



April 3, 2014

Bureau Of Land Management Director (21 0)

ATT: Protest Coordinator

20M Street SE, RM 2134LM

Washington DC 20003

Protest/Appeal of Colorado River Valley BLM FRMP & FEIS

Dear Sirs:

Please accept this correspondence as the appeal of the entirety of the Colorado River Valley Field Office ("CRVO") RMP and FIES (collectively referred to as "The Plan") by the above Organizations. The Organizations are forced to appeal the plan in its entirety as many of the appeal points are foundational in nature and directly impact the balancing of resources in the Plan. These foundational analysis issues include failure to meaningfully analyze recreational economics, failure to apply accurate management documents for various species, failure to incorporate state planning documents addressing the importance of recreational usage of the planning area and the failure to inventory 89% of the planning area for cultural resources despite significant new regulations for all sites currently identified and those that maybe identified in the future being adopted. The Organizations vigorously assert these failures have directly resulted in the CRVO proposal that closes over 50% of multiple use recreational routes on the planning area. The Organizations vigorously assert these decisions are arbitrary and capricious as a matter of law and fact and are made in violation of numerous federal planning requirements.

Prior to addressing the specific appeal points, a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization

of approximately 2,500 members seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. CSA has become the voice of organized snowmobiling seeking to **advance, promote and preserve the sport of snowmobiling** by working with Federal and state land management agencies and local, state and federal legislators. For purposes of this appeal, Colorado Off-Highway Vehicle Coalition, the Trail Preservation Alliance and Colorado Snowmobile Association will be referred to as "the Organizations" in this appeal.

The Organizations are vigorously opposed to the arbitrary and capricious manner that all economic analysis of recreational usage has been undertaken in the RMP and FEIS. The Organizations are deeply concerned with the accurate analysis of recreational spending in the planning process, as this is the primary method of recognizing recreational activity on public lands. This faulty analysis has led to spending profiles and totals that are so low as to lack any basis in law or fact. The Organizations vigorously assert this is prima facie evidence of the arbitrary and capricious nature of the economic analysis and the failure to meaningfully incorporate these conclusions into the planning for and balancing of uses on the FO moving forward.

Throughout this appeal, the Organizations are forced to guess at numerous critical factors for economic analysis of recreation. The Organizations vigorously assert that these forced guesses at factors is direct evidence of a failure to comply with NEPA requirements of a detailed statement of high quality information and a hard look regarding the decision making process. Not only are these guesses direct evidence of a failure of NEPA, these failures have directly impaired the Organizations ability to create meaningful appeal points and discussions, which has further prejudiced the Organizations.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period. It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different than the current management standards sought to be applied.

1. Introduction.

The Organizations have been involved in the planning process for the CRVO in a variety of capacities, including submission of extensive comments during the formal comment period, providing copies of additional economic analysis documents as they became available, correspondence with the BLM State Office regarding the issues with economic analysis that appear systemic in BLM planning in Colorado and providing copies of new Endangered Species management standards and guidelines to the CRVO as these documents have been released. Included in this appeal are the Organizations previous comments¹; various correspondence with the BLM state office voicing our concerns on economic analysis in numerous RMPs and State office replies to these correspondence²; a copy of the cover letter regarding the release of the 2013 Lynx Conservation Assessment and Strategy³; and a copy of the Forest Service NVUM analysis for Region 2 that has subsequently been provided to the CRVO and BLM state office.⁴

2a. Standards of review.

The Organizations believe a brief summary of the standard of review that are applied by Courts reviewing agency NEPA analysis is relevant to this discussion, as the Courts have consistently directly applied the NEPA regulations to EIS review of economic analysis. As a general review standard, Courts have applied an arbitrary and capricious standard of review for agency actions under NEPA. This standard is reflected as follows:

"...it required only that the agency take a **"hard look"** at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the

¹ These documents are attached as Exhibit 1 of appeal.

² These documents are attached as Exhibit 2 of appeal.

³ These documents are attached as Exhibit 3 of appeal. A complete copy of the LCAS is available at but has not been included with this appeal in order to avoid repetitive submissions. A complete copy of this report is available here: http://www.fs.fed.us/biology/resources/pubs/wildlife/LCAS_revisedAugust2013.pdf

⁴ These documents are attached as Exhibit 5 of appeal.. A complete copy of the Forest, Regional and national level analysis included in the NVUM process is available here. <http://apps.fs.usda.gov/nrm/nvum/results/>

agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."⁵

The CEQ regulations note that a detailed statement of the issues and methodology of analysis is a significant tool to be relied upon in the public comment process in order to satisfy the hard look mandate of NEPA. These regulations clearly state this relationship as:

“NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”⁶

The Organizations vigorously assert that a hard look has not been taken on numerous issues, such the arbitrary and capricious nature of the review of economic contributions of recreation to the CRVO planning area and that the Plan provides an average recreational spending amount that is only 20% of the USFS NVUM analysis and BLM planning regarding other issues in the CRVO such as the Greater Sage Grouse LUPA, where CRVO spending conclusions represent only 15% of the recreational spending amounts found in these documents. These conclusions are completely irreconcilable with additional analysis from State partners and that of user groups.

The arbitrary and capricious nature of review of recreational usage of the CRVO is further evidenced by the fact that extensive new regulations for the management of cultural resources on the 11% of the CRVO and the remaining 89% of the FO that simply has not even been inventoried. Rather than address these issues, determinations are made that all cultural sites, no matter how insignificant are worthy of listing on the National Register. These failures of analysis directly compound the failures to accurately address the economic contributions that result from recreational usage of the CRVO.

2b. The standard of review for economic analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis.

While the general standard of review for agency actions is an arbitrary and capricious standard of review, Courts have consistently held agencies to a much tighter level of review of economic analysis in the NEPA process, as the Court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis of NEPA decisions have concluded:

⁵ See, *Baltimore G & E Co v. NRDC*; 462 US 87 (1983) at pg 98.

⁶ See, 40 CFR 1500.1(b)

"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."⁷

The Court then discussed the significance of economic analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. See, *South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public's evaluation of a project."⁸

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in the total economic contribution calculations of approximately 32%.⁹ As more specifically addressed later in this appeal, the Organizations vigorously assert the error in economic calculations in the CRVO planning is easily more than twice the 32% the Hughes River Court found sufficient to overturn the EIS in that matter. It is the Organizations position that failing to accurately establish current spending of users precludes any meaningful comparison of how management changes will impact these economic benefits.

⁷ Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

⁸ See, Hughes River Supra note 7 .

⁹ See, Hughes River, Supra note 7 .

2c. Standards required for application of best available science in the NEPA process.

The Organizations believe a brief discussion of the agency standards for analysis of issues in the NEPA and land management process are very relevant to a review of the decision making process under an arbitrary and capricious standard of the hard look required by NEPA. The basic mandate to include documented economic and scientific analysis early in public lands planning process is provided by the Federal Lands Planning and Management Act ("FLPMA"). FLPMA specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

"(c) In the development and revision of land use plans, the Secretary shall–

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;..."¹⁰

The basic mandate of FLPMA regarding the critical need for documented economic analysis is more specifically and extensively addressed in Appendix D of the BLM's Land Use Planning Handbook. **The Organizations must note that economic concerns are the only factor that is addressed in every step of the planning process laid out in the BLM planning handbook.**

The development of forest plans is further governed by the Multiple Use Sustained Yield Act that provides as follows:

***Multiple use* - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people"**¹¹

The MUSYA further mandates that a transportation network be provided to allow for usage of public lands to best meet the needs of the American people. This issue is more completely addressed in subsequent portions of this appeal.

These concerns are summarized in the NEPA regulations which clearly provide the reason for the need for high quality information to be provided in the NEPA process. NEPA regulations provide as follows:

"(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. *The information must be of high quality. Accurate scientific analysis,*

¹⁰ See, 43 U.S.C. §1712

¹¹ See, 16 USC §531(a).

expert agency comments, and public scrutiny are essential to implementing NEPA. ¹²

The Organizations vigorously assert that high quality information on numerous issues has simply never been provided in the FEIS and RMP, as the Organizations are forced to theoretically address numerous issues despite the asserted priority and importance of the issues in the planning process. The lack of high quality information has materially impaired the Organizations ability to meaningfully and completely comment on a variety of issues and has directly resulted in 50% of multiple use recreational routes being closed.

It is well established that NEPA regulations require an EIS to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment..... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses...." ¹³

Federal statutes require that best available science be taken into account in all federal planning. The statutes also require planners to **discuss** how the best available science was taken into account, and how the science relied upon was interpreted and applied to the issues addressed in the plan. Best available science is specifically defined for planning purposes as:

"§ 219.11 Role of science in planning. (a) The Responsible Official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the Responsible Official must:

- (1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;
- (2) Evaluate and disclose substantial uncertainties in that science;
- (3) Evaluate and disclose substantial risks associated with plan components based on that science; and
- (4) Document that the science was appropriately interpreted and applied.

¹² See, 43 CFR 1500.1(b)

¹³ See, 40 CFR 1500.1

(b) To meet the requirements of paragraph (a) of this section, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.”¹⁴

The Organizations frequently cannot find any basis for several of the decisions that are more specifically addressed in the subsequent portions of this appeal meaning there can be no argument that the analysis is sufficient for purposes of the above standards. As there is no analysis, the decisions are arbitrary and capricious per se.

3a(1). The CRVO economic analysis of recreational usage is erroneous, an abuse of discretion and often conflicts with other BLM analysis of the planning area.

The Organizations are aware that there are many components to the analysis of recreational spending on public lands including total recreational spending in the planning area, total visitor days to the area, average recreational spending per user per day and the number of jobs that result from this spending. The Organizations vigorously assert that every component of the recreational economic analysis provided in the CRVO Plan is incorrect to some degree and had directly impacted the allocation of resources in the RMP and FEIS.

The failures of this analysis are compounded by the fact that much of this same analysis has been performed by the BLM with regard to the GRSG LUPA and no comparison of the conclusions has been provided in the CRVO RMP. While the Organizations have concerns regarding the sufficiency of the GRSG analysis, these concerns are minimal in comparison to the differences between GRSG analysis and CRVO economic analysis.

3a(2). No draft or final economic analysis report has been provided in violation of relevant planning requirements and specific economic analysis requirements in Executive Orders.

A review of the CRVO RMP and FEIS reveals that analysis of economics is routinely identified as Socio-economics, which the Organizations believe may have contributed to the erroneous economic conclusions that have been reached. Economics and social issues are truly two factors that have significantly different analysis processes and resources available. The Organizations are aware that there is significant information provided in the FEIS and RMP regarding the social makeup of the CRVO planning area including average ages of residents, racial make-up and housing costs. This basic social information is available for immediate

¹⁴ See, 36 CFR §219.11.

download from a wide range of source including the Department of Commerce's office of Labor Statistics, Census results, the Department of Labors office of Labor Statistics, the State of Colorado, the Headwaters economic database that is available free of charge and a variety of other sources. The Organizations must note that at no point is the social information that is available for easy download from these sources a replacement for the analysis of economic issues with the plan and analysis of how proposed changes will impact local economies.

As previously addressed in this appeal, FLPMA, NEPA and MUSYA specifically require both economic and social issues be meaningfully addressed in the planning process with best available science. The specific need for and timing of draft economic analysis in Department of Interior planning actions has also been specifically addressed by recent Executive Orders. On March 5, 2012 President Barack Obama specifically addressed economic analysis in Department of Interior planning as follows:

"Accordingly, in order to provide more complete information in the future regarding potential economic impacts when critical habitat proposals are first offered to the public, **I direct you** to take prompt steps to propose revisions to the current rule (which, as noted, was promulgated in 1984 and requires that an economic analysis be completed *after* critical habitat has been proposed) **to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule** to designate critical habitat."¹⁵

The Organizations believe it is exceptionally relevant to our concerns to note this Executive Order only addresses the **mandatory nature of economic analysis** and is entirely silent on providing socially related information, such as that provided in the CRVO planning. The Organizations vigorously assert that the mandate of this Executive Order requiring issuance of a draft economic analysis has clearly been violated in the CRVO planning process, as the final resource plan and EIS has been released but the Organizations are unable to identify any meaningful economic analysis in this process or any documentation that resembles meaningful analysis of economic issues.

Preparation of a single economic analysis report at any point in the CRVO planning process would have immediately brought to light critical flaws in the limited economic analysis that has been provided, such as conflicting and inconsistent boundaries for analysis of issues, failing to define key terms in analysis, how total visitor days were estimated in the planning area etc. As

¹⁵ See, Presidential Memorandum of February 28, 2012; Proposed revised habitat for the spotted owl; minimizing the regulatory burdens; Federal Register Volume 77, Number 43 (March 5, 2012).

an example the limited economic analysis in the CRVO repeatedly asserts it is excluding local recreational spending but at no point is there any definition of what "local" defined as. The Organizations rely on the NVUM definition of within 50 miles and beyond 50 miles as the definition of local and non-local spending simply for the purposes of discussion and analysis. This analysis should not be deemed a waiver of the objections to failure to define basic economic analysis terms in the CRVO planning and the facial inconsistencies that result from the failure to apply these terms accurately and consistently. Definition of these types of terms is a critical components of any economic analysis.

Preparation of an economic analysis report would have included compiling significant information regarding visitation to the CRVO that is critical to analysis and is routinely collected by the USFS without NEPA and statutory mandates of best available science standards as part of the planning process. Preparation of a single economic report would also have highlighted the conflicts between the CRVO conclusions of those in other BLM planning activities, the USFS NVUM conclusions and multiple other sources of information identified in this appeal. The Organizations vigorously assert that any attempt to explain why similar information was not collected during the BLM planning process to comply with best available science requirements, or the facial conflicts between the conclusions of documents that were allegedly reviewed as part of the CRVO planning process would lack both factual and legal basis and be arbitrary and capricious as a matter of law.

The Organizations vigorously assert that the EO is based on sound management practices and numerous statutory requirements and the CRVO chose to proceed without the economic analysis at their peril for reasons that are unclear. The Organizations vigorously assert this decision has directly resulted in economic conclusions that are arbitrary, capricious and lack any basis in law or fact.

3a(3). CRVO analysis area chosen for socio- economic analysis in no way corresponds with visitation information in NVUM analysis for adjacent USFS lands.

On several important issues for recreational spending analysis there are critical portions of the FEIS analysis that simply are not provided, such as failure to provide the division of recreational spending across the four NVUM categories, how analysis boundary areas are established and correspond to visitation and many other issues. The development of this information is critically important to NVUM functions as is why the NVUM analysis is consistently identified as best available science on this issue. It is the Organizations position that asserting consistency of analysis between CRVO analysis and NVUM conclusions entirely lacks factual basis and is arbitrary and capricious as a matter of law.

The Organizations will note that often average recreational spending varies based levels of visitation by particular user groups and total visitation but the average recreational spending amount for each user group is very consistent across the Country. While national information on spending of each user group is reasonably consistent, comparative spending among the user groups is highly variable as NVUM analysis for an average spending forest concludes hikers spend on average \$50 for a nonlocal day trip while snowmobilers spend over \$642 per day for nonlocal overnight trips, making an understanding of your users visitation highly relevant in economic analysis.¹⁶ Understanding the levels of visitation and duration of each user group visit to any planning area is a basic tool for the analysis of recreational activity and visitation is again critical to the development of accurate planning analysis and would be highly relevant to the basic allocation of competing resource demands on the planning process. Again this information simply has not been provided at any point in the planning process. The Organizations vigorously assert the failure to provide this basic information on a critical tool for the analysis of this issue is facial evidence of a failure to comply with NEPA and other planning requirements for federal resource planning.

The basic conflict between NVUM analysis and CRVO analysis starts with defining visitation to the CRVO planning area. These issues of the boundary of the analysis areas for the CRVO economics are further compounded by the fact that the analysis boundary areas asserted by the CRVO in no way correspond with the specific visitation information that is available for USFS lands adjacent to the CRVO. While these forest specific NVUM data sets are not controlling for the CRVO visitation, the Organizations vigorously assert these data sets are HIGHLY relevant to the CRVO visitation, as it has been the Organizations experience that users are often not aware of the managing agency for the areas that are providing dispersed recreational activities and resources. The Organizations vigorously assert that a proper understanding of visitation to the planning area would have immediately identified the errors in the conclusions for recreational spending that are identified in the RMP and FEIS.

These forest specific NVUM reports specifically identify that most out of region visitation to public lands in the CRVO planning area originates in Boulder, Denver, Arapahoe, Moffat and Jefferson Counties in Colorado.¹⁷ Each NVUM data set also identifies a strong percentage of visitors comes to that forest from out of state based on zip codes.¹⁸ These NVUM datasets also

¹⁶ See, Stynes and White November 2010 at pg. 6.

¹⁷ See, USDA Forest Service; NVUM Visitor Use Report Arapaho-Roosevelt NF; Round 2 Last updated May 23, 2012 at pg 43-46; See also USDA Forest Service; NVUM Visitor Use Report White River NF; Round 2 Last updated May 23, 2012 at pg 43-46; See also USDA Forest Service; NVUM Visitor Use Report Rout NF; Round 2 Last updated May 23, 2012 at pg 43-46.

¹⁸ See, the respective forests round 2 NVUM reports on pg 16.

specifically identify that visitors often travel more than 500 miles to reach these forests. These estimates range from 9% of visitors to the Medicine Bow National Forest to almost 50% of visitors on both the White River National Forest and Arapahoe/Roosevelt National Forests.¹⁹ **The Organizations must note that each of these Forest specific NVUM visitor data sets specifically identifies visitation from "foreign counties" as one of the top five sources of visitation to their planning area. The Organizations vigorously assert there is simply no factual or legal basis to assert that visitors traveling more than 500 miles or from outside the State or Country are spending \$16 per day on average for their trips. As more specifically addressed in other portions of this appeal, a visitor only 50 miles from the CRVO is unable to purchase sufficient fuel to travel to and from the CRVO with only \$16.**

The Organizations vigorously assert that the CRVO failure to define such fundamental analysis mechanism as where are visitors to the planning area coming from in a manner that is accurate and consistent has directly contributed to the arbitrary and capricious conclusions that are more specifically addressed in the subsequently in this appeal. The Organizations vigorously assert that the failure to accurately describe the analysis of the origin of recreational visitation has also directly impaired the public's ability to meaningfully comment in the process, as people could easily misunderstand the scales and areas of analysis. These failures of analysis are facial violations of the hard look at economic issues mandated by NEPA.

3b(1). The Western Governors' Association recently concluded that recreational spending is the driver for western economies.

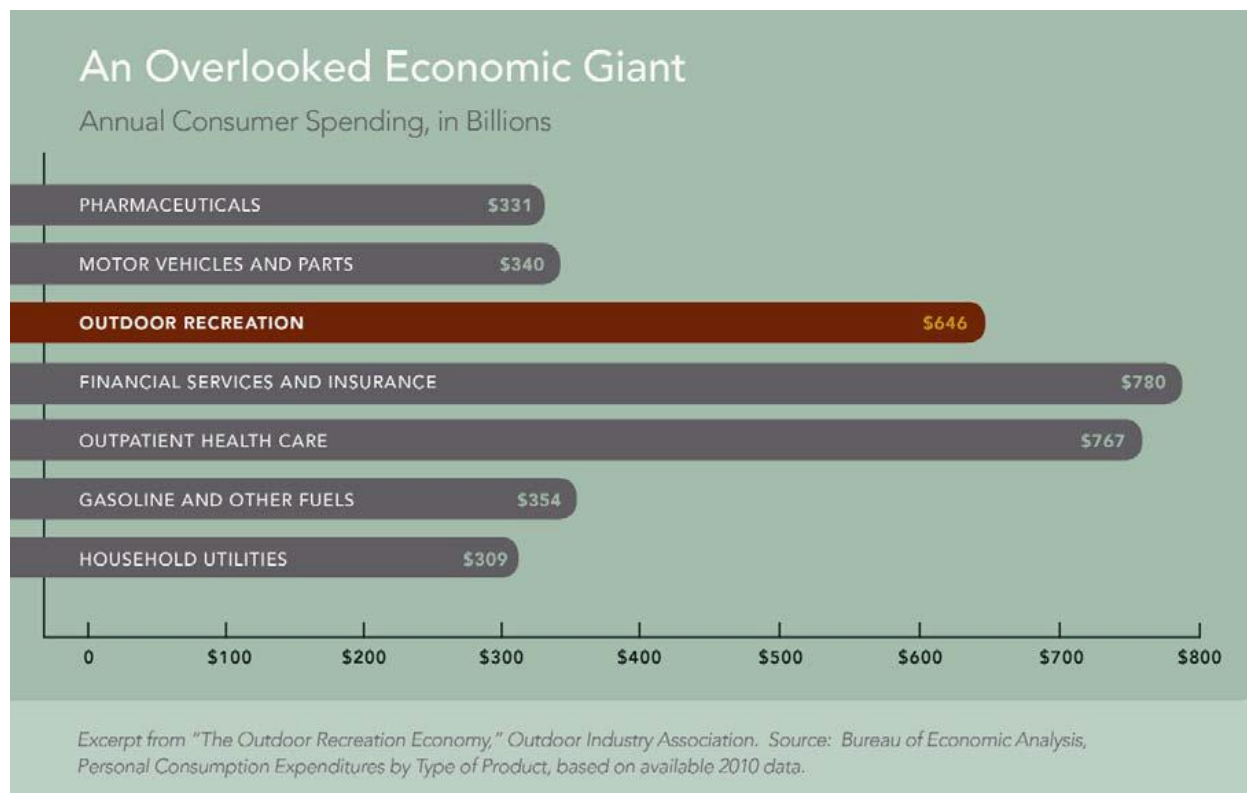
As previously noted, there are three general categories for providing conclusions of recreational spending information. The first the Organizations will be addressing is a total spending on a variety of geographic levels, starting at the regional level. Recreational usage of public lands is a significant portion of the Colorado economy, especially in the smaller mountain communities that have already lost more traditional sources of revenue, such as timber, farming and mining. This imbalance of usage and revenue is a frequently addressed issue in the Western US and should be a known issue in the preparation of economic analysis reports. The critical nature of recreational economics to the western economies was recently highlighted in the Western Governors Get our West Report that specifically stated:

"Spending on outdoor recreation is a vital part of the national and western economies. It means jobs and incomes and can be the lifeblood of many rural communities in the West. This snapshot helps highlight the value of this often

¹⁹ See, the respective forests round 2 NVUM reports on pg 16.

overlooked sector- one that is not otherwise measured as a traditional pillar of the US economy. ²⁰

The Western Governor's report makes some general level comparisons of recreational spending and other economic sectors that are consistently identified as important in the western United States. This comparison is reflected as follows:



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The Organizations believe this general landscape level comparison of total recreational spending is relevant to the CRVO planning process, as this activity is critical to western economies and accurate analysis should have been a high priority in order to avoid negative impacts to this important activity in addition recreation usage of public lands is identified as the largest basis for comments on the CRVO draft. Almost all the CRVO economic analysis exhibits a basic lack of understanding of the importance of this usage, as the conclusions that are reached regarding total spending and average per day recreational spending that are found in the CRVO analysis are woefully inadequate to create the total economic impact from recreational activity that has been identified in the Western Governors analysis above.

²⁰ Western Governors Association; *A Snapshot of the Economic Impact of Outdoor Recreation*; June 2012 at pg 4

²¹ *Id* at pg 1

3b(2). Proper integration of economic information in the planning process is an ongoing issue in federal planning.

It has been the Organizations experience that the proper integration of accurate economic information is often a weakness of the public lands planning process in Colorado, which has resulted in the creation of many other longer term problems when decisions reflecting an imbalanced multiple uses are implemented. The Organizations concerns were recently identified as a major planning issue that is not just limited to Colorado. The Western Governors' Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States. The *Get Out West* report specifically identified that proper valuation is a significant management concern as follows:

"Several managers stated that one of the biggest challenges they face is "the undervaluation of outdoor recreation" relative to other land uses."²²

The *Get Out West* report from the Western Governors' Association also highlighted how critical proper valuation of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

"Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."²³

The Organizations believe our concerns regarding the CRVO plan and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. These concerns and possible impacts are also specifically addressed in the BLM manuals for the development of land and resource plans. These failure to properly analyze recreational economic concern will result in increases to many other management issues that were sought to be minimized with the creation of the RMP. There can simply be no factual argument made that recreation has not been significantly undervalued in the CRVO and this has directed the range of alternatives previously provided and the final alternative provided for multiple use recreation on the CRVO.

²² Western Governors Association; *Get out West Report; Managing the Regions Recreational Assets*; June 2012 at pg 3. A Copy of this report has been included with these comments as Exhibit 1.

²³ *Get Out West Report* at pg 5.

3b(3). CRVO conclusions on total recreational spending are arbitrary and capricious as a matter of law and fact.

The Organizations believe there is significant merit in addressing the major conflicts that exist between Federal, State and user group analysis of recreational spending in the planning area. Prior to addressing conflicts in planning area analysis, the Organizations believe identifying the importance of the total recreational spending to the Colorado economy is warranted. The joint Western Governors/Outdoor Industry Association analysis recently concluded outdoor recreation contributes \$13.2 billion²⁴ to the Colorado economy annually, making recreational activity a compelling driver of the Colorado economy. Unfortunately this analysis was not of sufficient detail to apply to a planning office proposal such as the CRVO, but this total spending calculation highly correlates to recreational activity, such as trail usage, camping, off road cycling, hunting and fishing, that can only realistically occur on public lands. The Organizations vigorously assert that a \$13.2 billion dollar total is completely unachievable at the spending amounts identified in the CRVO planning process that reflect a \$16 per day average recreational spending amount.

There are numerous analysis of recreational activities that are more specific as to local areas and can be applied to field office planning such as the CRVO, as they provide regional or county level conclusions as part of their analysis. These reports are highly relevant to the CRVO as the CRVOP makes up 19% of all lands in the 5 county analysis area. In addition to these reports that provide county level information, both USFS NVUM data and recent planning regarding the Greater Sage Grouse (GRSG) provide average daily spending amounts that can be applied to visitor use estimates in the CRVO to provide accurate estimations of total recreational spending in the planning area. The Organizations vigorously assert there is significant conflict between these total spending amounts and the CRVO conclusions that all recreational spending only accounts for \$5.5 million dollars annually.

Colorado Parks and Wildlife (CPW) economic analysis reports found that just hunting and fishing recreational activities contributes **over \$298 million** to the CRVO planning area annually and \$122 million to Garfield and Eagle Counties alone.²⁵ These hunting and fishing related economic conclusions are highly relevant to recreational access as the National Shooting Sports Foundation in partnership with the USFWS and the Association of Fish and Wildlife Services'

²⁴ Full report is available here: http://www.outdoorindustry.org/images/ore_reports/CO-colorado-outdoorrecreationconomy-oia.pdf. Website was accessed March 25, 2014.

²⁵ See, Colorado Parks and Wildlife; *Final Report- The economic impacts of hunting, fishing and wildlife watching in Colorado*; September 26, 2008; prepared by BBC Research and Consulting; at Section IV at pgs 15-17.

recently concluded that access to public lands was the major issue restricting hunting.²⁶ By comparison, the \$5.5 million the CRVO finds results from total recreational spending represents only 1.8% of the spending that CPW concluded results from just hunting and fishing activity on the planning office area despite the CRVO managing 19% of the lands in the planning area. Clearly total recreational usage encompasses many other activities beyond hunting and fishing.

Colorado Tourism Office (CTO) found that tourism/travel contributed **over \$939 million** to Eagle and Garfield County and **\$1.9 Billion** to the 5 county analysis area identified as the CRVO analysis area.²⁷ The Organizations must also note that the Colorado Tourism office provided 14 years of county specific analysis as the basis for the current spending amounts, making these conclusions highly credible for the planning area. By comparison, the CRVO planning conclusions represent .3% of the amount that Colorado Tourism found for the 5 county planning area asserted to be relied on for CRVO analysis despite the CRVO managing 19% of these lands.

COHVCO found that the use of registered OHVs for recreation alone provided **over \$307 million** to the CRVO region.²⁸ It is significant to note that the scope of this study included only ATV, snowmobiles and motorcycles with state registrations. The study does not capture the full size 4x4 or jeep usage on the planning area, making this conclusion for total spending exceptionally conservative. Despite the conservative nature of this analysis, the CRVO conclusion of total recreational spending contributing \$5.5 million only represents 1.7% of the total spending that has been identified for a single sector of the recreational market. Again the CRVO spending amount should be significantly higher than this single sector analysis given the diverse scope of recreational activity and that the CRVO manages 19% of all lands in the 5 county CRVO planning area.

The Organizations also believe that it is very relevant to compare CRVO total recreational spending amount with total amounts that would be achieved with the application of per day recreational spending amounts that have been identified in recently BLM planning and the USFS NVUM process to the total number of visitor days that are asserted to be occurring on the CRVO for recreational purposes. The applications of these per day spending amounts yields the following results, which are again completely irreconcilable with the totals that are found in the CRVO planning process.

²⁶ See, National Shooting Sports Foundation; Issues related to hunting access in the United States; Final Report (2011).

²⁷ See, Colorado Tourism Office; *The Economic Impact of Travel on Colorado 1996-2010*; September 2011; prepared by Dean Runyan and Associates at pages 37, 39, 41, 45.

²⁸ See, Colorado Off Highway Vehicle Coalition; *Economic Contribution of Off-Highway Vehicle Recreation in Colorado*; Prepared by the Louis Berger Group(2008) at pg 16.

Application of Greater Sage Grouse ("GRSG") average recreational per day spending profile of \$121.96²⁹ to the average recreational visitor days (338,000) would generate **\$41 million** for total recreational spending, and this comparison is highly relevant as a significant portion of the CRVO is GRSG habitat. As more completely discussed in subsequent portions of the appeal, these process should generate significantly similar conclusions as both apply the same IMPLAN model, over the same geographic area over the same timeframes of analysis. These conclusions are made even more relevant as these totals are entirely based on the visitation amounts reached in the CRVO planning process that are the result of recreational activity on the planning office. The Organizations are unable to reconcile any assertions that 338,000 recreational visits would generate only \$5.5 million annually with the GRSG conclusions that the same recreational usage would generate over \$41 million.

Application of the USFS NVUM average per day recreational spending conclusions would result in a total recreational spending amount for 338,000 visitor days of **\$ 17 million** to **\$20 million** in recreational spending in the planning area. The CRVO planning process fails to provide sufficient breakdown of recreational visitation by user group to allow for the application of user group specific analysis that is provided as part of the NVUM analysis process. Rather the Organizations are forced to again rely on general visitation amounts that are developed in regional level reports from the NVUM process. The Organizations strongly assert the failure to provide this basic information is a failure of the hard look required of this issue by NEPA.

The analysis of the above planning documents is further expanded in later parts of this appeal. The CRVO RMP notes that several of the above documents were allegedly analyzed as part of the review for recreational spending analysis but at no point is there any discussion of what this analysis and review entailed or how these outside documents were integrated into the conclusions that are reached in the CRVO planning process. The Organizations vigorously assert that any asserted comparison of the above referenced documents as part of the CRVO planning process would be arbitrary and capricious as a matter of law given the disparity of the conclusions that are reached in the Federal and State analysis and the conclusions that are reached in the CRVO plan.

3d(1). The CRVO reaches conclusions on the average recreational daily spend that lack both factual and legal basis.

The Organizations vigorously assert the total spending amounts for recreational activity found by the CRVO are arbitrary and capricious and lack any legal or factual basis. This position is

²⁹ See, BLM Northwest Colorado Greater Sage Grouse Draft LUPA/EIS- August 2013 Appendix M at pg M-33.

further supported by the conflict that exists between average spending amounts for recreational activity that are identified by the CRVO planning process and the conclusions that are reached by credible research from the USFS, other BLM analysis, the State of Colorado on particular user groups and credible research from partner organizations. While the RMP and FEIS have failed to provide specific user group details, average recreational spending across the planning area can be developed and compared to the more general analysis of recreational spending that is available from a variety of sources. The RMP finds the total recreational spending on the CRVO is \$5.5 million per year.³⁰ The RMP finds an annual visitor days total of 338,000.³¹ As the RMP provides both a total recreational spend and a total number of recreational visitor days, the average recreational daily spend relied on for development of the RMP is able to be developed by dividing the total spend by the total days as follows:

$$\text{\$5.5 million/338,000 visitor days} = \text{\$16.27 per day per user average recreational spending}$$

The Organizations believe the conclusion the average recreational user will spend \$16.27 simply offends basic logic and reason and the hard look required by NEPA, as there is no recreational activity that can be done for \$16 per day. The arbitrary and capricious nature of this conclusion is further compounded by the fact that every adjacent USFS forest specifically identify foreign countries as one of their top 5 sources of visitors and specifically identify strong visitation totals from most US states in their NVUM analysis process for visitation. This conclusion is further drawn into question as each forest identifies a significant amount of visitation from many counties in Colorado that are more than 50 miles from the planning area.

The Organizations vigorously assert that inaccurate calculations have significantly impacted the motorized community in the allocation of resources and opportunities moving forward as the motorized user groups are consistently identified as the highest spending user group on public lands. As a result injury to the motorized community is significantly higher than that to other user groups whose average spending amount may be closer to the average that is identified in the CRVO process.

3(d)(2). An average recreational spending amount of \$16.27 is insufficient to cover fuel necessary to travel to and return from outside the CRVO for a day of recreation.

The lack of factual basis in the conclusions of the CRVO in recreational spending are immediately evident with application of the spending total to several common fact patterns for

³⁰ See, CRVO RMP and FEIS at pg 4-766.

³¹ See, CRVO RMP and FEIS at pg 4-763.

recreational usage. The lack of basic consistency in law or fact in the CRVO spending conclusions is reflected in the fact that if Internal Revenue Service reimbursement rates for vehicle mileage are applied to the non-local CRVO visitors who live at the boundary identified in the NVUM process of 50 miles from their destination, this group of users would not be able to reach the area and return home if they spent only \$16.27. The Organizations believe this basic relationship indicates a serious issue with the CRVO analysis as \$16.27 is only a sufficient amount of money to travel 29.3 miles at IRS mileage rates. This means that the average recreational user from out of the region would only get approximately half way to the CRVO and then run out of fuel and be unable to return. Any assertion of the accuracy of the \$16.27 spending per day becomes even more problematic when NVUM visitation analysis, which notes high levels of visitation from outside Colorado and the Country, are incorporated drawing any total in this range further from a rational or legally sufficient basis for planning purposes.

The Organizations are aware that there are many factors incorporated into IRS mileage rates that may not be exceptionally relevant to federal planning such as depreciation. Even with application of actual expenses of travel for a user who is only 50 miles away, visitors from outside the planning area are unable to travel to the CRVO and return home on the average spending amounts asserted in the RMP. For purposes of this discussion, the Organizations are assuming the average vehicle gets 20 miles to the gallon and fuel costs \$3.75 per gallon in the planning area. As a result, a visitor that traveled 50 miles (the out of region standard used in NVUM analysis) would need 2.5 gallons of fuel for each leg of his trip. Each leg of the trip would then cost \$9.37 (2.5 gallons x \$3.75 per gallon) to travel and a round trip would cost \$18.75. Based on the average recreational spend the visitor would end up almost 20 miles short of home and almost a gallon of fuel short, without undertaking any recreational activity after getting to the CRVO, if he only spent \$16.27. These conclusions are direct evidence that the economic analysis of recreational spending in the RMP is faulty as a matter of law and fact and is arbitrary and capricious as a matter of law.

Any factual accuracy of the CRVO conclusions for average recreational user spending at the \$16.27 amount is more problematic as this amount is an average. For this conclusion to be correct, it would mean there are large recreational groups that are able to recreate for significantly less than \$16.27 per day to offset those user groups directly addressed in these comments, who on average spend 10x this amount per day. Unfortunately both users are out of gas before ever achieving their day of recreational activity. The Organizations believe this facially incorrect conclusion is the direct result of the failure to meaningfully analyze economics has lead to conclusions in the RMP.

3e(1). USFS NVUM analysis has long been recognized as best available science on comparative recreational spending.

Throughout this appeal, the Organizations are heavily reliant on USFS NVUM data for comparisons and the basis of appeal points, and this reliance is not academic or without legal basis. The Organizations will note that numerous references to application of USFS NVUM data and methodology are made in the CRVO RMP and FIES, making any comparisons between these two processes highly meaningful. The USFS NVUM process has long been recognized as best available science for recreational usage and now must be specifically addressed in federal planning. It is the Organizations position that the CRVO conclusions and that of any portion of the USFS NVUM are wholly irreconcilable as a matter of law and fact and make the CRVO conclusions violations of various planning laws requirements and executive orders as a matter of law.

The USFS began compiling National Visitor Use Monitoring information ("NVUM") data as the result of Executive Order #12,862 issued by President Clinton in 1993 which addressed setting customer service standards for ALL Federal agencies. The on-going importance of the issues originally addressed in EO #12,862 was recently reaffirmed with the issuance of EO #13,571 on April 27, 2011 by President Barack Obama. Over the 20 year lifespan of the NVUM process, there has been significant peer review of the analysis process and conclusions. The Organizations have found these conclusions to be rather conservative for motorized usage, but these concerns are very minimal here, as the CRVO conclusions are significantly below any conclusions reached in the NVUM analysis. NVUM conclusions have now been recognized as best available science on the recreational spending of users, as more specifically discussed in subsequent portions of this appeal, but the comparison of the methodology of the NVUM process is highly relevant.

NVUM analysis of recreational spending is provided in two basic manners. The USFS provides a single national report with specific information for each user group and then each forest and region develops forest specific reports that apply the national level recreational spending amounts to the visitation levels of the specific region or forest. The USFS NVUM process provides a wide range of information regarding users and economic information which is divided into 4 national categories for each user group as part of a single national report. These categories are local day use; non-local day usage; local overnight use; and non-local overnight usage.³² Each group is provided a low, average and high spending amount. The national

³² See; White and Stynes; *Spending Profiles of National Forest Visitors, NVUM Round 2 Update*; November 2010 at pg 6. Hereinafter referred to as "Stynes and White November 2010". A copy of this report is attached to this appeal as Exhibit "1".

averages in each category are then adjusted to incorporate comparative local costs for using particular areas of the county, as costs of living and recreation vary significantly throughout the county. These multipliers for local costs are summarized as a below average, average and above average spending area. These localized categories are then multiplied by the visitation to a particular area in each category of user to allow for flexibility of the analysis process and develop site specific total spending conclusions. The CRVO failure to provide this basic information, which should have been developed for the application of the NVUM process has directly prejudiced the Organizations ability to meaningfully discuss errors in conclusions. The Organizations believe the failure to provide this information is a violation of NEPA as a high quality detailed statement of the analysis of the issue under the hard look standard has not been provided.

NVUM economic analysis is also provided at the Forest and Region level on a periodic basis and addresses a wide range of factors necessary to provide quality services to the visitors on public lands, such determinations of where people are visiting, average ages and gender. As part of these forest and region specific reports, economic information is also provided based on average visitation to the planning areas, which would reflect a summary of the specific spending profiles that are addressed in the national level user group specific data provided. As noted in other portions of this appeal, this information would have been highly relevant in addressing visitation profiles on the CRVO.

3e(2). Basic consistency of BLM planning with USFS NVUM data is mandated by multiple Executive Orders and BLM national office requirements.

Prior to expanding the analysis of economic concerns to analyze research from other federal agencies, the Organizations believe a brief discussion of the history of these federal analysis and the relationship of Forest Service analysis to BLM planning is warranted. Forest Service NVUM data has been collected pursuant to multiple Executive Orders that were equally applicable to all federal agencies. The Organizations will note that these Executive Orders and preliminary works of the Forest Service were available for BLM use, well before the CRVO ever started any planning relative to the current RMP. As a result, the ability to conduct some type of comparison between the two processes was available and for reasons that are not clearly described in the RMP were never pursued further by the CRVO.

On September 11, 1993 President Clinton issued Executive Order #12,862 which addressed Setting Customer Service Standards for **ALL** Federal agencies. Order 12,862 specifically provided:

"All executive departments and agencies (hereinafter referred to collectively as "agency" or "agencies") that provide significant services directly to the public shall provide those services in a manner that seeks to meet the customer service standard established herein and shall take the following actions:

(a) identify the customers who are, or should be, served by the agency;"

As a direct result of EO 12,862 the Forest Service embarked on compiling significant amounts of data regarding the demographics and spending habits of recreational users of USFS lands. The USFS clearly identified that understanding the customer is of paramount importance to providing good customer service and developing good planning to provide a high quality customer service to recreational users. The results of this research has developed in the National Visitor Use Monitoring process and has uniformly been recognized as best available science regarding visitation and spending on public lands.

The on-going importance of the issues originally addressed in EO 12,862 was recently reaffirmed with the issuance of EO 13,571 on April 27, 2011 by President Barack Obama. With the issuance of EO 13,571 by President Obama, the BLM Washington Office entered into a cooperative agreement with the USFS to adopt NVUM findings and apply NVUM methodology to BLM lands. The background and benefits of this cooperative agreement are specifically outlined on the BLM's National Recreation Offices webpage as follows:

"Background

In an effort to identify a uniform, agency-wide program to collect scientifically-defensible visitor use estimates, the BLM entered into an Interagency Agreement with the USDA Forest Service (FS). The program provides a pilot test of the Forest Service National Visitor Use Monitoring (NVUM) program at three BLM Field Offices (Moab, UT, Roseburg, OR, Dolores, CO) to determine the viability of this comprehensive visitor use methodology for possible long-term, BLM-wide application.

Benefits

It is critical that the BLM has a standard consistent bureau-wide, scientifically-defensible method for visitor monitoring. Implementing this pilot program allows BLM to evaluate, adapt, and modify (as needed) the FS NVUM system, providing BLM with valid and reliable baseline data, trend analysis, demand assessment, and forecasting. Such visitor monitoring information enables BLM to incorporate statistically valid visitor use monitoring information into planning and management decisions as well as long-term monitoring assessment. **The FS**

NVUM system provides BLM with accurate data with high confidence levels for reporting to Congress and constituents, thereby building credibility and establishing legal protection in decision-making. This program would also provide input for estimating regional socio-economic impacts associated with BLM visitor use. The program would provide insight into the recreation settings and recreation experiences that BLM visitors want on the public lands. Finally, by working with the FS, BLM can achieve significant savings in research and development costs while also being able to have comparable data with a sister agency. This inter-agency, inter-department effort represents a major achievement between the two Departments and sister agencies."³³

The Organizations must note that the national BLM pilot program offices are within the general planning region and under the same State office as the CRVO. Given the clear vision that the BLM national office provided to comply with the mandates of multiple Executive Orders, the Organizations have to question why any BLM Field Office would not undertake a basic comparison of economic conclusions they have reached in their planning process to the USFS NVUM data. It is the Organizations position that type of review simply did not happen in this case, resulting in conclusions being reached in the CRVO RMP and FEIS that are in violation of both Presidential Executive Orders and the BLM National Office position on this issue. These conflicts must be resolved and the public allowed to comment on the revised allocation of resources after multiple uses are rebalanced pursuant to these mandates.

3e(3). Consistency of BLM planning with USFS NVUM data is required under existing science partnership agreements between USFS and BLM.

In addition to the adoption of NVUM data as the accepted conclusions and methodology for recreational spending analysis pursuant to Executive Orders, interagency strategies also address the critical need to rely on partner agency research on particular issues to develop plans in a cost effective and timely manner. These partnerships are a critical tool in complying with requirements to develop plans in reliance with best available scientific research requirements. The need to manage in compliance with rapidly evolving bodies of research is specifically identified as a major concern for the BLM moving forward, as identified in the 2008 BLM Science Strategy, which states:

“In this era of rapidly expanding knowledge and methodologies of predicting future environmental changes, it is critical to keep up with the state of

³³ http://www.blm.gov/wo/st/en/prog/Recreation/national_recreation/visitor_use_surveys.html as viewed 5/3/2013.

knowledge in resource management. By making use of the most up-to-date and accurate science and technology and working with scientific and technical experts of other organizations, we will be able to do the best job of managing the land for its environmental, scientific, social, and economic benefits.”³⁴

The role that strategic planning documents play in determining the resources currently available and in identifying those resources that need to be developed is specifically and extensively discussed in the provisions of the 2008 BLM science strategy. This discussion specifically identifies:

“National management issues will be focused to reflect how they apply to the various biogeographic regions of the United States. The BLM identifies and prioritizes the science needs and problems that threaten the targets and goals from the National Strategy. Targets are established for managing specific goals or objectives.....The science needed to address the regional management issues will be defined. Science may include existing resource inventory, monitoring, and other data, as well as new information derived from research and project efforts.”³⁵

BLM’s Science Strategy identifies a wide range of scientific research partners for the exchange of credible information and to be used to address issues that may arise. One of these partners is the US Forest Service,³⁶ making the extensive works of the Forest Service’s research stations and NVUM research cited in this appeal fully applicable to management of BLM lands. Again the Organizations vigorously assert that these science agreements make the conclusions of the CRVO on economic issues even more arbitrary and capricious and lacking factual and legal basis. Merely asserting there is consistency when there is none in fact is simply unacceptable.

3e(4). Forest Service NVUM data conclusions on daily average recreational spending are completely irreconcilable with CRVO conclusions.

As outlined in the previous two sections of the Organizations appeal, basic consistency of economic analysis performed as part of BLM planning with USFS NVUM data conclusions and research has been required by both BLM National office management standards, BLM science strategies and multiple Presidential Executive Orders. Versions of these documents have been in place since well before the commencement of the CRVO planning process. These specific requirements in addition to FLPMA requirements of reliance on best available science in the planning process and NEPA requirements of a hard look at the decision making process. While

³⁴ See, BLM Science Strategy 2008 – Doc Id BLM/RS/PL-00/001+1700 at pg iv.

³⁵ *Id* at 16.

³⁶ *Id* at pg 10.

these planning requirements are clear, a comparison of the conclusions reached in the NVUM analysis and the CRVO planning efforts leads to a single overwhelming conclusion. The Executive Orders and National BLM directives simply have not been complied with in the CRVO planning process despite numerous assertions of reliance on NVUM conclusions for the planning process.

The US Forest Service recently released new National Visitor Use Monitoring reports and research for the Rocky Mountain region and many of the USFS lands that are adjacent to the CRVO. The conclusions of this research regarding amounts of average recreational spending per day is totally irreconcilable with CRVO findings regarding recreational spending on public lands. The USFS NVUM data for Region 2 found the average recreational spending for a party on a trip was \$1,059 dollars.³⁷ The average trip within Region 2 was 5.7 days in length³⁸ and the average party consisted of 3 people.³⁹ As a result the average spending can be developed by dividing the average trip total by the average trip length and the average party size. The USFS NVUM region 2 research and analysis concludes that the average daily recreational spending total in R2 is \$61.92 per day including visitors who ski. When similar calculations are applied and exclude skiers an average spending amount of \$51.92 is reached. A copy of the Region 2 NVUM report is included with this appeal for your reference, as a copy of this document was provided to the CRVO when it was released outside the formal comment period and as this document was allegedly relied on in the development of the CRVO analysis.⁴⁰ The Organizations vigorously assert this total is utterly irreconcilable with the CRVO conclusion that the average recreational user spends \$16.27 per day, especially given the high levels of motorized usage on the CRVO, which NVUM concludes results in similar daily spending amount to skiing. CRVO conclusions are between 1/3 and 1/4 of the USFS regional NVUM spending amounts. This imbalance of CRVO uses must be corrected to accurately balance multiple uses of the public lands in the CRVO planning process.

In addition to the Region 2 report that identifies spending profiles on adjacent Forest Service lands, the USFS NVUM also provides specific national level analysis of each type of recreational users spending profiles to allow for a more meaningful analysis of visitor information and allow for the preparation of accurate economic analysis of recreation and actual visitation estimates

³⁷ USDA Forest Service; *Visitor Use Report - USDA Forest Service Region 2*; June 20, 2012 at pg 28. A copy of this report has been included with these comments as Exhibit 5.

³⁸ *Id*

³⁹ *Supra* note 35 at pg 19.

⁴⁰ NVUM data may be further broken down to individual forest levels on the Forest Service website, allowing a more localized review of this information for BLM purposes. <http://apps.fs.usda.gov/nrm/nvum/results/>

for each user group. A complete copy of analysis is attached with this appeal as Exhibit F.⁴¹ This information is critical to analysis and simply has not been provided in any part of the CRVO analysis entirely precluding more specific application of the following information. Again this information has allegedly been relied on in the CRVO planning process but the conclusions of the two works cannot be reconciled. The national level NVUM spending breakdown by user group provides as follows:

Table 3. Visitor spending for high, average, and low spending areas by activity, \$ per party per trip (\$2007)

Activity	Non-Local Day Trips			Non-Local Overnight Trips ^a			Local Day Trips			Local Overnight Trips ^a		
	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg	High
Downhill skiing	\$126	\$130	\$181	\$468	\$798	\$893	\$68	\$64	\$69	\$359	\$386	\$489
Cross-country skiing	\$87	\$97	\$135	\$315	\$537	\$951	\$26	\$27	\$31	\$242	\$259	\$329
Snowmobile	\$116	\$129	\$180	\$377	\$642	\$1,139	\$72	\$74	\$74	\$289	\$311	\$394
Hunting	\$79	\$88	\$122	\$253	\$368	\$652	\$41	\$51	\$51	\$230	\$248	\$314
Fishing	\$52	\$55	\$77	\$214	\$331	\$548	\$36	\$38	\$38	\$154	\$161	\$205
Nature-related	\$56	\$65	\$90	\$269	\$473	\$826	\$36	\$37	\$42	\$182	\$195	\$247
OHV-use	\$98	\$109	\$151	\$219	\$277	\$491	\$63	\$58	\$58	\$125	\$134	\$170
Driving	\$42	\$54	\$75	\$338	\$576	\$1,021	\$28	\$32	\$30	\$259	\$278	\$353
Developed camping	n/a	n/a	n/a	\$183	\$206	\$300	n/a	n/a	n/a	\$178	\$171	\$217
Prim. camping/bpack	n/a	n/a	n/a	\$108	\$134	\$196	n/a	n/a	n/a	\$121	\$120	\$153
Hiking/biking	\$53	\$50	\$64	\$228	\$473	\$765	\$20	\$21	\$18	\$126	\$150	\$190
Other	\$60	\$72	\$100	\$216	\$330	\$569	\$36	\$40	\$32	\$170	\$187	\$237
Total	\$58	\$65	\$90	\$214	\$366	\$648	\$34	\$34	\$29	\$165	\$177	\$224
Ratio to average	0.90		1.39	0.59		1.77	0.98		0.84	0.93		1.27

Assuming there is an even division of usage across user groups of the CRVO spread evenly between each of the above 4 categories and evenly across each user group, this would yield an average daily spend of \$160 per day for recreational usage.⁴² This is 10 times the CRVO conclusions. In addition to the above summary chart of recreational activity average spending, the NVUM average spending analysis provides a specific breakdown of how each group is spending their money in pursuit of their chosen activity.⁴³ The average user conclusions are as follows:

⁴¹ See; White and Stynes; *Spending Profiles of National Forest Visitors, NVUM Round 2 Update*; November 2010 at pg 6.

⁴² The Organizations again vigorously assert the failure to provide this information regarding user groups and visitation is a facial violation of NEPA and direct evidence of why economic analysis reports are critically important in federal land management.

⁴³ See, Stynes and White, November 2010 at pg 7-21.

Table 4a—Non-local visitor spending averages, all activities \$ per party per trip (\$2007)

Spending category	NL- Day Trips			NL- Overnight Trips		
	Low	Average	High	Low	Average	High
Lodging	0.00	0.00	0.00	57.39	116.84	222.37
Restaurant	11.06	14.16	23.69	25.08	58.94	128.45
Groceries	7.76	8.07	8.04	44.81	57.25	72.25
Gas & oil	25.27	27.34	33.43	58.52	71.79	102.55
Other transp.	0.83	0.60	0.17	0.51	2.86	2.54
Entry fees	4.23	4.36	5.67	5.94	12.51	24.67
Recreation & entertainment	4.40	4.13	6.56	7.24	15.46	32.77
Sporting goods	2.64	2.89	2.89	8.11	13.29	19.95
Souvenirs and other expenses	2.02	3.12	9.52	6.88	16.57	42.60
Total	58.21	64.68	89.97	214.49	365.51	648.15
Sample size	896	2,224	213	2,175	7,338	1,248
Std. deviation	63.0	71.2	91.5	267.8	531.5	739.0
Standard error	2.10	1.51	6.27	5.74	6.20	20.92
Pct error (95%)	7.2%	4.7%	13.9%	5.4%	3.4%	6.5%

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The NVUM national conclusions provide a similar level of analysis for each of the user groups that are identified in the general chart that is previously cited.⁴⁵ For almost every category of spending addressed in the national level NVUM analysis of fuel costs for an average spending recreational activity far exceed the average total spending conclusions that are reached in the CRVO analysis. While this detailed analysis of each of the 12 NVUM user groups is not specifically reproduced here, these conclusions are highly relevant to the arbitrary and capricious nature of the CRVO conclusions as each category of user specifically identifies that more fuel is spent simply getting to their destination than the CRVO asserts is necessary to drive to the CRVO, recreate all day and return home.

National level NVUM analysis of spending identifies spending profiles for each forest adjacent to the CRVO in terms of above average, average or below average recreational spending.⁴⁶ The NVUM spending study specifically identifies that the Medicine Bow/Routt, GMUG and White River National Forest are at least average spending forests. As a result, the Organizations believe the CRVO could be summarized as an average spending area as well, as often the recreational users are not aware of the manager of specific areas of land. Even if the CRVO were classified as a low spending recreational area, the differences in spending profiles are

⁴⁴ See, Stynes and White, November 2010 at pg 7.

⁴⁵ See, Stynes and White, November 2010 at pgs. 9- 20.

⁴⁶ See, Stynes and White, November 2010 at pgs 35 & 36.

completely insufficient to provide any basis for the conclusions that are reached in the CRVO analysis.

In subsequent correspondence with the Colorado BLM State Office on recreational spending issues that have been repeatedly identified in RMPs throughout the state, copies of which are included with this appeal, there were assertions made that skiing activity on USFS lands accounted for the variations between the average recreational spending amounts in BLM planning and those found in USFS analysis. Even if skiing is excluded from analysis, the fact that no local user group spends less than \$21 per day will heavily impair any ability to obtain an average spending amount of \$16.27 that the CRVO asserts is accurately reflecting non-local visitors who must travel more than 50 miles to reach the planning office. USFS forest specific analysis finds there are several forests in the region that do not have significant skiing activity and have similar spending amounts to the regional average. Removing the skiing amounts from the user specific breakdown above and recalculating the averages does not significantly impact the averages above and do not address the massive differences in conclusions. The arbitrary and capricious nature of any assertion of skiing spending accounting for the difference in conclusions between CRVO and NVUM analysis is evidenced by the conflict between CRVO conclusions and GRSG economic analysis, which does not analyze any planning areas where significant skiing activity is present. The specific concerns of the GRSG comparison are addressed in subsequent portions of this appeal.

The Organizations vigorously assert the arbitrary and capricious nature of the CRVO conclusion that the average recreational user spends \$16.27 per day is apparent as the NVUM analysis can find no user group that spends less than \$21. The Organizations must note that the \$21 average is a local user group spending profile that the CRVO asserts has been excluded from analysis in their process. The lowest out of region spending profile that is identified is \$50, further drawing into question any average below that amount. **The NVUM analysis concludes the average out of town recreational visitor spends between \$65 and \$366 per night, again directly conflicting with the CRVO conclusions that the average out of region user spends \$16.27 per day. These NVUM conclusions simply are irreconcilable with CRVO conclusions and directly evidence the arbitrary and capricious nature of the CRVO conclusions on average recreational spending of users. The Organizations vigorously assert that this systemic undervaluation of recreation in the planning process has directly resulted in an allocation of multiple uses that fails to integrate economic impacts of planning into the process and provides positions in the RMP and FEIS that in no way reflect the actual economic impacts that these decisions will have on local communities.**

3d(5). The NVUM process specifically addresses how economics and visitation are integrated in the planning process.

The Organizations believe it is important to understand the impacts that relatively small changes in the per day user spending amounts can have on total spending, as these are compounded by the total recreational visitation to the planning area, which in the case of the CRVO are estimated to be 338,000 per year for recreational activity. The potential impacts to subsequent management decisions that results from inaccurate calculations of the average economic spending of user groups is extensively discussed by Drs. White and Stynes regarding the development of a parking lot as part of a site specific analysis.⁴⁷ When the impacts specifically outlined in the parking lot example are expanded to allocation of resources on a landscape level plan, the negative implications and possibility of bad management decisions being made expands to a facially unacceptable level and would immediately create arbitrary and capricious decisions.

The Organizations would be remiss if a comparison of the NVUM examples of information necessary at the starting point for integration of economics into plan and CRVO analysis were not made. In the NVUM parking lot example the following information is required to meaningfully integrate economics into planning:

"In this report, we have generated a number of distinct spending profiles that can be used for analyses focusing on specific recreation activities. These spending profiles can be used in national, regional, forest, and sub-forest level planning activities. For economic impact or contribution analyses, the spending profiles must be combined with 1) estimates of total visits, 2) estimates of the percentage of visits within given trip and activity segments, and 3) appropriate local input-output (I-O) models or multipliers." ⁴⁸

The facial insufficiency of the CRVO analysis in comparison to the application of economic analysis to landscape and site specific development of resources in the NVUM process is immediately apparent as **none** of the three factors the NVUM identifies as necessary for application of recreational visitation and spending to planning actions are available in the CRVO analysis. The Organizations submit this failure is direct evidence of the lack of the hard look required by NEPA as part of the federal land management process.

⁴⁷ See, UDSA Forest service NVUM analysis; Stynes and White November 2010 at pgs 22-28.

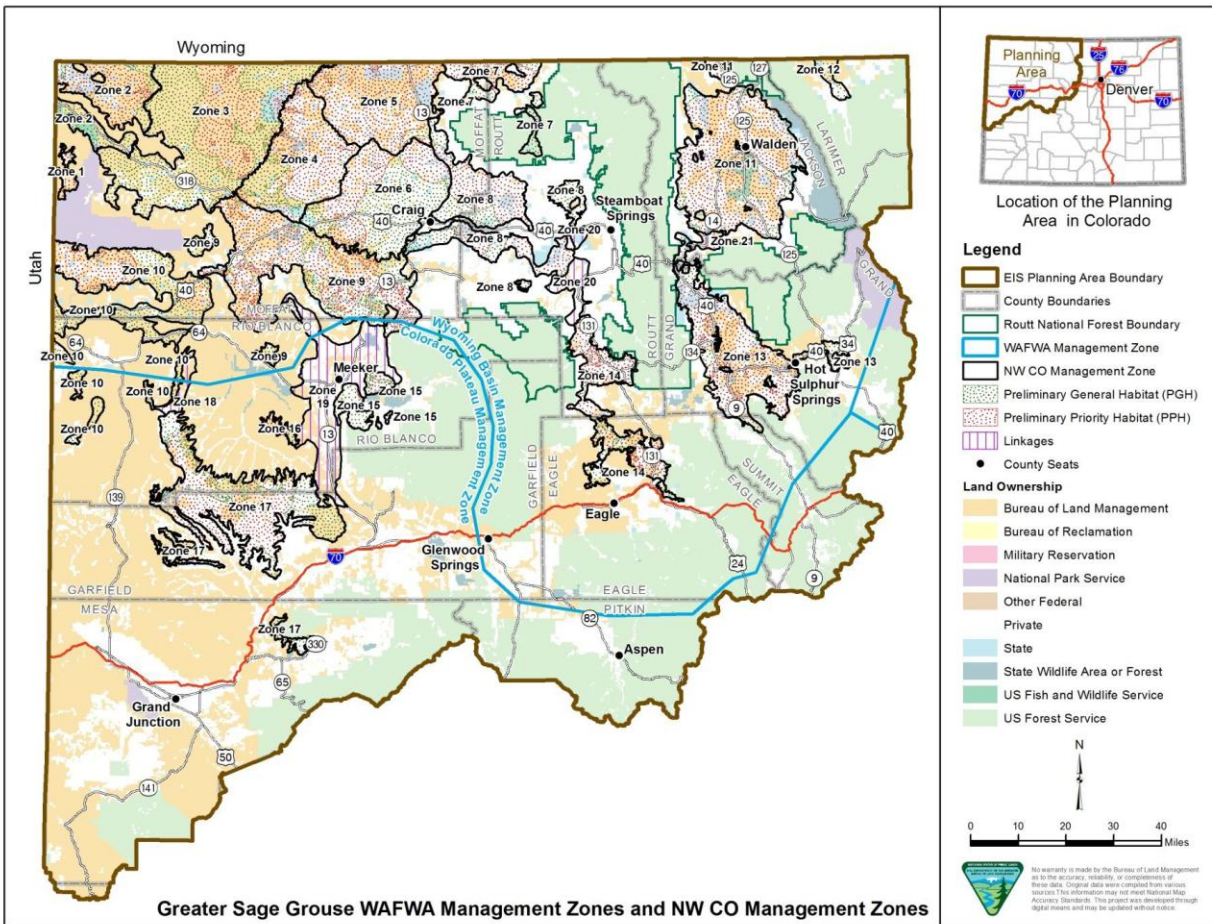
⁴⁸ See, Stynes and White; November 2010 at pg 22.

4a. Recreational spending totals provided in the CRVO RMP are totally inconsistent with other BLM analysis of the planning region.

The arbitrary and capricious nature of the CRVO spending profiles for recreation usage is further evidenced by the fact the CRVO RMP conclusions are completely inconsistent with the conclusions of the BLM's Northwestern Colorado Greater Sage Grouse Land Use Plan Amendments (GRSG). The Organizations again assert the conclusions of the CRVO process and GRSG analysis should be roughly consistent as each process has occurred over a common period of time, using similar methodology (IMPLAN) and similar geographic areas by the BLM. As a result the average daily spending amounts for recreational usage should be reconcilable. However, the conclusions on average recreational spending are anything but reconcilable when the CRVO conclusions and the GRSG conclusions, as GRSG analysis finds the lowest category of recreational spending (nonlocal day trips at \$34.26) is twice the average found on the CRVO. The GRSG analysis concludes that non-local overnight recreational users spend on average \$209.47 (13x the CRVO average) further conflicting with CRVO conclusions⁴⁹ and that all recreational usage (local and non-local) results in an average spending amount of \$121.96.

The overlap between the CRVO planning area and GRSG analysis areas is significant as noted in the GRSG analysis boundary, which is as follows:

⁴⁹ See, BLM Northwest Colorado Greater Sage Grouse Draft LUPA/EIS- August 2013 Appendix M at pg M-33.



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Given that a significant portion of the CRVO planning area has been analyzed as GRSG habitat and this analysis has occurred at basically the same time, using the same model with the same agency as the CRVO RMP has been developed, there should be a high level of consistency with the conclusions on various issues between the two planning actions. **There simply is no consistency between the recreational economics in the CRVO and GRSG planning and the Organizations vigorously assert this is direct evidence of the arbitrary and capricious nature of the analysis provided in the CRVO analysis.**

The Organizations will note that the GRSG plan provides spending amounts that are roughly consistent with USFS NVUM data excluding skiing, again prohibiting any assertion of skiing activity skewing the comparison of these conclusions. The GRSG analysis has been performed by the Bureau of Land Management and with the same IMPLAN model utilized in the CRVO economic analysis and covers a similar time period for analysis as GRSG draft was released in

⁵⁰ See, Department of Interior; Bureau of Land Management; *Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS*; August 2013 at Appendix B pg B-3.

2013 and CRVO was released in draft in 2011 and final in 2014. As a result the Organizations believe there should be basic consistency between average daily spending conclusions between the GRSG analysis and CRVO analysis of this issue. There simply is not.

The Organizations believe that a brief comparison of the economic data that is available in the 44 pages of economic analysis that are provided with the GRSG LUPA to the CRVO analysis will immediately identify the unacceptable quality of the CRVO analysis. The Organizations would be remiss if the similarity of the GRSG analysis and data and USFS conclusions was not mentioned here. The similarity of data and analysis points is striking. None of this data or analysis points are identified or discussed in the CRVO RMP and FEIS.

Appendix M of the GRSG LUPA provides 44 pages of economic analysis and very little socially related data, such as average age and racial background of residents, that is the predominate information found in the CRVO review. The GRSG LUPA analysis includes a county by county breakdown of the total employment by sector, employment by sector as a percentage of total employment, income by sector, employment trends over 20 years, supply and demand for recreational opportunities, consumer surpluses by sector visitation, visitation totals and supporting information, visitation trends, direct, indirect and induced economic analysis with multipliers for multiple sectors of activity and average salaries for many sectors. **The Organizations are simply unable to find any mention of most of these factors in the CRVO plan, again supporting the Organizations position of the arbitrary and capricious nature of the CRVO conclusions.**

The GRSG DRMP provides the following breakdown of total recreational spending at the landscape level:

Table 3.87. Visitor Spending from Recreation on BLM-Administered and National Forest System Lands in Socioeconomic Study Area

Trip Type	Percent of Visits ¹	Estimated Number of Individual Visits	Average Party Size ¹	Estimated Number of Party Visits	Party Spending Per Visit (2010) ¹	Estimated Direct Expenditure (\$ millions)
Nonlocal Day Trips	10	430,881	2.5	172,352	\$63.68	\$11.0
Nonlocal Overnight on Public Lands	9	387,793	2.6	149,151	\$237.27	\$35.4
Nonlocal Overnight off Public Lands	14	603,233	2.6	232,013	\$522.63	\$121.3
Local Day Trips	49	2,111,316	2.1	1,005,389	\$33.56	\$33.7
Local Overnight on Public Lands	4	172,352	2.6	66,289	\$165.14	\$10.9
Local Overnight off Public Lands	1	43,088	2.4	17,953	\$216.48	\$3.9
Non-Primary Visits	13	560,145	2.5	224,058	\$376.62	\$84.4
Total	100	4,308,808	N/A	1,867,205	N/A	\$300.6

¹ National average for all National Forests. White and Gooding (2012). Party spending per visit is converted from 2009 to 2010 dollars using the Consumer Price Index (US Bureau of Labor Statistics 2012a).

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The Organizations believe it is critical to compare the conclusions that are reached in these documents for recreational daily spending as each represent planning for geographically adjacent planning areas, done by the same federal agency with the same planning model at the same basic time. Logic would lead to a conclusion that results should be basically consistent. The results simply are not. This comparison of the two analysis provides stark contrasts in the daily average spending of recreational users rather than the consistency of conclusions that would be expected. The GRSG LUPA analysis estimates out of region recreational spending ranges from \$34.26 (nonlocal day trips) to \$209.67 (Nonlocal overnight trip). It is significant to note that NONE of these totals are of sufficient low levels to warrant an average daily spend of \$16.27.

The GRSG planning also provided a highly detailed and specific breakdown of spending profiles of non-local recreational visitation, as follows:

⁵¹ BLM -Northwest Colorado Greater Sage Grouse Draft LUPA/EIS (August 2013) - Chapter 3 - Existing Conditions at pg 429. A full copy of this DEIS and DLUP is available here: <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=48134>

Table M.15
Assumptions for Analysis of Impacts on Output for Recreation Activities

Economic Impact	Primary Study Area	Primary and Secondary Study Area
<i>Nonlocal Day Trip</i>		
Direct Economic Impact ¹	\$25.45	\$25.45
Indirect Economic Impact ²	\$2.66	\$3.85
Induced Economic Impact ³	\$4.73	\$4.96
Total Economic Impact	\$32.84	\$34.26
Multiplier (total impact/direct impact)	1.29	1.35
<i>Nonlocal Overnight Trip</i>		
Direct Economic Impact ¹	\$146.58	\$146.58
Indirect Economic Impact ²	\$28.59	\$28.85
Induced Economic Impact ³	\$33.97	\$34.25
Total Economic Impact	\$209.14	\$209.67
Multiplier (total impact/direct impact)	1.43	1.43

Notes: Overnight expenditures are the simple average of expenditures on and off National Forest System lands. Details may not add to total due to rounding.

¹Direct economic impact is the average expenditure per visit.

²Indirect impacts from IMPLAN reflect increased demand in sectors that directly or indirectly provide support for the recreation industry.

³Induced impacts from IMPLAN reflect increased demand in the consumer and government sectors.

Clearly an average spending amount of \$16.27 found for out of region visitation in the CRVO analysis cannot be reconciled GRSG analysis that finds out of region recreational users spend between \$34.26 and \$209.67 per day and that the average user spends \$121.96. The Organizations also vigorously assert that the insufficiency of the CRVO analysis is again reflected by the fact the Organizations must guess at user group specific visitation breakdowns to the CRVO planning area. Visitation is a critical piece of any analysis of recreational usage of public lands.

The Organizations believe a brief discussion of the application of the GRSG averages for recreational usage totals to CRVO total recreational user days provides a concrete example of our concerns regarding the insufficiency of total spending amounts previously addressed. While the Organizations are aware there are concerns regarding the factual division of usage, the Organizations believe this example provides sufficient basis for concern regarding the basic accuracy of the economic contribution analysis. **Application of the GRSG daily economic contribution for recreational spending of \$121.96 is applied to the total recreational visitor days (338,000) for the CRVO reaches a total recreational spend in the CRVO planning area of**

⁵² See, Northwest Colorado Greater Sage Grouse Draft LUPA/EIS- August 2013 Appendix M at pg M-33.

\$42 million in total recreational spending. This conclusion simply cannot be reconciled with the CRVO position that recreational usage accounts for \$5.5 million annually.

The Organizations believe there must be basic consistency within the agency analysis in the region regarding recreational spending profiles and there currently is not. While the total amount of visitor days and land management allocations will impact total spending conclusions at the local level, average daily spending of a user group will not change significantly within a geographic region. The Organizations believe the CRVO analysis is faulty when compared to other regional BLM analysis and must be corrected to avoid an imbalance of uses on the CRVO based on facially faulty analysis.

4b. CRVO conclusions of per day user spending conflict with State and user group analysis as well as NVUM analysis.

As noted above, the Organizations believe the conclusions regarding economic analysis are directly in conflict with the NVUM data the conclusions are alleged to be based upon, and are completely irreconcilable with other BLM analysis of the planning area, as evidenced by the GRSG. In addition to these conflicts in value, the arbitrary and capricious nature of the conclusions is further evidenced as CRVO conclusions conflict with a wide range of analysis that has been performed by the States of Colorado, Wyoming and numerous user groups. The conclusions of these user group analysis are identified below:

CPW Big Game Hunting	\$106-216 ⁵³
CPW Small Game Hunting	\$87-\$94
CPW Fishing	\$67-\$118
COHVCO OHV	\$125-1,225 ⁵⁴
Wyoming State Parks	\$98.29- 159 ⁵⁵
Snowmobile usage	

The arbitrary and capricious nature of the CRVO conclusions on average recreational spending are directly evidenced by the fact that many of the above resources have allegedly been

⁵³ See, CPW; *The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado* September 2008 at section III, pg 11. A copy of this report is available here

⁵⁴ COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3. A copy of this report has been included with this appeal for your reference as Exhibit "4".

⁵⁵ Wyoming State Parks Snowmobile spending report attached with this appeal. It should be noted the daily spending totals do not include the purchase of equipment used for snowmobile recreation. A copy of this work has been included with this appeal as Exhibit "5". Must be noted these amounts do not include equipment purchases which average \$3,367.28 per year

incorporated in the CRVO analysis. Given the disparity of conclusions, the Organizations simply do not see any basis in fact or law for such a position.

It should also be noted that motorized and non-motorized users carry often carry very similar gear in the backcountry in terms of jackets, packs etc and as a result spending profiles for basic gear should be very similar. Where differences occur is with the purchase of motorized equipment, which can often exceed \$12,000 per unit and operation of the unit. COHVCO analysis indicates that the average motorized user spends between \$19 and 40 per day in gasoline. These expenditures would account for the significant differences that the NVUM analysis concludes is present between non-motorized and motorized users even if costs of equipment are not accounted for in the spending profiles.⁵⁶

4c. CRVO conclusions regarding average recreational spending directly conflict with the conclusions that are provided by case studies in the Western Governors recreational analysis.

The erroneous nature of the CRVO conclusions is immediately apparent when compared with outside research such as the Western Governors Association study addressed previously. The Organizations note that while the Western Governors Study cited above did not provide specific calculations regarding average spending of recreational users, the study was issued with a large number of companion site specific case studies.⁵⁷ Many of these case studies did provide a total visitor days number and a total spending amount as part of their analysis and as a result an average daily spend for recreational activity could be calculated. Western Governors site specific analysis did not exclude local spending of recreational users, making the following comparison strong direct evidence of the arbitrary nature of the CRVO conclusions that assert to have excluded local spenders, as local spending amounts are consistently lower than that of the out of region user groups the CRVO alleges are the basis of the analysis.

After calculating the average daily spend for a wide range of recreational activities in locations throughout the west, the Organizations are forced to conclude that these case studies are entirely consistent with the outside data as these case studies had a total spending range of low \$20 per day to a high of \$190 per day and the bulk of areas finding an average spend in the \$45 to \$70 per day range. Again, these conclusions simply cannot be reconciled with the spending amounts determined in the CRVO planning process. The CRVO conclusions must be corrected and usages rebalanced in the CRVO planning area to comply with federal law and regulations.

⁵⁶ COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3.

⁵⁷ See, Western Governors' Association; *The West; A Wealth of Recreational Opportunities Report*. A copy of this report is attached to these comments as Exhibit 4.

5. CRVO estimates of recreational visitor days are problematic.

The Organizations are deeply concerned the failures in analysis of recreational spending are contributed to by the CRVO underestimation of the total number of visitor days to the planning area. The Organizations are aware that the planning process of the CRVO and Kremmling Field Offices were consolidated in the early portions of planning and the BLM separated these planning processes before the release of the draft plan for each office. In the Organizations discussions with Kremmling FO staff, there were vigorous concerns voiced regarding the significant underestimations of recreational visitation to the planning area when on the ground counts were compared to the data that was provided in the RMIS system. Often there were statements made to the effect that visitation to areas on a busy weekend exceeded BLM estimations of visitation to the site on an annual basis.

As a result the Kremmling FO deployed game cameras and vehicle counters on roadways in the planning area to obtain more accurate information on this issue. It is significant to note that as a result of this research, visitation estimates to the KFO more than doubled between the draft and final versions of the RMP recently released to a total that exceeds 900,000 per year.⁵⁸ The Organizations vigorously assert the CRVO position that recreational usage of CRVO lands accounts for approximately 1/3 of visitation when compared to the KFO completely lacks factual basis as CRVO access is much easier as a result of the proximity of I-70 and that many communities in the CRVO exceed the total populations of entire counties in the KFO.

The Organizations believe the CRVO assertion that recreational visitation accounts for only 338,000 visitor days lacks factual and legal basis and this conclusion has directly resulted in an under allocation of recreational resources and opportunities in the CRVO moving forward. Clearly a 50% closure of motorized routes may be viable with 338,000 visitor days, but such a position would not support visitation at the levels that are more accurately reflected in the KFO at almost 1,000,000 visits per year. This issue compounds the concerns that have already been expressed regarding the undervaluation of per day recreational spending estimates.

6. Recreational jobs are significantly underestimated in the CRVO planning process, when compared to other BLM initiatives and State resources.

As the Organizations have previously noted there are three major points of comparison for economic analysis issues, and the Organizations have identified significant concerns between the analysis of the CRVO RMP and both USFS and BLM analysis for the planning area for both total spending and average spending per day for recreational usage. The CRVO RMP conclusions of jobs resulting from recreational usage is also arbitrary and capricious and fails to comply with relevant planning statutes. The Organizations are aware that portions of the total jobs that are

⁵⁸ See, Kremmling Field Office Final RMP and FEIS - Volume 2 at pg 4-1042.

identified in the following conclusions are related to public lands that are not under CRVO management but the CRVO RMP conclusions simply cannot be reconciled in any manner with the conclusions from other forms of analysis as well. The CRVO manages 19% of all lands in the 5 county planning area but asserts that recreational jobs from these activities result in less than 1% of the total found by all other organizations and analysis.

The CRVO RMP asserts all recreation accounts for 153 jobs total.⁵⁹ The conclusions are completely inconsistent with the conclusions that the BLM has reached as part of the Greater Sage Grouse planning and resource amendment process despite most of the CRVO planning area being designated as GRSG habitat. The BLM GRSG planning estimates that in Eagle, Garfield, Mesa and Rout county planning area 766 jobs are related to hunting and fishing.⁶⁰ Estimates for Eagle county were withheld for confidentiality reasons as part of the GRSG planning. The GRSG also estimates that 8,135 jobs result from arts, entertainment and recreational usage of the multi-county planning area.⁶¹ When combined the GRSG analysis finds that 8,901 jobs result from hunting, fishing and recreation in the planning area. The CRVO position that CRVO lands result in only 1.6% of jobs in the planning area completely lacks rational or factual basis. The Organizations vigorously assert that these conclusions simply cannot be reconciled and are further evidence of the arbitrary and capricious analysis process that has been applied in the CRVO planning process.

For further comparison, the State of Colorado estimates that hunting and fishing recreational activity accounts for 3,155 jobs in multicounty analysis CRVO planning area.⁶² The CRVO conclusions assert that all recreational usage of the 19% of the 5 county area under CRVO management accounts for less than 4% of jobs that Colorado Parks and Wildlife found result from just hunting and fishing. The Colorado Office of Economic Development found that tourism/travel in multi-county CRVO planning area accounts for 17,740 jobs, CRVO recreationally related jobs estimates account for only .8% of that total.⁶³ The Organizations would be remiss in pointing out that a major reason that people visit this 5 county area is the wide range of recreational opportunities that have been provided. COHVCO economic contribution analysis further found that OHV recreation accounts for 4,398 jobs in the CRVO multi-county planning region⁶⁴ or almost 30 times the number of jobs are present from OHV recreation as the CRVO asserts are present for all recreational usage.

⁵⁹ See, CRVO RMP and FEIS at pg 4-776.

⁶⁰ See, Department of Interior, Bureau of Land Management; *Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS* (August 2013) at Appendix M pg m-1.

⁶¹ See, Department of Interior, Bureau of Land Management; *Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS* (August 2013) at Appendix M pg m-2.

⁶² See, CPW 2008 Study of hunting and fishing at section IV at pgs 16&17.

⁶³ See, Colorado Tourism report at pgs 34-46.

⁶⁴ See, COHVCO analysis at pg ES-6.

The Organizations vigorously assert that these conflicts in analysis are direct evidence of the arbitrary and capricious nature of the conclusions that have been reached in the CRVO planning process and evidence analysis that relied on something other than best available science for the analysis of these issues.

7. The mandatory economic strategies workshop did not occur.

The Organizations membership has been involved in meetings with CRVO planning personnel since the release of initial notice documentation relative to the DRMP. While our members are actively involved, none can recall any public meetings regarding economic contribution analysis. A review of the RMP, EIS and CRVO website yields no additional information regarding such a workshop. Economic Strategies Workshops are required under BLM planning standards as follows:

"B. Economic Strategies Workshop

The public involvement effort on all new RMPs, RMP revisions, and RMP amendments accompanied by EISs **must** include at least one economic strategies workshop. Such workshops provide an opportunity for local government officials, community leaders, and other citizens to discuss regional economic conditions, trends, and strategies with BLM managers and staff."⁶⁵

The Organizations believe such a Workshop would have been exceptionally helpful in resolving many of the issues that are now raised in this appeal, as both the process relied for development of CRVO economic contribution analysis and the results asserted to have been reached would have been found facially unsatisfactory and could have been resolved immediately in the planning process such as CRVO assertions that closure of 50% of routes in the planning area will have no impacts on visitation. Rather the Organizations now must appeal what is an unsatisfactory range of alternatives and final alternative to be released in the RMP at far greater expense to the office.

The failure to comply with these BLM planning requirements has directly resulted in determination being made in the CRVO planning process that lacks legal and factual basis, and has resulted in an allocation of resources in the CRVO that fails to integrate recreational usage, which has been repeatedly identified as the major usage of the planning area, over the life of the RMP.

⁶⁵ See, BLM LUP Handbook Appendix D pg 10.

8a. Baseline standards for landscape level planning for wildlife are not supported by best available science.

The Organizations are very concerned regarding the application of landscape level standards for the management of wildlife in the CRVO planning process to the direct detriment of multiple use recreation. It has been the Organizations experience that wildlife related issues are highly localized issues and that landscape level standards are frequently ineffective. This position has been echoed by recent Research Station USFS analysis, which concludes as follows:

"Actions such as limiting grazing or closing OHV trails have historically been some of the primary tools used by land managers in southern Nevada to reduce the effects of anthropogenic stressors on species of conservation concern..... It is evident from this body of research that very little is known about the relative threats posed to, or the mitigation actions needed to protect, virtually any species, except perhaps the desert tortoise. **Too often research jumps immediately to mitigation strategies without first determining what specific factors pose the greatest threats and are the most important to mitigate. In addition, the evaluation of potential threats typically focuses upon the usual anthropogenic suspects (e.g. OHVs, livestock grazing, invasive species, and climate change) without first carefully considering which factors are most likely to pose the greatest threats.**"⁶⁶

The Organizations will note that recreational impacts to wildlife at a landscape level is an issue that has been heavily researched in the Yellowstone National Park for an extended period of time, and these conclusions are virtually identical to those found by the USFS Research Station. The Yellowstone research has uniformly concluded:

"Based on these population-level results, we suggest that the debate regarding effects of human winter recreation on wildlife in Yellowstone is largely a social issue as opposed to a wildlife management issue. Effects of winter disturbances on ungulates from motorized and non-motorized uses more likely accrue at the individual animal level (e.g., temporary displacements and acute increases in heart rate or energy expenditures) than at the population scale. A general tolerance of wildlife to human activities is suggested because of the association

⁶⁶ See, USDA Forest Service, Rocky Mountain Research Station; *The Southern Nevada Agency Partnership Science and Research Synthesis; Science to Support Land Management in Southern Nevada; Executive Summary*; August 2013 at pg 38.

between locations of large wintering ungulate herds and winter recreation. Habituation to human activities likely reduces the chance for chronic stress or abandonment of critical wintering habitats that could have significant effects at the population level, especially when these activities are relatively predictable.”⁶⁷

In addition to the application of landscape level planning to address local issues, many of the standards and analysis fail to address the primary threat to the species, while asserting best available science requires closures to multiple use recreation. This type of a position is simply unacceptable, arbitrary and a violation of NEPA requirements regarding planning be based on best available science.

Research has found that big game response to hunting pressure has always been more significant than response to other factors in the same habitat areas, such as roads. CPW researchers have specifically concluded that game immediately move away from hunters without regard to the number of roads in the area when hunting season opens. This research specifically addressed the increasing level of movement from each hunting season as follows:

“After eliminating the effects of primary and secondary roads, elk were farther from primitive roads than random points within the study area for all 10-day intervals except 1-10 October (Table 2). Elk were farther from secondary roads through the period of 1-10 October after which elk dispersion patterns were indistinct relative to secondary roads. Elk locations relative to primary roads were similar to those for primitive roads in that elk were increasingly closer to primary roads during the 10-day intervals from 22 August to 10 October. After 11 October, the average distance of elk to primary roads increased through 30 November.”⁶⁸

Clearly, management concerned about disturbance of animals must start by addressing the primary source of the issue. Management of secondary factors simply will never address the problem, but will significantly increase conflicts between agency personnel and the public and general levels of frustration. Unfortunately the TMP started with management of secondary risks to the species for reasons that remain unclear.

⁶⁷ US Park Service; White and Davis; *Wildlife response to motorized recreation in the Yellowstone Park; 2005 annual report*; at pg 15.

⁶⁸ Rumble, Mark A; Benkobi, Lahkdar; Gamo, Scott R; 2005. *Elk Responses to Humans in a Densely Roaded Area*; Intermountain Journal of Sciences. 11(1-2); 10-24 @ pg 17-18.

10a. Sage Grouse Habitat management standards do not apply best available science.

The Organizations are deeply concerned that best available science has not been relied on in the CRVO planning process as Sage Grouse habitat areas are addressed by limiting roads and trails that may have existed in the area.⁶⁹ This is an issue that has been highly discussed in the Greater Sage Grouse LUPA that has been occurring at the same time as development of the CRVO plan. The Organizations vigorously assert that any decision regarding recreational usage made in the GRSg planning process will be far more favorable to that usage as the GRSg process more accurately reflects the importance of recreational usage of habitat areas as the GRSg estimates are simply more accurate than anything in the CRVO analysis. These issues are discussed in previous portions of the appeal.

There is general consensus among researchers that road and trail activity has little to do with the decline of the Greater Sage Grouse and CPW research has provided conclusive analysis to this effect in the GRSg planning process. This research is clearly best available science on the issue and the CRVO planning process must include this analysis as well. Mitigating the impacts of bad science in the GRSg planning process but applying the same bad science at the Field Office level makes little sense and would negate efforts currently targeting the development of plans based on best available science in the GRSg planning efforts.

The Organizations vigorously assert the possible impacts of road and trail usage is an issue that has been addressed in extensive research conducted by Colorado Parks and Wildlife and that the proposed threat/management and analysis is not supported by this research. While this research is in regard to the Gunnison Sage Grouse, rather than the Greater Sage Grouse, as noted in the status proposal for the Gunnison Sage Grouse, there is significant overlap in research between the Greater Sage Grouse and Gunnison Sage Grouse. The status decision clearly states:

"Gunnison sage-grouse and greater sage-grouse (a similar, closely related species) have similar life histories and habitat requirements (Young 1994, p. 44). In this proposed rule, we use information specific to the Gunnison sage-grouse where available but still apply scientific management principles for greater sage-grouse (*C. urophasianus*) that are relevant to Gunnison sage-grouse management needs and strategies...."⁷⁰

⁶⁹ Kremmling RMP Appendix P at page P-18.

⁷⁰ Department of Interior; Endangered and Threatened Wildlife and Plants; *Designation of Critical Habitat for Gunnison Sage-Grouse*; 78 Fed. Reg. 2540 (Jan. 11, 2013) at pgs 2552-2556.

Given the overlap of research and limited research that has been provided on this issue for the Greater Sage Grouse, the Organizations believe this research is compelling for both species and has provided a complete copy of these comments for analysis of this issue based on best available science. This research specifically concludes as follows:

"To explore the role that roads may play on the population of GuSG in the Gunnison Basin, CPW conducted a GIS analysis of the frequency (at 100 m intervals) of the Euclidean distances for successful and unsuccessful nests to the nearest road. Roads include highways and county roads in Gunnison and Saguache counties. "Primitive" roads were not included as was done in Aldridge et al. (2012), thus making our analysis a more conservative approach. Figure 3 illustrates a declining trend in the number of nests further away from roads with no apparent impact on nest success (i.e., grouse are not "avoiding" roads as suggested in Aldridge et al. (2012)). Approximately 45% of the nests are within 300 m of a road and 70% of the nests are within 500 m. The frequency declines > 500 m from a road. Apparent nest success was similar across all intervals. This analysis does not account for age (yearling vs. adult), renesting (however, only 3.2% of females[6/185 nests] renested), or time (same female observed across years).

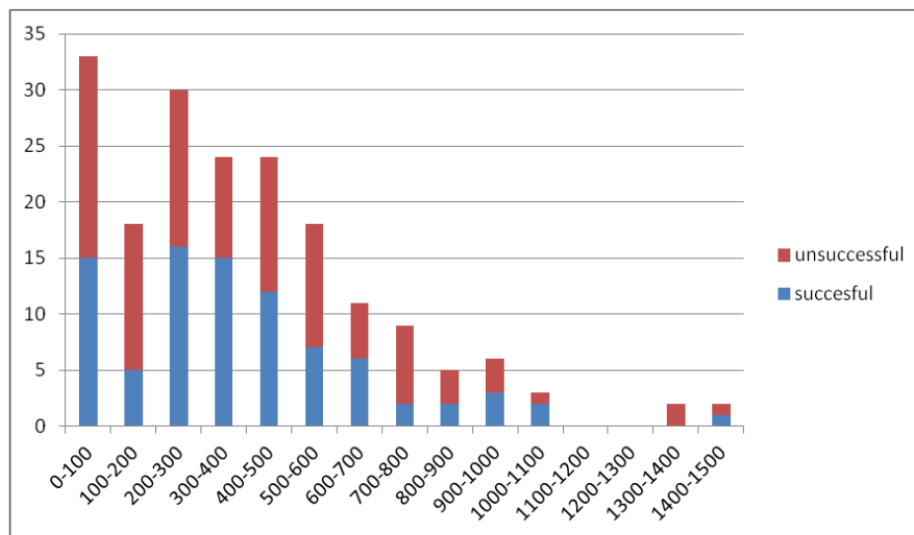


Fig. 3. Frequency of successful and unsuccessful nests (n=185) at 100 m interval distances from roads in the Gunnison Basin population (2005-2010). Roads include highways and county roads (primitive and 4-wheel drive roads are not included).

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⁷¹ See, CPW Gunnison Sage Grouse comments dated April 1, 2013 at pg 8-9. A complete copy of the CPW comments regarding the Gunnison Sage Grouse have been included with this document for your reference.

The Organizations respectfully submits that the work and analysis provided in the comments of Colorado Parks and Wildlife regarding the lack of impact to Grouse activities from the dispersed road and trail network clearly represent best available science on this issue and must be addressed. Merely asserting an impact is present, in light of this research, fails to address statutory requirements that best available science be relied on in the RMP planning process.

11. New lynx management standards directly conflict with BLM management standards for the management of the species and best available science.

There have been significant changes in the management of the lynx between the release of the draft and final versions of the RMP that have not been included in the RMP analysis of habitat areas for the lynx. These changes were summarized in the 2013 Lynx Conservation Assessment and Strategy (2103 LCAS) that was adopted as part of a multi- agency process that involved the BLM, conclusions of which were released almost 9 months before the release of the final RMP. A copy of the 2013 LCAS was specifically sent to the CRVO in order to avoid the reliance on out of date information in the planning process.

The 2013 LCAS clearly represents best available science and specifically superseded the 2001 LCAS that the RMP was based on, which was highly theoretical on many issues related to recreational activity in lynx habitat areas. Best available science planning requirements does not mandate application of the most restrictive standards on any issue, and application of lesser restrictive standards for the management of species would reflect integration of economic impacts from public lands usage as part of the planning process. Lynx management is a major issue on the CRVO as reflected by the fact that the RMP recognizes large portions of the planning area are lynx habitat.⁷²

The Organizations wanted to highlight some of the more significant changes in lynx management standards between the draft CRVO RMP and the 2013 LCAS including:

- Recreational usage of lynx habitat is a second level threat and not likely to have substantial effects on the lynx or its habitat. Previous theory and management analysis had placed a much higher level of concern on recreational usage of lynx habitat;⁷³
- Lynx have been known to incorporate smaller ski resorts within their home ranges, but may not utilize the large resorts. Dispersed motorized recreational usage certainly does not create impacts that can be equated to even a small ski area;⁷⁴
- Road and trail density does not impact the quality of an area as lynx habitat;⁷⁵

⁷² See, CRVO RMP Map .

⁷³ 2013 LCAS at pg 94.

⁷⁴ 2013 LCAS at pg 83.

- There is no information to suggest that trails have a negative impact on lynx;⁷⁶
- Snow compaction from winter recreational activity is not likely to change the competitive advantage of the lynx and other predators;⁷⁷
- Snow compaction in the Southern Rocky Mountain region is frequently a result of natural process and not recreational usage;⁷⁸
- Winter recreational usage of lynx habitat should only be "considered" in planning and should not be precluded given the minimal threat this usage poses to the lynx; and⁷⁹
- Failing to manage habitat areas to mitigate impacts of poor forest health issues, such as the spruce and mountain pine beetle, is a major concern in lynx habitat for a long duration.⁸⁰

The Organizations vigorously assert that these factors must be incorporated into the planning process, both under requirements of best available science being relied on in the planning process and integration of economic analysis into the planning process. The Organizations believe these changes will significantly impact allocation and development of site specific resources on the CRVO planning area over the expected 20 year life of the RMP. Clearly the adoption of these less restrictive standards would allow more public access to lands identified as lynx habitat and must be incorporated in the RMP as the 2013 LCAS was released almost 1 year prior to the release of the CRVO RMP and FEIS.

11. ACEC designations are used as a replacement for Wilderness Characteristics areas.

A review of the ACEC alternatives and the wilderness characteristic area designations reveals significant overlap between the areas, especially when comparisons are drawn between the alternatives previously presented. These overlap areas include Grand Hogback, Bull Gulch, Thompson Creek, Deep Creek proposal areas. It is significant to note that under Alternative C, the Grand Hogback is to be designated both an ACEC and a wilderness characteristics area at the same time without addressing the concerns in the area. The Organizations believe that these concerns really warrant designation of the Hogback area under one standard or the other. Pursuant to the BLM manual regarding designation of ACEC areas, these type of relationships with Wilderness type designations are not a proper planning tool, as the manual provides:

⁷⁵ 2013 LCAS at pg 95.

⁷⁶ 2013 LCAS at pg 84.

⁷⁷ 2013 LCAS at pg 83.

⁷⁸ 2013 LCAS at pg 26.

⁷⁹ 2013 LCAS at pg 94.

⁸⁰ 2013 LCAS at pg 91.

“An ACEC designation will not be used as a substitute for wilderness suitability recommendations.”⁸¹

Based on a review of the proposals it appears that ACEC designation are a proposed substitute for Wilderness characteristic areas as all ACEC proposed under Alternative B are proposed to be designated as Wilderness suitable in Alternative C. This simply is not acceptable and is a violation of BLM planning guidelines.

The Organizations are opposed to what appears to be the attempt to create a management progression from ACEC to Wilderness characteristics area in the RMP. In addition to this being improper management, the distinctions of why an area is suitable for one designation as an ACEC in one alternative and a Wilderness characteristics area under another are poorly described, if at all. This lack of planning analysis would appear to be a facial violation of NEPA requirements of a detailed statement of high quality information regarding the planning decision.

This lack of discussion also violates BLM guidelines created to specifically require discussion and analysis of designation of ACECs and Wilderness characteristics areas. BLM guidelines specify the need for this discussion as follows:

“Relation to Wilderness Study Areas. ACEC's may be designated within wilderness areas ACEC designation shall not to be used as a substitute for a wilderness suitability recommendation. **If an ACEC is proposed within or adjacent to a Wilderness Study Area (WSA), the RMP or plan amendment shall provide a clear description of the relationship of the ACEC to the recommendation being made for the WSA. The relationship shall be described to the level of detail required to avoid misunderstanding or misinterpretation by the public.”**⁸²

A review of the RMP reveals there is almost no discussion of why there is such a significant correlation of the areas to be designated as Wilderness Characteristics areas and ACEC designations.

The RMP does provide analysis of why an area could be designated under a particular standard under a particular alternative, but at no point is there a discussion of why an area is properly classified under both standards. WCA and ACEC are two different designations with separate

⁸¹ BLM manual 1613- Areas of critical environmental concern @ 06.

⁸² BLM manual 1613- Areas of critical environmental concern @ 33D.

reasoning for the creation of each. A discussion of why the area satisfies both designations would be very relevant to any NEPA compliance or public comment. This lack of discussion is a violation of NEPA and relevant BLM guidance, and this omission has resulted in exactly the type of misunderstanding and misinterpretation that was to be prevented by these requirements. The Organizations believe that any management changes to these designations must only occur after compliance with these rules has been achieved and this analysis is incorporated into the RMP and public comment is allowed. Without this analysis any changes will be made in violation of BLM guidelines and federal planning statutes.

In addition to the significant overlap of the designation areas, it appears the ACEC areas to be designated are some of the hardest hit areas for trail closures. While many of these ACEC are designated for reasons other than motorized recreational management, there appears to have been a decision made that motorized recreation is not an appropriate use of these areas, even if the ACEC restrictions do not address motorized recreation. This improper planning is clearly evident in the Grand Hogback area, where all trails in the proposed ACEC are closed prior to designation of the ACEC area. The analysis of the Grand Hogback ACEC reveals the designation is based on the expansion of oil and gas exploration on the Grand Hogback area.⁸³ Clearly, the exploration for oil and gas under a BLM permit is a completely different management issue than public access for recreational activities. These types of concerns are simply not addressed with the closure of motorized trails.

12a. The RMP fails to address significance and possible deterioration of cultural resources in violation of various federal laws and are arbitrary and capricious as a matter of law.

The Organizations vigorously assert that the management of cultural resources is an issue where the need for accurate analysis of multiple uses is critical, as management of these areas is a balancing of the need to protect the limited resources with benefits of usage and possible loss. Clearly, this balance is not properly struck when a balance is based on \$16 per day average economic benefit to communities from recreational usage vs. \$121.96 per day benefit that has been found in other BLM planning in the area. While the Organizations would welcome the ability to protect all resources, this is simply not realistic and does not reflect the balance of uses that is required for the management of federal public lands.

The analysis of cultural resources is a major concern in the travel management process, and the CRVO specifically admits that usage of 142 routes have been altered as the result of cultural resource site management.⁸⁴ Unfortunately the 72 page travel management appendix fails to provide any discussion of what routes have been changed and if there is still non-motorized

⁸³ Colorado River Valley Field Office – Draft RMP Revision EIS Chapter 4, Environmental Consequences @ pg 4-635.

⁸⁴ See, CRVO RMP and FEIS Appendix O - Travel Management at pg 9.

usage of the route allowed. Clearly these levels of impacts and changes warrant meaningful discussion of how decisions were made and should be addressed in the future site specific analysis, which would be based on a full inventory of cultural resources rather than with landscape level attempts at planning.

Prior to addressing the facial violations of federal law that are present in the entirely newly adopted RMP standards for exclusion of most usage around an unprecedented number of cultural sites, the Organizations believe a review of the inventory status of cultural resources is warranted. Currently, there are 132 sites on the National Register of Historic places in the 5 county analysis area identified by the CRVO.⁸⁵ The CRVO RMP expands this amount to somewhere between 1196 and 6,250 cultural resource sites on the 19% of these lands under CRVO management and makes each site subject to mandatory closures to recreational usage and many other activities. While the Organizations support the management and protection of cultural resources, these decisions must be made in compliance with federal law and balanced with other uses of the areas.

Meaningfully discussion and analysis of this issue is complicated by the fact that information is often conflicting, inconsistent and incomplete in the RMP and FEIS and plagued with the mixing of terms like cultural resources, cultural resource sites and cultural sites and the fact that analysis of totals often bears no relationship to the charts and other summary materials that are provided. These types of conflicting analysis will make implementation of the RMP basically impossible on the ground and result in overly cautious management standards being applied to sites that are truly insignificant. It has been the Organizations experience that once a route is closed at the landscape level, the reasoning for the closure is quickly forgotten and even if there is site specific planning at some point in the future, reopening of the route is simply never allowed. This simply must be avoided.

Example of the conflicting analysis and total lack of discussion of cultural resources that plagues the FEIS and RMP is available on pg 3-109 of the FEIS where the summary chart provides a total of 1,290 cultural resources but the analysis below addresses somewhere between 1,389 sites and 1,196 sites. These conclusions also conflict with totals given elsewhere in the FEIS, where a total of 6,250 known cultural resource sites is clearly stated.⁸⁶ These totals cannot be reconciled with previous assertions of a total site amount of 3,930 in the CRVO.⁸⁷ At no point in this analysis is there any discussion of a significance review that has occurred or being relied on

⁸⁵ See, On-line directory of cultural sites available at <http://www.nationalregisterofhistoricplaces.com/CO/state.html> (Website accessed April 28, 2014).

⁸⁶ See, CRVO RMP and FEIS at pg 4-355.

⁸⁷ See, CRVO RMP and FEIS at pg 3-109.

for exclusion of sites from management. The Organizations can see no possibility of this type of conflicting management analysis being accurately applied in implementation of the RMP.

The conflicting analysis and complete lack of discussion of cultural sites is not limited to just the total number of sites, as there is significant variation in estimates of cultural sites per mile. Chapter three clearly states there are .65 sites per square mile,⁸⁸ while Chapter four of the EIS estimates this average as 11.6 sites per square mile.⁸⁹ It is the Organizations position that these conclusions simply cannot be reconciled as the Chapter 4 estimate of density is almost 18 times the average that is found in Chapter 3. Again this is well short of management based on a complete inventory and direct evidence that landscape planning for cultural resources is not possible at this time.

Even the lesser densities of cultural sites or resources identified in Chapter 3 to be managed fails to mitigate concerns regarding possible impacts from standards, as this is more than a tenfold increase from the total number of sites currently on the National Register in the planning area. The Organizations are simply astonished with any assertion that these types of conflicting analysis and conclusions could ever be the basis for application of these conclusions to the 89% of the CRVO that simply has not been inventoried. The RMP proposes a significant expansion of identified cultural resource sites which is compounded by the fact that the 3,930 sites are within the 11% of the CRVO that has been inventoried. The CRVO analysis specifically addresses the level of research that is currently in place for management of cultural resources is summarized as follows:

"Cultural resource inventory is incomplete for the planning areas. At the time Class I cultural resource inventory reports were completed, **only 11 percent of the CRVFO had been inventoried.** The methods section for cultural resources discusses how cultural resource projections were based on previous inventory data (e.g., numbers of sites likely to be impacted by roads) and prehistoric and historic site sensitivity models. "⁹⁰

The mandatory cultural inventory simply has not occurred on 89% of the CRVO, precluding any valid argument of compliance with these federal regulations addressing the management of cultural resources for the development of the numerous new landscape level cultural resource protection standards. Such an inventory is highly critical to allow for determinations of the significance of each site and to allow management to be tailored to address passage of time and natural deterioration of sites.

⁸⁸ See, CRVO RMP and FEIS at pg 3-109.

⁸⁹ See, CRVO RMP and FEIS at pg 4-356,

⁹⁰ See, CRVO FRMP and FEIS at pg 4-15.

The limited information that the Organizations have been able to compile in this appeal indicates the overwhelming percentage of possible historical sites on the CRVO have been categorized as less than significant, exceptionally deteriorated and not eligible for listing on the National Register of Historic Places. Often the lack of significance of sites in the CRVO planning area is heavily impacted by the minimal levels of original development and severe levels of deterioration of many locations, as the result of the locations only being used for temporary shelters for the seasonal movement of herd animals hundreds of years ago. The Organizations are aware that many truly historic sites that have been well maintained have been declined for listing on the register after only minimal changes, such as paint color or windows, have been performed on the residence. The stringency of the National Register listing requirements further heavily weighs against the blanket application of any finding of significance or suitability in the RMP as each listing is heavily influenced by site specific factors.

The Organizations believe a review of the origin and current status of many of the cultural sites on the CRVO is highly relevant to any discussion of significance and deterioration. Many of the sites located on the CRVO are of Native American creation and are comprised of a temporary shelter known as a wickiup, and were abandoned by the persons constructing them as the herd animals they were guarding and herding moved. The Organizations believe that a definition of a wickiup is very relevant to these comments, as most of the public simply is not aware of what a wickiup even is. A wickiup is defined as:

“temporary conical and domed shelters and other brush and wooden structures have been constructed for millennia by the aboriginal inhabitants of the colorado river basin, just as they have throughout the world. based on the premise that in all temperate and harsh-weather regions of the world shelters were highly desirable, even necessary for human survival, it is likely that a significant percentage of prehistoric campsites in colorado included temporary shelters.”⁹¹

The Organizations believe that photos of a wickiup site are even more helpful in understanding what a wickiup site is, as most people simply are not familiar with the term and are not able to form an accurate picture of what is being discussed from the definition. Often the public believe that these to be far more significant structures than they really are. Below is a well preserved Juniper Wickiup:

⁹¹ The Colorado Wikiup Project- Volume I- Context Data Assessment and Strategic Planning ; Domingez Archelological Research Group Inc; at pg 3.



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This photo represents a well preserved but collapsed wickiup:



⁹² See, Martin et al; *The Colorado Wickiup Project Volume V: Test Excavation of The Ute Hunters' Camp (5RB563) and the Documentation of Five Additional Aboriginal Wooden Feature Sites in Rio Blanco County, Colorado*; September 2010 plate 7

The ability of researchers to even locate a wickiup site and accurately analyze these types of sites has resulted in several examples being provided in analysis documents to allow wickiup sites to be located if pictures are taken by researchers.⁹⁴ These positions have been clearly and repeatedly stated in numerous scholarly works addressing cultural resources in the Grand Valley as follows:

“Identifying wickiups can be a challenge. Partially intact structures with standing elements or collapsed structures with well-preserved poles in an obvious radial pattern are relatively easy to recognize. All that may be left of highly deteriorated structures, however, are one or two decayed poles on the ground, a pole or two leaning into a tree, or a concentration of weathered juniper splinters.”⁹⁵

In addition to be hard to locate, deteriorated wickiup sites often are simply not subjected to scientific review:

“Wickiup sites will most often be encountered during surface inventories and will only rarely be subjected to data recovery.....”⁹⁶

The Organizations believe that the lack of funding for such excavations is evidence of the lack of belief these areas will yield significant archeological information, and such a determination should be weighed heavily in the protection process. If these were significant cultural sites, funding could be found to perform research on the sites. The Organizations must note that the application of management standards for motorized routes, that routinely close routes due to a failure of funding, were applied to these cultural resource sites of limited significance, these sites would be completely released from protection.

The Organizations believe it is highly relevant to the appeal for a full review of the source work of the above photos to be completely reviewed, as the conclusions of this research are significantly different than the analysis provided in the RMP. This work is a 5 volume set that has numerous pages of photos that address the exceptionally deteriorated status of most of the

⁹³ *Id* – photographic plate at pg 70.

⁹⁴ See, The Colorado Wickiup Project- Volume I- Context Data Assessment and Strategic Planning ; Domingez Archeological Research Group Inc; at pages 64-69.

⁹⁵ Rand A. Greubel, *Strategies and Methodologies for Investigating Wickiup Sites*; Presented at the Colorado Council of Professional Archaeologists Annual Meeting, March 5, 2005, Grand Junction, Colorado; at pg 1.

⁹⁶ See, Gruebel supra note 91; at pg 2.

native american sites in the CRVO and Grand Valley planning area.⁹⁷ The conclusions of this work are only highlighted in this appeal.

A review of the items found as a result of excavation of historical sites in the CRVO planning area finds many items are interesting but probably not significant from a large scale historical perspective. The following photo reviews items found after excavation of a cultural site:



Researcher's findings at wickiup sites are summarized as:

"First, wickiup interiors should be examined for hearths as evidenced by fire-cracked rock, charcoal, or ash stains. Concentrations of juniper bark may be present, likely in highly deteriorated condition, representing floor covering, bedding, or clumps of fallen structure closing material Artifacts may be visible on the modern ground surface inside wickiups, including flaked and ground lithics, ceramics, metal and glass items, and beads. Finally, there may be hearth furniture such as large flat-topped stones that functioned as pallet stones, expedient tables, or bone-reducing anvils"⁹⁹

⁹⁷ A complete copy of each volume of this set is available for download here: <http://www.dargnet.org/publications.html>

⁹⁸ See, Martin et al; *The Colorado Wickiup Project Volume V: Test Excavation of The Ute Hunters' Camp (5RB563) and the Documentation of Five Additional Aboriginal Wooden Feature Sites in Rio Blanco County, Colorado*; September 2010 plate 7.

⁹⁹ *Id.*

If the above photograph and findings are accurate, which the Organizations have no reason to believe it is not, the Organizations vigorously assert that these items fall well short of a significant cultural resource that is worthy of protection on the National Register. The information that the Organizations have developed as part of this appeal on this issue should not be taken in any way as a waiver of the CRVO statutory obligations to inventory possible cultural sites in the planning area and manage significant sites. The arbitrary nature of the CRVO treatment of the works relied on above is evidenced by the fact the above information comes from a series of books that have been developed with direct and significant funding grants from the BLM itself.

A complete understanding of the limited levels of significance of most CRVO sites is highly relevant to the application of federal laws for the protection of historical resources. Federal historical preservation statutes provide exceptionally clear management standards on management of cultural sites, which are highly site specific and require a site specific inventory and analysis of each site for its "significance". As addressed above many of the locations in the CRVO planning area are not able to obtain a significant classification and are highly deteriorated from natural processes or have never been accurately inventoried at all. Federal law governing cultural resources provides a general standard to address protection of cultural resources, as follows:

"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."¹⁰⁰

Pursuant to the rules and regulations promulgated under §106, the "significance" of the cultural site and impacts from the passage of time **must be addressed** in review of eligibility of a site for designation on the National Register and are **primary** factors in determining if there is required management to be addressed in planning. The CFR provisions specifically provide:

"(c) Evaluate historic significance. (1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36CFR

¹⁰⁰ See, 16 USC §470-f and related provisions.

part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) Determine whether a property is eligible. If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility."¹⁰¹

The mandatory nature of site specific findings regarding the "significance" or "importance" and quality of a site to trigger mandatory management of historical places are specifically outlined in the BLM manual in a manner that is consistent with federal law. The BLM manual specifically states:

"E. The National Register Criteria. A district, site, building, structure, object, traditional cultural property, historic landscape, or discrete group of thematically related properties, that represents America's history, architecture, archaeology, engineering, or culture may be eligible for the National Register. **To be judged eligible, a property must possess integrity of location, design, setting, materials, workmanship, feeling, and association, and must meet at least one of the following criteria:**

1. Property is associated with an event or events that have made a **significant** contribution to the broad patterns of America's history. (Corresponds to 36 CFR 60.4 criterion "a".)
2. Property is associated with the lives of persons **significant** in our past. (Corresponds to 36 CFR 60.4 criterion "b".)

¹⁰¹ See, 36 CFR §804c.

3. Property embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a **significant** and distinguishable entity whose components may lack individual distinction. (Corresponds to 36 CFR 60.4 criterion "c".)
4. Property has yielded or may be likely to yield information **important** in prehistory or history. (Corresponds to 36 CFR 60.4 criterion "d".)¹⁰²

Given the overwhelming number of times the significance of a site must be addressed prior to protection, logic would assert that there is a significant portion of the plan directed towards accurately addressing and defining what is a significant cultural resource. As previously addressed 89% of the CRVO simply has never been inventoried and the information that is obtained from the 11% that has been inventoried is often highly variable and conflicting and precludes any possibility of accurately extrapolating this information into the areas of the CRVO that have not been inventoried. No information is provided on what the basic makeup of each site is or how future sites will be reviewed as part of the significance process or why applications of these standards has resulted in thousands of new sites being identified and closures of 142 additional routes on the 11% of the CRVO that has been inventoried.

The Organizations will note the only place that significance is addressed in the CRVO plan is in the general goal for management of cultural resources at the landscape level. This landscape level standard is as follows:

"Identify, preserve, and protect significant cultural resources in order to ensure appropriate uses by present and future generations (i.e., for research, education, and preservation of cultural heritage...."¹⁰³

The arbitrary nature of CRVO determinations regarding significance analysis is reflected in the fact that this is the only place that significance of resource sites is possibly addressed in the landscape level analysis. No guidance is provided as to what is a significant cultural site or that the severely deteriorated nature of the sites must be taken into account in management of areas under site specific analysis in the future.

Rather than provide a review of the significance of various sites and levels of deterioration, the RMP starts with an assertion that is simply fatally flawed, as all sites are immediately found significant and warranting inclusion on the National Register in the site specific management standards. The CRVO RMP's new site specific standards immediately address "all" cultural sites

¹⁰² See, BLM Cultural Resources Manual 8110 at 8110.32E.

¹⁰³ See, CRVO RMP and FEIS at pg 2-72.

now and in the future and fail to address statutory requirements that a site must be significant to warrant mandatory protection, not significantly deteriorated as follows:

"Allocate all cultural resources currently recorded, or projected to occur on the basis of existing data synthesis, to use allocations according to their nature and relative preservation value (BLM Manual Section 8110.42 and Planning Handbook H-1601-1 [Appendix C]). Cultural Use Allocations include: "¹⁰⁴

While there are 5 categories of usage created for cultural resources, these categories are not defined and are not relied on for a tiered level of management that could address areas or sites that might be less than significant or severely deteriorated. The CRVO decision that all cultural resource are to be protected at the site specific level is reflected in the RMP as follows:

"Identify research opportunities and preserve the nature and value of cultural resources. "

The Organizations vigorously assert this standard is a facial violation of federal historical protection laws, as management is required for "all" sites now and in the future rather than those that area reviewed and found "significant". The Organizations believe the CRVO has completely erred in its determination that every site now and in the future will satisfy the "significance" factor and permit additional management, when 89% of the CRVO planning area has not been inventoried. The landscape level findings regarding significance of possible sites in the CRVO planning process are deeply inconsistent with the findings of significance by outside reviewers in the State of Colorado.

The mandatory nature of protection of all cultural sites is reflected with the creation of specific management for two additional specific types of sites, which are identified as historic properties and heritage areas. These terms are simply never defined in a manner that allows integration of these classes into the 5 categories of usage that are attempted to be developed in other portions of the RMP. The baseline for management of historical properties sites in the CRVO RMP is as follows:

"Stipulation CRVFO-NSO-21: *Historic Properties (100 meters [328 feet])*. Prohibit surface occupancy and surface-disturbing activities within 100 meters (328 feet) of historic properties (9,100 acres/1,100 acres federal mineral estate) "¹⁰⁵

¹⁰⁴ See, CRVO RMP and FEIS at pg 2-73.

¹⁰⁵ See, CRVO RMP and FEIS at pg 2-74.

The second entirely new single standard management for heritage areas in the RMP is as follows:

"Stipulation CRVFO-NSO-20: *Heritage Areas*. Prohibit surface occupancy and surface-disturbing activities within 0.25 mile of heritage areas or Native American traditional properties (e.g., ceremonial features, rock art, culturally modified trees, human remains and site types as identified through consultation) to protect the integrity of place, setting, and/or feeling (4,900 acres/500 acres federal mineral estate). "¹⁰⁶

At no point is there any process identified in the RMP that allows for designations of boundaries for these new categories of items for mandatory protection or for a review of the significance or levels of deterioration at these locations. These heritage area and historic properties standards definitions fail to address the need for a site specific review of possible sites identified in the future to address significance of the site and allow for exclusion of sites that are found to be insignificant or for any tiering of management to address the fact that many sites are insignificant. The Organizations believed that tiered management is a valid option for cultural resources that has not been explored and could be a viable alternative to address the significant impacts that surface exclusions will have on multiple use recreation. This entirely new standard of mandatorily prohibiting all activity within 100 meters of any possible historical site is a significant change from current management requiring compliance with BLM state guidance of a 100 meter buffer that was not subject to NEPA when released. Again, this management change mandates compliance with NEPA requirements which is impossible to comply with as only 11% of the CRVO office has even been inventoried.

Given the clear mandate that only significant sites, that are not significantly deteriorated are appropriate for further management as cultural resources, the Organizations are vigorously opposed to any management of areas that have been found ineligible for listing on the National Register of Historic Places. Given the failure to inventory 89% of the planning office, there can be no argument that the determinations that all sites are well maintained and significant are a violation of federal laws, which must be reversed.

12b(1). Cultural resource laws mandate NEPA review of management standards for cultural resource sites.

The Organizations vigorously assert the failure to inventory 89% of the CRVO planning area for cultural sites is a per se violation of NEPA review requirements of a hard look at possible

¹⁰⁶ See, CRVO RMP and FEIS at pg 2-74.

impacts to other uses of public lands that result from the newly adopted management standards for all cultural sites. As previously noted, the analysis of cultural resources by the CRVO is often conflicting, interchangeably uses terms and manages all categories of usage under single level exclusions of usage further frustrating the hard look requirements of NEPA. The Organizations vigorously assert that NEPA compliance would have resulted in development of management standards that actually address the management threats to significant cultural sites and developed management standards that allow usage of the sites found to be significant in a manner that does not impact other usages.

CRVO attempts to close all sites now and in the future from a wide range of usage. Given the fact that only 11% of the CRVO has been inventoried and conclusions are highly conflicting, the Organizations are vigorously opposed to the imposition of the following standards for the management and analysis of cultural resources:

"The BLM has allocated cultural resources currently recorded, **or projected to occur on the basis of existing data synthesis**, to the following uses (BLM 2005a). These allocations are contained in the *Class I Cultural Resource Overview of the BLM Colorado River Valley Field Office* (Reed et al. 2008), which contains privileged information not for distribution."¹⁰⁷

The Organizations support redacting any and all information that could lead to the destruction of cultural resources in cultural analysis reports in Federal planning. The limiting of site specific information provided for in historical preservation laws in no way provides for a waiver of NEPA analysis of the proposed management changes. Rather the mandatory nature of NEPA analysis is specifically identified in BLM regulations as follows:

".13 Environmental Documentation. When an environmental assessment or environmental impact statement is being prepared for a proposed land use that might affect cultural resources, preparers must have access to sufficient inventory data, and professional expertise, to allow them to give meaningful consideration to cultural resources known or projected to occur in the potential impact area."¹⁰⁸

Regulations promulgated in furtherance of NEPA specifically identify economic and cultural impacts as factors that are part of the human environment that must be addressed and balanced in the preparation of an EIS. These regulations specifically provide:

¹⁰⁷ See, CRVO RMP at pg 2-73.

¹⁰⁸ See, BLM Manual 8110.13-

"Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. **When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.**"¹⁰⁹

CEQ regulations mandate a single NEPA standard of review for analysis of direct and indirect effects on cultural resources and the relationship of management decisions on other factors to be addressed as part of any NEPA analysis such as economics. The CEQ regulations specifically provide as follows:

"Effects include: (a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, **cultural**, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial."

BLM regulations regarding the management of cultural resources specifically identify that a complete inventory of the planning area **must** be undertaken and that multiple use impacts from cultural resource management **must** also be addressed. BLM regulations specifically state as follows:

".12 Information Needs. During the earliest feasible stage of land use planning or environmental review, **the Field Office manager, assisted by professional staff, will determine the information needed to locate and evaluate cultural resources potentially affected by the plan or undertaking.** After this

¹⁰⁹ See, 40 CFR 1508.14.

determination, the Field Office manager will also seek information from relevant Indian tribes and interested persons to identify historic and traditional cultural properties and potential effects on them. **Where possible, information needs can be determined on a large-scale programmatic basis.**

A. During planning, the Field Office manager, assisted by professional staff, **shall complete cultural resource inventory, evaluation, and use allocations for public lands potentially affected by planning decisions as an integral component of regional plans, local interdisciplinary plans, or project plans.**

B. In issuing land use authorizations, the Field Office manager shall ensure that areas where proposed land uses are being considered in response to a land use application or a BLM proposal are inventoried to identify potentially affected cultural resources at a level commensurate with the nature of the proposed undertaking and its likely effects on cultural resources."¹¹⁰

The Organizations can in no way find a basis for any assertion of complete cultural resource inventory in the CRVO RMP or that the management standards applied in the CRVO are at a level that is commensurate with the proposed undertaking. Provisions for the protection of cultural sites must not be applied as a justification or cover for the fact that 89% of the CRVO simply has not been reviewed for cultural issues, and that horribly inconsistent information obtained from this limited inventory was then applied in an attempt to address the failure of the inventory. This directly precludes any assertion that sufficient inventory data is available for the meaningful consideration of issues as required by NEPA analysis. Given that BLM regulations applying NEPA specifically qualify the requirements of landscape level cultural planning to the times "it is possible", the fact that 89% of the CRVO has not been inventoried solidly places the CRVO planning efforts in the situation of being not possible to plan based on an complete inventor that allows assessment of impacts.

As a comparison, the review of the Grand Junction DRMP reveals that office provided a 65 page appendix to their RMP that attempted to address site specific issues with cultural resources.¹¹¹ While the Organizations appreciate the analysis of sites, the Organizations are deeply troubled that the GJFO found all sites significant, and worthy of mandatory closures, despite admissions that most sites needed further review and data and were not eligible for listing on the National Register of Historic Places, as required by federal law. A representative page of this appendix is as follows:

¹¹⁰ See, BLM Manual 8110.12 Identifying and evaluating cultural resources. (12/03/04)

¹¹¹ See, DOI, BLM - Grand Junction Field Office Draft Recourse Management Plan and Environmental Impact Statement (December 2012) Appendix I.

Table I-2
Scientific Use Sites

Site No.	Prehistoric Site Type	Historic Site Type	Eligibility	RMP Planning Area	Secondary Allocation
5GF.1051		Mining	Need data (F)	Book Cliffs	
5GF.1055	Sheltered camp		Not eligible (F)	Book Cliffs	
5GF.1056		Habitation/ homestead	Not eligible (F)	Grand Valley	
5GF.1063	Open camp		Not Eligible (O)	Book Cliffs	
5GF.1065	Open lithic		Not eligible (F)	Roan Creek	
5GF.1067	Isolated feature- hearth		Not eligible (F)	Roan Creek	
5GF.1068	Isolated feature- hearth		Not eligible (O)	Roan Creek	
5GF.1074	Sheltered camp		Need data (F)	Book Cliffs	
5GF.1075		Habitation/ homestead	Not eligible (F)	Book Cliffs	
5GF.1076		Habitation/ homestead	Need data (F)	Book Cliffs	
5GF.1077	Open camp		Not eligible (F)	Roan Creek	
5GF.1079	Sheltered camp		Need data (F)	Book Cliffs	
5GF.1081	Open lithic		Need data (F)	Roan Creek	
5GF.1082	Open lithic		Need data (F)	Roan Creek	
5GF.1083	Open camp		Need data (F)	Roan Creek	
5GF.1084	Isolated find – Paleoindian		Not Eligible (F)	Grand Valley	
5GF.1124	Open lithic		Need data (F)	Roan Creek	
5GF.1127	Open lithic		Not eligible (F)	Grand Valley	
5GF.1130		Farm/ranch	Not eligible (F)	Book Cliffs	
5GF.114	Open camp		Need data (F)	Book Cliffs	
5GF.1152		Isolated feature	Not eligible (F)	Book Cliffs	
5GF.1155		Farm/ranch	Not eligible (F)	Book Cliffs	
5GF.116	Open camp		Need data (F)	Book Cliffs	
5GF.1171	Open camp		Need data (F)	Grand Valley	
5GF.1204	Open camp		Eligible (F)	Book Cliffs	
5GF.1223	Open lithic		Not eligible (F)	Roan Creek	
5GF.1335	Open camp		Not Eligible (O)	Grand Valley	
5GF.1336	Open camp		Need data (F)	Book Cliffs	
5GF.1337	Open camp		Not Eligible (O)	Grand Valley	
5GF.1340	Open camp		Need data (F)	Book Cliffs	
5GF.1341	Open camp		Need data (F)	Book Cliffs	
5GF.1342	Open lithic		Need data (F)	Book Cliffs	
5GF.1343	Open camp		Need data (F)	Book Cliffs	
5GF.1344	Open lithic		Need data (F)	Book Cliffs	
5GF.1345	Open lithic		Need data (F)	Book Cliffs	
5GF.1346	Open camp		Need data (F)	Book Cliffs	
5GF.1347	Sheltered camp		Need data (F)	Book Cliffs	
5GF.1348	Sheltered camp		Need data (F)	Book Cliffs	
5GF.1349	Sheltered camp		Need data (F)	Book Cliffs	

In addition to the GJFO appendix, the Organizations are aware of a wide range of reports, analysis and other studies of cultural resources in the Grand Valley, such as those from the Domingez Archeological Research Group that provide extensive examples of the severely deteriorated state of most cultural resources, and conclusions that most sites are simply not worthy of listing on the National Register of Historic Places. The Organizations would note that the BLM has been a partner in these projects for a long time, precluding any assertion of confidentiality precluding analysis of and public comment on these types of issues. Clearly the BLM is aware of these documented research efforts that directly conflict with the management that is proposed in the CRVO RMP as the BLM has been actively funding this research with numerous grants.

Despite extensive analysis of the CRVO Plan and all appendix, the Organizations are completely unable to local any site specific analysis of cultural sites, any summaries of what has been identified as a cultural site or any impacts that could result from the application of standards that may significantly impact economic benefits from the multiple uses that must be addressed as part of a NEPA analysis. The Organizations submit that any appendix similar to the GJFO documentation for the CRVO would have immediately highlighted the fact that only 11% of the office had been inventoried and highlight what is a critical flaw in statutorily mandated analysis and NEPA compliance. The Organizations again vigorously assert the failure to culturally inventory the CRVO cannot be hidden behind a claim of confidentiality under a cultural resources law. This failure is a complete violation of NEPA planning requirements and makes conclusions that simply lack any and all factual or legal basis and are nothing but arbitrary and capricious. As specifically addressed in BLM regulations, landscape level cultural planning may only occur when there is a complete inventory. The CRVO must prepare a complete inventory of the planning area to allow NEPA analysis of new management standards or continue to apply current management until such time as the inventory is complete, rather than try to extrapolate the existing inventory of 11% of the CRVO planning area to support landscape level planning.

12c. No range of alternatives has been developed for management of cultural resource sites and as such viable alternatives have been excluded from analysis.

The Organizations must address the fact that there is simply no range of alternatives provided for the management of proposed cultural resource areas, despite the fact that BLM management documents specifically address viable management alternative that are not even forwarded for public comment as a management alternative for these areas. Cultural resources can be economic drivers, such as the Bonanza Trail Network on the Gunnison Field Office and simply are never even addressed.

The BLM Colorado Protocol for the management of Cultural resources specifically states:

"designation of routes and travel network areas generally has a beneficial effort of controlling impacts of travel on public lands, including cultural resources. Designation provides a purposefully designed and clearly delineated travel network, reduces the potential for user caused route proliferation, and facilitates travel management and law enforcement.... Route designations prohibit indiscriminate cross country travel that may cause adverse impacts to cultural resources."¹¹²

Given that this is clearly adopted as a valid management standard in the above agreement the organizations have to question why this was not adopted as a management standard to mitigate issues related to a lack of inventory. The Organizations vigorously assert that these management standards would be far more able to address the failures to inventory 89% of the CRVO and mitigate impacts that result from the implementation of new management standards that simply have never been subjected to NEPA analysis and often management standards simply bear no relationship to the threats that are to be addressed.

As noted by numerous experts, the rational decision-making process of the National Environmental Policy Act (NEPA) is compromised when agencies consider only a limited range of alternatives to their proposed projects.¹¹³ When reviewing ranges of alternatives provided in a NEPA analysis, the courts have consistently held:

"The alternative section is 'the heart of the environmental impact statement,' 40 C.F.R. 1502.14; hence, '[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.'" ¹¹⁴

When determining if an EIS has provided a satisfactory range of alternatives, the standard of comparison is to the purpose of the rulemaking and EIS. The courts have consistently held:

"[E]nsure that federal agencies have sufficiently detailed information to decide whether to proceed with an action in light of potential environmental

¹¹² See, State Protocol agreement between the Colorado State Director of BLM and the Colorado SHPO regarding the manner in which the BLM will meet its responsibilities under the NHPA and the National Programmatic agreement (NPA) among the BLM, the advisory council on historic preservation and the national conference of state historic preservation offices; October 2006; at appendix 1 pg 4.

¹¹³ James Allen; *Does not provide a range of alternatives to satisfy NEPA.....NEPA Alternatives Analysis: The Evolving Exclusion of Remote and Speculative Alternatives*; 2005 25 J. Land Resources & Envtl. L. 287.

¹¹⁴ *Citizens for a Better Henderson v. Hodel*, 768 F. 2d 1051, 1057 (9th Cir. 1985).

consequences, and [to] provide the public with information on the environmental impact of a proposed action and encourage public participation in the development of that information.”¹¹⁵

The Organizations vigorously assert that the failure to inventory 89% of the planning area for cultural issues has directly impacted the range of alternatives previously presented. BLM mandates landscape cultural planning only when possible and planning must be based on a complete inventory. The movement of the CRVO planning area to a designated trail network directly results in significant benefits to a wide range of issues, including protection of cultural resources, when compared to the current open riding designations. Most users of public lands simply will never seek out the locations of these structures, as they simply are not identifiable by most laypersons. With the adoption of a designated trail system most users will simply ride by these locations and never stop at all as it looks like a pile of brush. These benefits clearly reflect an alternative that is viable for the protection of cultural resources, especially when only 11% of the planning area has been inventoried. Clearly as the inventory expanded, site specific planning could be undertaken to address any cultural issues that may come to light as a result of site specific analysis. This is an alternative for management of this issue that was simply never analyzed in the draft version of the RMP.

The Organizations vigorously assert that the failure to inventory 89% of the CRVO lands for cultural resources has directly resulted in additional closures of multiple use recreational opportunities over the life of the RMP as management alternatives that would have preserved trails and protected cultural resources simply have not been looked at. These closures would be in addition to the 132 routes that are currently lost due to alleged cultural resources issues.

These secondary issues are the types of issues that the hard look of NEPA analysis is specifically developed to address, and simply have not been analyzed. These closures will result from the failure to properly assess impacts of routes to be closed in the RMP process without the cultural inventory. It is entirely possible routes with minimal cultural resource impacts will be closed based on concerns of repetition and cost while routes with significant cultural impacts will remain open until cultural resources are identified. At that point the route that was closed in the RMP process will not be an option for mitigating impacts and the second route will have been closed as well. This is a double lose for anyone who recreates in the vicinity of the cultural resources as both routes are lost simply due to poor management and decision making by the agency.

¹¹⁵ *Kunzman*, 817 F. 2d at 492; *see also Citizens for a Better Henderson*, 768 F. 2d at 1056.

The Organizations vigorously assert that the lack of analysis of cultural resources as part of the travel management process has directly resulted in failures to develop alternatives in the planning process that would have significantly mitigated impacts to multiple use recreational opportunities and would have increased protection of cultural resources.

12d. The failure to inventory 89% of the CRVO has directly limited public comment which is a critical component of the NEPA process.

When determining if an EIS has provided a satisfactory range of alternatives, the standard of comparison is to the purpose of the rulemaking and EIS. The courts have consistently held:

“[E]nsure that federal agencies have sufficiently detailed information to decide whether to proceed with an action in light of potential environmental consequences, and [to] provide the public with information on the environmental impact of a proposed action and encourage public participation in the development of that information.”¹¹⁶

The Organizations vigorously support that public comment of any detailed analysis would have been difficult as 89% of the CRVO simply had not been inventoried. This failure of comment would have long term impacts to the management of these areas.

13. The failure to inventory 89% of the CRVO planning area for cultural resource directly impairs any validity in asserted boundaries of ACEC for the protection of cultural resources.

The Organizations believe the management of cultural resources and associated areas has directly impacted the plan in additional manners, that again must be addressed after being inventoried. as these structures have been the basis for significant closures to motorized access in other BLM offices and are specifically identified as a management concern relied upon for designation of the Grand Hogback ACEC.¹¹⁷ The RMP does not provide a detailed statement of how decisions were made regarding these areas and structures, which causes the Organizations to believe that similar management decision process have been applied to these structures as have been incorrectly applied on other offices.

¹¹⁶ *Kunzman*, 817 F. 2d at 492; *see also Citizens for a Better Henderson*, 768 F. 2d at 1056.

¹¹⁷ Colorado River Valley Field Office – Draft RMP Revision EIS Appendix E @ pg 17.

The Organizations have to believe that the fact that most cultural sites are not locatable by the public and probably will not be reviewed by scientists has to place these structures low on the priority list when compared with other multiple uses in the vicinity of the wickiup. This makes designations of ACEC, encompassing thousands of acres problematic. The Organizations believe that preservation of historical sites is very important for a wide range of reasons to the users of public lands and native americans. However, the Organizations are also aware that every historical site cannot be saved and there has to be some type of balance between the somewhat limited findings and the costs to other uses in the management of these areas under multiple use standards. Clearly the protection of these resources is a questionable basis for the designation of areas thousands of acres in size.

Given the sparse density of cultural resources and paleontological resources on the CRVO, the Organizations have to question if there is sufficient information regarding these structures to warrant development of targeted management encompassing thousands of acres for these structures in the RMP as an ACEC. The arbitrary nature of decisions to designate ACEC for the protection of cultural resources and paleontological resources sites is further compounded by the CRVO position that 89% of the field office has not been inventoried for cultural resources.

These structures and sites appear better suited for state historic preservation laws, or management under subsequent site specific management where a complete inventory of information can be developed that are specifically designed to address these types of issues. State historic designations would have been site specific to each resource site and had minimal impact to the use of surrounding public lands. For reasons that are not discussed in the RMP, a decision was made that wickiups were of sufficient concern to designate an ACEC of 13,990 acres in the RMP, despite the fact they were not of sufficient interest for designation as a state historic site. Given this conflict, the Organizations must question if wickiup management is truly a regional issue. The Organizations have to believe that the generally unidentifiable status of most of the sites had to weigh heavily in the decision not to designate these areas as historically significant.

The Organizations have to believe that that attempts to generate public support for protection of these sites may be difficult too. A review of the Colorado register of historic places reveals only the Duck Creek Wickiup Village in Rio Blanco County has been designated as a historic site.

¹¹⁸ The Organizations have to note that this is a significantly refurbished location that simply is not comparable to the wickiups on the Grand Hogback and this area outside the jurisdiction of

¹¹⁸ http://en.wikipedia.org/wiki/National_Register_of_Historic_Places_listings_in_Rio_Blanco_County,_Colorado

the planning office and the proposed Grand Hogback ACEC. Again the protection area around the Duck Creek Wickiup area is significantly smaller than the area that is now proposed to become an ACEC for the protection of resources that are in significantly worse condition than those in Duck Creek and will probably simply never even be excavated.

The nature of the threats to wickiup and cultural sites also weighs heavily against the creation of a large designation for the protection of several small sites. Forestry, controlled burns¹¹⁹ and grazing¹²⁰ are identified as several of the primary threats to these types of structures. These are all activities that occur after the issuance of a permit, and preservation of the wickiups could be easily addressed in the terms and restrictions of the permits. Grazing permits could be issued only after fencing of cultural and wickiup sites has been accomplished and fire mitigation activities could also occur in such a manner to preserve these sites. The Organizations have to wonder why the much narrower and probably more effective management policy of addressing these concerns in the issuance of permits would not be the first step in managing these areas. Clearly properly addressing permit issuance is not a special management concern that warrants landscape level planning.

Motorized recreation has also been addressed as a possible management concern for cultural resources sites, however these concerns are specifically mitigated by the CRVO going to a completely designated trail system as specifically identified in the Programmatic agreement between BLM and Colorado SHPO. Again this change mitigates any special management that might be needed for cultural resources. Given the limitations on locating a cultural resources and the fact that there is nothing of monetary value associated with cultural resources, the Organizations have to believe that that an overwhelming percentage of users will pass a well preserved wickiup or other cultural site without even thinking of stopping or realizing what the pile of sticks could be.

14. Conclusion

The Organizations vigorously assert that there are numerous foundational analysis errors in the CRVO RMP and FEIS that have directly contributed to the levels of closures to recreational opportunities that is now proposed. These failures of analysis represent facial violations of federal law requirements for analysis to be conducted in conjunction with federal planning. Errors include the arbitrary and capricious manner that recreational usage has been valued at, despite recreational usage being repeatedly identified as the primary usage of lands in the CRVO planning area and failures to inventory the planning area for cultural issues in order to

¹¹⁹ Colorado River Valley Field Office – Draft RMP Revision Chapter 3, Affected Environment EIS at pg 3-107.

¹²⁰ *Id.*

allow the development of alternatives and balance protection of these resources with benefits of usage. This has compounded the impact of each separate failure. The CRVO conclusions repeatedly assert reliance on USFS NVUM process for their analysis but CRVO conclusions represent only approximately 20% of the average daily recreational spending totals found by USFS NVUM analysis. It is the Organizations position these conclusions are arbitrary and capricious as a matter of law and have directly resulted in the high closures to recreational opportunities.

The CRVO conclusions for recreational spending have occurred under analysis of a single agency at the same time, using the same modeling methods, for the same geographic areas as the GRSG planning process. Despite the similarity of analysis the CRVO finds average daily spending amounts for recreational users that are less than 10% of the GRSG conclusions for the same activity. This can be nothing but arbitrary and capricious as a matter of law and again have directly resulted in the high levels of closures to recreational opportunities proposed in violation of federal law, numerous Executive Orders and BLM planning guidelines.

It is the Organizations vigorous position that the CRVO plan and all associated documents must be remanded to the CRVO in order to allow for the development of economic analysis of recreational activity that reflects the significance of recreational usage of the CRVO to local communities and the State of Colorado as a whole. Once the economic importance of recreational usage is accurately established, resource allocation decisions must be remade to provide a balance of usages that reflects the economic importance of recreation and are based on a meaningful inventory of cultural resources in the CRVO planning area.

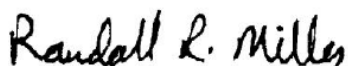
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Sincerely,



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