Submitted via email to blm_ut_fm_sevier_playa_potash_project@blm.gov and c1steve@blm.gov – exhibits sent via USPS First Class Mail only

January 14, 2019

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Re: SUWA Comments on the Sevier Playa Potash Project Draft Environmental Impact Statement, DOI-BLM-W020-2014-0001-EIS (Nov. 2018)

Greetings:

The Southern Utah Wilderness Alliance (SUWA) appreciates the opportunity to submit the following comments on the Sevier Playa Potash Project Draft Environmental Impact Statement, DOI-BLM-W020-2014-0001-EIS (Nov. 2018) (DEIS). BLM cannot proceed with the proposed potash development unless and until the issues discussed in the following sections are resolved.

BLM's approval of the Sevier Playa Potash Project would allow Crystal Peak Minerals, Inc. (Crystal Peak) to develop a 125,000 acre potash mining operation (both on- and off-lease). The proposed development, with hundreds of miles of trenches, new communication and power lines, a new rail spur and load out facility and processing facility would transform the remote Sevier Playa into an area dominated by large-scale industrial development. The proposed development would have profound impacts on air quality, water quality and quantity, cultural resources and wildlife, including migratory birds. It would also impact recreation both around the playa and the surrounding mountain ranges.

In short, the DEIS violates the National Environmental Preservation Act (NEPA), the Federal Policy and Management Act (FLPMA) and the Migratory Bird Treaty Act and their implementing regulations. BLM failed to conform its decision to a governing land use plan, not once referencing that plan in its DEIS. Moreover, the DEIS failed to consider a reasonable range of alternatives, instead evaluating only minor modifications to the proposed action. It also failed to take the requisite hard look at the direct, indirect and cumulative impacts to air quality, water resources, visual resources and wildlife resources, among other resource values.

In addition to these comments, SUWA expressly incorporates in their entirety the comments submitted by Audubon Society.

As an initial matter, BLM should *extend the comment deadline* for this DEIS. Starting on December 22, 2018, the country has experienced a partial federal government shut down due to a lapse of appropriated funding. Since that shutdown began, BLM, U.S. Fish and Wildlife Service and other federal agency employees have been furloughed and unavailable to answer questions or provide information. SUWA or its contractors have reached out to BLM and other cooperating agencies requesting additional information about this DEIS and have not received any response. BLM must extend the comment deadline commensurate with the length of the government shutdown. **SUWA reserves the right to supplement these comments once it has received and evaluated the information requested**.

I. BLM Has Failed to Conform the DEIS to the Great Basin National Heritage Area Plan

On April, 30, 2013, in accordance with Public Law 109-338, the Interior Department approved the Management Plan for the Great Basin National Heritage Area, an area which covers the entire project area and cumulative impact analysis area. A copy of that Plan is attached hereto. In her April 30, 2013 transmittal letter, Deputy Assistant Secretary Rachel Jacobsen expressed the Interior Department's "desire to continue a close working relationship" with the Great Basin Heritage Area Partnership and its partners "to effectively implement our mutually held resource protection objectives. The Great Basin National Heritage Route contains some of our nation's most important natural and cultural resources and is indeed worthy of our joint and on-going respect and protection." *See* Heritage Area Plan at xvi.

Inexplicably, there is *no mention whatsoever* of the Heritage Area or its guiding Management Plan in the DEIS, its accompanying appendices or supplemental reports. *See, e.g.,* Sevier Playa Potash Project, Resource Report: Recreation at 10 (explaining that Section 4.0 "describes federal, state, and local laws, regulations, and policies related to recreation that are relevant to the Project" but not identifying the Heritage Area or its approved Management Plan)[1]; DEIS Appendix G: Authorizing Laws, Regulations and Policies (similarly not mentioning Public Law 109-338, the Heritage Area nor its Management Plan).[2] Thus there is no explanation whether or how the proposed action (or any alternative) and its anticipated direct, indirect and cumulative impacts comports with or affects the Heritage Area and its Management Plan. For example, the Plan highlights its remoteness from light pollution and noise, two items that, as discussed below, and inadequately analyzed in the DEIS. *See* Heritage Area Plan at 6.

This glaring shortcoming must be addressed in a supplemental draft EIS.

II. Alternatives.

NEPA requires agencies to study, develop, and describe appropriate alternatives and their comparative effects in every proposal. 40 C.F.R. § 1502.14. While an agency need not select a particular alternative, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989),

[1] The Recreation resource report is available online at https://eplanning.blm.gov/epl-front-office/projects/nepa/67624/163237/199227/SPP_ResourceReport_Recreation_181029.pdf.
[2] Appendix G is available online at https://eplanning.blm.gov/epl-front-office/projects/nepa/67624/162986/198905/SPP_DEIS_AppG_LawsRegulationsPolicies_181102.pdf.

the alternatives requirement ensures that an agency fully consider—and show the public that it considered—less environmentally harmful means to its proposed action that would accomplish the same goal. 40 C.F.R. §§ 1500.1(b); 1500.2(d), (e); *see Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988), *cert. denied sub nom.*, 489 U.S. 1066 (1989) ("NEPA's requirement that alternatives be studied, developed and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place.").

An agency's discussion of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. An EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). "It should present the environmental impacts of the proposal and the alternatives in comparative form, thus *sharply defining* the issues and providing a clear basis for choice among options by the decisionmaker and the public." *Id.* (emphasis added). "[S]ubstantive, comparative environmental impact information regarding other possible courses of action" is vital "to inform agency deliberation and facilitate public involvement." *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009).

While an agency may take into account the goals of the applicant in evaluating alternatives, NEPA requires an agency "to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project" and to look at the general goal of the project rather than only those alternatives by which a particular applicant can reach its own specific goals. *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997) (internal quotations omitted). According to the Council on Environmental Quality:

> In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant.

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, Question 2A (March 23, 1981). Further, an agency must independently evaluate any information submitted by an applicant and verify its accuracy. 40 C.F.R. § 1506.5(a).

The range of alternatives an agency must analyze is dictated by a "rule of reason and practicality" based on the agency's stated purpose and need for the project. *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (citation omitted), *abrogated on other grounds by Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008). The reasonableness of an alternative is measured in two ways. First, it must accomplish the purpose and need of the proposed action. *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 709 (10th Cir. 2009). Second, it must fall within the agency's statutory mandate. *Id.* An alternative that is reasonable on its face must also be practical—"non-speculative … and bounded by some notion of feasibility." *Utahns for Better Transp. v. U. S. Dep't of Tramsp.*, 305 F.3d 1152, 1172 (10th Cir. 2002). An agency has broad discretion to define its objectives for a project proposal. However, after "defining the objectives

of an action," the agency must "provide legitimate consideration to alternatives that fall between the obvious extremes." *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

A. BLM Failed to Analyze a Reasonable Range of Alternatives.

Here, BLM failed to analyze the requisite reasonable range of alternatives. In the DEIS, BLM analyzed the proposed action, the no action alternative and five self-styled "alternatives" to that proposed action. DEIS at 2-11 to 2-29. However, rather than "rigorously explore and objectively evaluate all reasonable alternatives," BLM merely analyzed minor modifications to the proposed action. Indeed, BLM acknowledges that the alternatives are simply "variations of specific project components." DEIS at 2-11. For example, the sum total of Alternative 1 is that it would re-route a portion of a 69 kV power and communication line on the north end of the project area to follow existing roads. DEIS at 2-12. In Alternative 1, the power and communication line would be 3.7 miles longer and cause 44.6 acres of additional surface disturbance. *Id.* at 4-15. Alternative 2 would re-route a portion of a 69 kV power and communication line on the *south* end of the project area to follow existing roads. DEIS at 2-17. Similarly, the segment is just over 3 miles longer than the proposed action and would cause 47.4 acres of additional surface disturbance.[3] DEIS at 4-15. Alternative 3 would re-route a portion of a proposed natural gas pipeline to avoid crossing over private lands. DEIS at 2-18. Alternative 4 would re-route another portion of natural gas pipeline on the west side of the project area to follow an existing road. DEIS at 2-18.

The project area for the Sevier Playa Potash Project is twenty six miles long, an average of eight miles wide and covers approximately 125,000 acres of federal public land. DEIS at 1-1. The proposed action includes 306 miles of extraction trenches, 280 miles of recharge trenches, 160 miles of power or communication lines, 13 miles of natural gas pipeline, a processing facility, a rail loadout facility and spur, production ponds, tailings storage and more than 60 miles of road. DEIS at 2-4. The tweaks BLM considered—minor modifications to individual components of the proposed action, resulting in minimal differences in acres and location of surface disturbance—are plainly insufficient to comply with NEPA's alternatives mandate. The alternatives neither "sharply define the issues" nor "provide a clear basis for choice among options" by BLM or the public. *See* 40 C.F.R. § 1502.14. This anemic alternatives analysis violates one of the most basic tenets of NEPA: to fully consider less environmentally harmful means to a proposed action that would accomplish the same goal. 40 C.F.R. § 1502.1; *see also Sierra Club v. Watkins*, 808 F. Supp. 852, 875 (D.D.C. 1991) (The obligation to consider alternatives "is designed to insure that an agency's single-minded approach to a proposed action is tempered by the consideration of other feasible options that may have different (and fewer) environmental effects."). *See generally* DEIS at 1-6 (Section 1.3.2: broadly describing BLM's purpose and need).[4] To comply with

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[3] Although this alternative would re-route the power and communication line, it would not re-route the natural gas pipeline that is co-located with that power and communication line in the proposed action.
[4] The sum total of the purpose and need statement is as follows:

> Fertilizer rich in potassium is in high demand to support national and global food production. The Food and Agriculture Organization (FAO) of the United Nations has forecast a 2.4 percent annual increase in demand for potassium fertilizer, also known as potash, between 2015 and 2020 (FAO 2017). In the United States, agriculture relies on potash imports for 90 percent of its needs, with 85 percent of these imports originating in Canada. In recognition of its importance, the Department of the Interior has identified potassium as one of 35 critical minerals that the United States is almost completely reliant on importing from foreign

NEPA's alternatives requirements, BLM must bring forward and fully analyze a range of *alternatives*, rather than modifications to minor components of the proposed action, that would sufficiently define important resource issues and provide the agency and the public a clear among options.

B. BLM Improperly Dismissed Proposed Alternatives Without Sufficient Analysis.

Compounding its failure to analyze a reasonable range of alternatives, BLM inappropriately dismissed proposed alternatives from detailed analysis based on alleged technical and economic feasibility issues and regulatory constraints. *See generally* DEIS App. I. However, in dismissing these alternatives, BLM mischaracterized its legal responsibilities and provided no record evidence of its independent verification of any of the proposed alternatives' alleged technical or economic infeasibility. As discussed above, a reasonable alternative must accomplish the purpose and need of a proposed action, fall within the agency's statutory mandate and be feasible. Moreover, if an agency relies on information supplied by an applicant, the agency must "independently evaluate the information submitted" and verify its accuracy. 40 C.F.R. § 1506.5(a). BLM dismissed reasonable, feasible alternatives that would have lessened the environmental impact of the Sevier Playa Potash Project from full consideration.

First, BLM dismissed many of the alternatives from full analysis based on Crystal Peak's assertions that individual alternatives would be technically or economically infeasible. *See* DEIS at I-1 (noting that the alternatives considered but not analyzed in detail were deemed technically or economically infeasible by Crystal Peak). However, the record does not reflect that BLM conducted any independent technical or economic feasibility analysis. BLM must undertake that independent analysis and cannot rely on Crystal Peak's self-serving statements that alternatives beyond its proposed development plan are not feasible. *See Simmons*, 120 F.3d at 669; *see also Envtl. Law & Policy Ctr. v. U.S. Nuclear Regulatory Comm'n*, 807 F.3d 676, 683 (7th Cir. 2006) (NEPA requires an agency to "exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of a project."); *Utahns for Better Transp.*, 305 F.3d at 1165 (Department of Transportation violated NEPA because the administrative record contained no

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> markets. Presently, potash produced in the United States is mined from underground ores and the processing of brines in Utah and New Mexico, and additional sources of potash are needed to meet the increasing national and global demands for fertilizer rich in potassium**.** *The purpose of the Project is to help meet this need in an environmentally sound manner that, in accordance with 43 CFR 3594.1, provides for maximum recovery of potassium sulfate.*
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> *The BLM's purpose is to consider CPM's proposed Mining Plan for use of federal lands and development of federal minerals consistent with CPM's valid existing lease rights, which allow for development of the mineral resource subject to lease stipulations and reasonable conditions of approval to avoid, minimize, and mitigate adverse environmental effects. The BLM's purpose is also to consider CPM's requests for ROWs and mineral material sales associated with the proposed Mining Plan. The need for action by the BLM is based on both the MLA and the FLPMA, which provide for the mining of potash on the public domain, mandate the management of federal public lands to meet the present and future needs of the American people, and require the BLM to respond to ROW grant requests while avoiding or minimizing adverse effects, in conformance with existing land use plans.*

DEIS at 1-6 (emphases added).

evidence the agency verified the project applicant's cost estimates regarding the feasibility of a potentially viable alternative); *Fla. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005) ("Representations by the applicant alone, who clearly has an interest in obtaining the permit . . . cannot be sufficient to establish a project's independent utility, without independent evaluation by the agency based on record evidence."). Without independent analysis, BLM's conclusion that the proffered alternatives are not technically or economically feasible is arbitrary, capricious and an abuse of discretion.

Second, BLM dismissed alternatives from full consideration based on an overly narrow interpretation of "ultimate maximum recovery." BLM repeatedly dismissed potential alternatives based on its claim that a given alternative would not provide for maximum recovery of the potassium resource pursuant to 43 C.F.R. § 3594.1. *See, e.g.*, DEIS at I-1. BLM relied on this provision even when it dismissed alternatives where only some amount of brine would be more difficult to access. *See id.* at I-3. However, while §3594.1 requires mining operations to be conducted "in a manner to yield the ultimate maximum recovery of the mineral deposits," that recovery also must be "consistent with the protection and use of other natural resources and the protection and preservation of the environment." 43 C.F.R. § 3594.1. The regulatory definition of ultimate maximum recovery also does not preclude BLM from ensuring mining operations are conducted in an environmentally sound manner: "[t]he requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the . . . protection of other resources." 43 C.F.R. § 3590.0-5. Accordingly, BLM improperly dismssed alternatives from full analysis simply because the proposed development would allow for recovery of more potassium than another, less environmentally damaging alternative. The Mineral Leasing Act regulations specifically contemplate that recovery of minerals should be consistent with protection of other resources. Accordingly, BLM should have fully analyzed all reasonable, feasible alternatives.

One of the proposed alternatives BLM dismissed from full consideration was the Mining Project without the LUMA[5] leases. DEIS at I-3. BLM identified this potential alternative because it would have reduced the footprint of the project. *Id.* The LUMA leases make up the northern portion of the Sevier Playa and include the Sevier River diversion. *Id.*; *see also* BLM, Sevier Lake Competitive Potash Leasing Proposal, Environmental Assessment, DOI-BLM-UT-W020-2010-014-EA, Figure 2-1 (Feb. 2011) (SP Leasing EA). As the U.S. Fish and Wildlife Service (FWS) has explained, the northern portion of the Sevier Playa contains freshwater wetland and shallow water habitats. *See* Sevier Playa Potash Project, Environmental Impact Statement, Scoping Report 90 (Sept. 2015) (Scoping Report).[6] FWS has previously highlighted the importance of protecting the north end of the playa in its comments on the SP Leasing EA. SP Leasing EA at E-32-33. In those comments, FWS recommended that BLM analyze development scenarios that would consider the habitat values of Sevier Lake, select an alternative which would have protected the northeast and northwest of the playa to minimize impacts to wildlife, and enhance and restore habitat on the north end of Sevier Lake. SP Leasing EA at E-32-33. Full

[5] *See* DEIS at ES-1 (explaining that a portion of the lakebed has been leased to LUMA Minerals, LLC and that LUMA and Peak Minerals have "entered into a cooperative development agreement.").

[6] An updated version of the 2015 scoping report is Appendix F to the DEIS. An email from Betsy Hermann, FWS to Patrick Golden, ENValue, notes the importance of the north part of Sevier Lake. *See* DEIS App. F at 41 (Appendix F is not paginated; the reference to Ms. Hermann's email is to page 41 of the .pdf).

analysis of the LUMA alternative would have allowed BLM to consider an alternative that preserved important and sensitive habitat. The LUMA lease alternative is reasonable, feasible and should have been brought forward for full analysis.

The LUMA lease alternative is reasonable because it accomplishes the purpose and need of the Sevier Playa Potash Project and falls within BLM's statutory mandate. BLM's stated purpose for the Sevier Playa Potash Project is "to consider CPM's proposed Mining Plan for use of federal lands and development of federal minerals consistent with CPM's valid existing lease rights." DEIS at 1-6. The need for the project is to "provide for the mining of potash on the public domain . . . to meet the present and future needs of the American people . . . while avoiding or minimizing adverse effects." *Id.* The LUMA lease alternative would still allow Crystal Peak to both develop its leases and recover brine from its own leases while minimizing impacts to the environment. DEIS at I-3. It would also fulfill BLM's need to provide for the mining of potash on public lands. *Id.*

The LUMA lease alternative is also within BLM's statutory mandate under FLPMA and the Mineral Leasing Act. FLPMA grants BLM broad authority and discretion to implement SUWA's proposed alternative. FLPMA provides that BLM should manage lands "on the basis of multiple use and sustained yield." 43 U.S.C. § 1701(a)(7). "Multiple use requires management of the public lands and their numerous natural resources so that they can be used for economic, recreational, and scientific purposes without the infliction of permanent damage." *N.M. ex rel. Richardson*, 565 F.3d at 710 (citations omitted). The LUMA lease alternative would allow for recovery of the resource and minimize impacts on sensitive habitat and riparian area. Consistent with Mineral Leasing Act regulations, the LUMA lease alternative would "encourage maximum recovery and use of all known mineral resources" and "promote operating practices which will avoid, minimize or correct damage to the environment." 43 C.F.R. § 3590.0-1.

As described in the DEIS, the LUMA lease alternative also appears to be potentially feasible. In its dismissal of this alternative from full analysis, BLM noted that Crystal Peak would have to access brine under the LUMA leases via directional and horizontal boreholes which it states "*may* not be technically or economically feasible." DEIS at I-3. BLM also asserted that the topographic relief outside the LUMA lease area "is not as widespread or consistent . . . which *could* compromise the technical feasibility of the Project." Based on these statements alone, and without documented independent review and consideration, BLM cannot definitely conclude that the LUMA lease alternative is infeasible. In accordance with NEPA, FLPMA and the Mineral Leasing Act BLM should fully develop and analyze the LUMA lease alternative to provide an alternative development scenario which would allow for potash mining and minimize impacts to sensitive lands and resources.

BLM must analyze reasonable, feasible alternatives to the Sevier Playa Potash Project before it can approve the development. It has not done so here. BLM must also document its independent review of Peak Minerals' applicant-prepared information.

III. BLM Failed to take a Hard Look at Impacts from the Sevier Playa Potash Project.

In addition to evaluating alternatives to a proposed action, NEPA requires that BLM take a "hard look" when it analyzes and evaluates the impacts of proposed projects "utilizing public comment and the best available scientific information." *Robertson*, 490 U.S. at 350. An EIS must "provide a full and fair discussion of significant environmental impacts." 40 C.F.R. § 1502.1. Moreover, NEPA requires that federal agencies carefully consider relevant "detailed information concerning significant environmental impacts" and share that information with the public in the environmental assessment. *See Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). General statements about "possible" effects and "some risk" do not constitute a "hard look" absent a showing of why more definitive information could not be provided. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

NEPA requires agencies to analyze any potential direct, indirect and cumulative effects of major federal actions. 40 C.F.R. § 1502.16. Direct effects are "caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). Indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). Cumulative impact is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" and "can result from individually minor but collectively significant actions taking place over a period of time." *Id.* § 1508.7.

A. Air Resources.

SUWA submits and incorporates in its entirety, including exhibits referenced therein, the comments prepared on behalf of SUWA by Ms. Megan Williams, an air quality expert. *See generally* Megan Williams, *Review of the BLM's November 2018 Sevier Playa Potash Project Draft Environmental Impact Statement (DEIS)* (Jan. 11. 2019) (comments and exhibits attached).

B. Wildlife Resources.

SUWA submits and incorporates in its entirety, including exhibits referenced therein, the comments prepared on behalf of SUWA by Ms. Janice Gardner, a certified wildlife biologist with Wild Utah Project. *See* Janice Gardner, *Sevier Playa Potash Project Draft Environmental Impact Statement: Comments regarding Migratory Birds and Bats* (Jan. 9, 2019) (comments and CV attached).

C. Visual Resources.

The DEIS failed to take a hard look at impacts to visual resources. BLM's analysis of visual resource impacts relies on a severely outdated visual resource inventory (VRI). BLM's visual resource management objectives for the analysis area were established in the Warm Springs Resource Management Plan and classified the analysis area as primarily VRM Class IV with some portions of VRM Class III. *See* BLM, Sevier Playa Potash Project, Resource Report, Visual Resources 22 (Oct. 2018) (Visual Resources Report). The Warm Springs RMP relied on a VRI conducted in 1985. BLM, Warm Springs Resource Area Resource Management Plan, Record of Decision, Rangeland Program Summary 35 (Apr. 1987). BLM conducted a new VRI

in 2011. Visual Resources Report at 11. That updated VRI identified several areas of Class II and new areas of Class III within the analysis area. *Id.* at 22. However, rather than rely on that more up-to-date and accurate information, BLM relied on the old VRI to inform its visual resource impact analysis. *Id.* at 11. This is not sufficient under NEPA. To undertake the requisite hard look, BLM must analyze impacts to visual resources based on its most up-to-date, accurate information – the 2011 VRI.

Further, BLM completely failed to consider potential impacts to dark night skies. The Sevier Playa lies in the western Utah Sevier Desert bounded by the Cricket Mountains on the east and the Black Hills portion of the House Range on the west. DEIS at 1-1. Each of those ranges reach an elevation of approximately 8,000 feet. *Id.* The area is remote with hardly any artificial lighting. In 2004 and 2005, the National Park Service's "Night Sky Team" tested the light levels at nearby Great Basin National Park and determined that the Park's night skies are among the darkest in the country. *See generally* International Dark Sky Park Designation, Great Basin National Park, Nomination Park (2015) (attached). *See also id.* at 26 (Figures 16 & 17, depicting regional sky brightness); *id.* at 11 (letter of support for Dark Sky designation from Great Basin Heritage Area Partnership, an area which includes Sevier Lake).[7]

Lighting associated with the proposed development has the potential to adversely impact the area's naturally dark skies. Artificial sky glow can inhibit people's ability to see celestial objects in the night sky and impact wildlife habitat and wildlife behavior. BLM failed to even acknowledge potential impacts to dark night skies. BLM should establish a baseline Sky Quality Index for the project area. BLM must then consider, analyze and disclose the direct, indirect and cumulative impacts of the proposed development regarding dark night skies, including but not limited to, Great Basin National Park.

D. Climate Change and Greenhouse Gas Emissions.

The DEIS failed to take a hard look at impacts to climate change from increased greenhouse gas (GHG) emissions. It is beyond dispute that federal agencies must analyze climate change impacts and courts have repeatedly set-aside their decisions for failure to do so. *See, e.g.*, *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 2018 WL 5043909 *5-6 (D. Colo. Oct. 17, 2018) (holding that BLM's resource management plan violated NEPA by failing to analyze indirect impacts of GHG emissions and climate change); *W. Organization of Res. Councils v. U.S. Bureau of Land Mgmt.*, 2018 WL 1475470 at *13 (D. Mont. March 26, 2018) (holding that BLM needed to analyze indirect effects of combustion of fossil fuels in an RMP). NEPA requires agencies to both analyze all reasonably foreseeable impacts and provide a "full and fair disclosure of significant environmental impacts." 40 C.F.R. § 1502.1. In so doing, federal agencies must rely on "[a]ccurate scientific analysis" which is "essential to implementing NEPA." *Id.* NEPA also requires consideration of "[b]oth short- and long-term effects." *Id.* § 1508.27(a).

In *San Juan Citizens Alliance v. U.S. Bureau of Land Management*, the court set-aside BLM's decision for, among other reasons, the agency's failure to analyze *all* reasonably foreseeable downstream GHG emissions. 326 F. Supp. 3d 1227 (D.N.M. 2018). Specifically, the plaintiffs

[7] *See* http://www.greatbasinheritage.org/.

argued that BLM failed to adequately consider the downstream GHG emissions resulting from BLM's oil and gas leasing decision *i.e.*, "*all* emissions produced through and including the end-use combustion of the oil and gas produced by wells developed on the subject leases." *Id.* at 1242 (emphasis added). The court agreed. "By regulation, indirect effects of an action are effects that 'are caused by the action and are later in time or farther removed in distance, but are still *reasonably foreseeable*.'" *Id.* at 1244 (emphasis in original). "As such, the Court concludes that BLM's failure to estimate the amount of [GHG] emissions which will result from combustion of the oil and gas produced as a result of development of wells . . . was arbitrary." *Id.* "This error also requires that BLM reanalyze the potential impact of such [GHG] on climate change in light of the recalculated amount of emissions in order to comply with NEPA." *Id.*

In the present case, the DEIS failed to estimate GHG emissions, including downstream emissions from reasonably foreseeable activities such as the construction of off-lease rights-of-way and rail transport, and failed to analyze cumulative impacts to climate change because, allegedly, it is not possible to do so. *See* DEIS at 4-9 to 4-10, 4-99. This dismissive approach to NEPA analysis is unlawful. BLM provided a detailed description of anticipated activities throughout the life of the project but failed to analyze – at all – the GHG and climate change impacts of those activities. *See* DEIS, Appendix K, Fig. K-10 (providing a detailed project schedule); *see also id.* tbl. K-8 (listing the rights-of-way on off-lease BLM-managed lands). BLM acknowledged that the proposed action will emit GHG emissions including methane, CO_2, and nitrous oxide, *see* DEIS at 4-2, but never took a "hard look" at the potential impacts of those emissions to climate change. *See id.* at 4-9 to 4-10. Among other things, BLM does not discuss their global warming potential or their impacts in relationship to other reasonably foreseeable projects. *See id.*; *see also id.* at 4-99. BLM makes an obscure reference to the "Ramboll" study to recognize that the project will emit emissions with global warming potentials but the findings of that study, including emission estimates, are not provided in the DEIS. *See id.* at 4-9. For example, BLM acknowledges that the produced resource will be transported by heavy truck to the rail facility and from that point: "At peak production, an estimated 38 rail ships per year of SOP, each made up of 100 rail cars, would leave the Rail Loadout Facility, travel along the Rail Spur, cross Headlight Canyon Road and SR 257, and then proceed along the UPRR tracks to their final destination." DEIS, Appendix K at K-77. The GHG emissions from that activity is not calculated in the DEIS. *See* DEIS at 4-9 to 4-10.

Moreover, with regard to cumulative impact analysis, BLM claims – incorrectly – that it lacks the ability to analyze GHG and climate change impacts, and BLM, to the extent it provided any analysis, answered the wrong question. *See* DEIS at 4-99. "The impact of [GHG] emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). That BLM cannot "accurately" calculate the total emissions expected is not a rational basis for cutting off its analysis. "Because speculation is . . . implicit in NEPA," agencies may not "shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry." *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (citation omitted).

Notably, in other situations, BLM staff have confirmed that the agency *has* the ability to calculate GHG emissions and analyze impacts to climate change but has declined to do so to

avoid setting a "precedent" for NEPA analysis. *See* E-mail from Sheri Wysong, Utah BLM Fluid Mineral Leasing Coordinator, to Julie Suhr Pierce, BLM Great Basin Socioeconomic Specialist (Aug. 14, 2017) (stating that "[BLM] ha[s] the [emissions] data, but doing the calculation would set a precedent") (attached). The desire to avoid setting a precedent for NEPA analyses is an arbitrary reason to hide from the public a full and accurate assessment of climate change impact resulting from BLM's decision. Further, BLM answered the wrong question because the agency never examined "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R § 1508.7. BLM's GHG and climate change cumulative impacts analyses never discuss any other project, past, present, or future. *See* DEIS at 4-99. The DEIS Appendix L is not helpful to BLM on this point because while that document cites to various projects in the general area it provides no analyses of cumulative impacts. *See generally* DEIS, Appendix L, Past, Present, and Reasonably Foreseeable Future Actions. Instead, that document provides only a brief project description and its "interaction" with the Sevier Lake project but not impacts analysis. *Id.*

E. Water Quality and Quantity.

The DEIS failed to take a hard look at impacts to the environment, including wildlife, from the alteration of water quality and quantity. BLM explains that the project will require significant amounts of water – both surface and ground – and that that water will be acquired from numerous sources including Gunnison Bend Reservoir and fresh water supply wells. *See generally* Whetstone Associates and ENValue, Sevier Playa Potash Project, Resource Report Water Resources at 57-69 (Oct. 2018) [hereinafter "Water Report"]. The Water Report is incorporated by reference in the DEIS for "potential direct and indirect effects." DEIS at 4-83. However, despite providing details regarding the quantities of water necessary for the project including, among other things, the potential groundwater recharge rates and impacts to brine levels the Water Report failed to analyze impacts to the environment from the alteration of water quantity. For example:

- What will be the effects to wildlife including pronghorn and migratory birds from the drawdown of groundwater aquifers that provide water to the species habitats on the land surface?

- What will be the effects to wildlife and water quality and quantity once the project terminates and the water levels, which in many instances will become artificially higher to support project activities, decrease (or entirely cease to exist) thereby re-altering the habitats upon which wildlife had come to rely on?

- What will be the effects to the Sevier River designated beneficial uses for the segment of river below Gunnison Bend Reservoir?

BLM provides no answer to these questions. In *San Juan Citizens Alliance*, the court held that BLM violated NEPA by failing to (1) quantify how much water will be used for the development project, and (2) discuss and consider the effect of such water use on the environment. 326 F. Supp. 3d at 1253-54. First, the court agreed with the plaintiffs that BLM had failed to "quantify how much water will be required for the development." *Id.* at 1253. Second, the court agreed that

"there is no discussion of how the groundwater drawdown from lease development will impact the land, forests, wildlife, livestock, or human communities in the planning area, or how these impacts are further compounded in a drought-stricken southwest, which is poised to worsen in the face of climate change." *Id.*

"Assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made." *Id.* at 1254 (citing *New Mexico ex rel. Richardson*, 565 F.3d at 715, 718). The court explained further that "[g]iven several other cases in which water usage was quantified prior to the [development proposal stage], the Court is not persuaded by BLM's unsupported conclusion that it did not have enough information to calculate water usage." *Id.* (citations omitted). "Further, in addition to having failed to estimate the quantity of water which would be used, BLM also failed to discuss and consider the effect of such water use on the environment." *Id.*

BLM has repeated these same mistakes here. While BLM may have provided a detailed accounting of water usage the agency provided little, if any, analysis regarding the environmental impacts of that water usage. For example, BLM failed to analyze groundwater drawdown effects to wildlife including pronghorn, migratory birds, and greater sage-grouse. DEIS at 4-23 to 4-24 (analyzing direct and indirect effects from construction activities including species displacement); *id.* at 4-24 to 4-25 (same but for migratory birds); *id.* at 4-30 to 4-31 (claiming that greater sage-grouse will not be adversely affected). Instead, the DEIS focused almost entirely on "displacement" effects from surface disturbing activities. *See id.*

Moreover, BLM has failed to analyze what will happen to the environment once the project ends. The project is estimated to last for thirty-two years, during which time the quantity of water in the Sevier River will be increased significantly to support potash mining operations. *See, e.g.*, Water Report at 58 ("the Project would require that water be conveyed to the Project via the Sevier River to recharge the brine groundwater system and maintain brine levels in the extraction trenches."). The majority of this water will come from Gunnison Bend Reservoir. *See id.* at 61. The water will be added to stretches of the Sevier River, including sections that are "typically dry" during winter months. *Id.* The addition of water to the Sevier River to support the project will result in the transformation of the river into a "perennial" water rather than ephemeral or dry river bed. *Id.* at 63. "The increased flow and duration of flow in the Sevier River from the proposed action would increase surface water availability for wildlife and livestock during the life of the Project" and "would also likely cause expansion of riparian areas adjacent to the river corridor." *Id.*

However, and notably, "[a]t the end of the Project, the flow of acquired recharge water from Gunnison Bend Reservoir would *cease* and the quality of the waters that flows *intermittently* in the river *would be similar to the currently existing conditions*." DEIS at 4-89 (emphases added). BLM never provides any analysis with regard to potential environmental impacts from the cessation of the artificially high water levels – which, after thirty-two years, will have become the new "normal" for wildlife dependent thereon – and there is no record evidence to support BLM's claim that existing water quality conditions will be restored. BLM must analyze these impacts in the final EIS.

Also, BLM has not analyzed impacts to the Sevier River designated classes (*e.g.*, Class 2B, 3C, and 4) or the associated beneficial uses such as non-game fish and other aquatic life. *See generally* Water Report at 61 (recognizing the various Clean Water Act designations for the Sevier River); DEIS at 4-87 (same). Stated differently, BLM has failed to analyze how its decision will impact the state's ability to comply with water quality standards for the Sevier River, including its designated beneficial uses. The Water Report states:

> Water in the Sevier River is a well-buffered sodium chloride water with TDS concentrations that have an observed range of 884 to 4,700 mf/l. The highest TDS concentrations typically occur during low flow conditions in the late fall or winter. A secondary peak in TDS concentrations may also occur during spring runoff. Water in the Sevier River sporadically exceeds applicable secondary contract recreation (Class 2B) and aquatic life (Class 3C) standards for cadmium, lead, mercury, selenium, silver, zinc, and pH. TDS concentrations are also typically greater than the Class 4 agricultural standard of 1,200 mg/l. The release of up to an additional 69,000 ac-ft/yr of recharge water from Gunnison Bend Reservoir under the proposed action is ***not*** expected to change TDS concentrations in the Sevier River outside of the currently observed range. The river water is expected to continue to exceed the TDS agricultural standard of 1,200 mg/l during most of the year and have sporadic pH levels and concentrations of cadmium, lead, mercury, selenium, silver and zinc that exceed applicable standards.

Water Report at 63 (emphasis added). There is no record evidence to support this claim. In fact, the claim is illogical. TDS is defined as "[t]he quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness." Utah, Dep't. of Envtl. Quality, Glossary: Utah Ground Water Quality Protection Program, https://deq.utah.gov/legacy/programs/water-quality/ground-water/glossary.htm#T (last visited Jan. 11, 2019). Thus, by definition, if more water is added to the Sevier River – in this case *69,000 acre feet per year* added to an oftentimes ephemeral stream – the TDS level will unquestionably be significantly altered.

Moreover, BLM cannot approve a project that will continue or exacerbate the already degraded water quality in this stretch of the Sevier River, in violation of state water quality standards. *See* 43 U.S.C. §1712(c)(8); 43 C.F.R. §1610.3-2. *See also* 33 U.S.C. § 1323(a) ("[e]ach department, agency, or instrumentality . . . of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity . . . .").

Likewise, BLM lacks support for its claim that at the end of the project, "the quality of the water that flows intermittently in the river would be similar to the currently existing conditions." Water Report at 64. BLM has failed to analyze how the chemical composition of the Sevier River will change over the thirty-two year project life including, but not limited to, the introduction or

removal of new pollutants and thus this claim lacks any record support. *See generally id.* at 57-69 (failing to provide this analysis).

F. The Clark, Lincoln, and White Pine Counties Groundwater Development Project.

BLM must update and supplement its cumulative impact analysis to account for the Clark, Lincoln, and White Pine Counties Groundwater Development Project [hereinafter, "Nevada Groundwater Development Project"].[8] An agency's NEPA duties do not end when it completes its initial environmental analysis. An agency must supplement its NEPA analysis when "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). As the United States Supreme Court has explained, "[i]t would be incongruous with … the Act's manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action, simply because the relevant proposal has received initial approval." *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989). Thus, supplemental NEPA is necessary "if the new information is sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered." *Id.* at 374; *see also Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (agencies must "be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action.'" (*quoting Marsh*, 490 U.S. at 374)).

In Appendix L of the DEIS, BLM purports to list all "reasonably foreseeable" cumulative impacts, but that list does not include the Nevada Groundwater Development Project (nor does BLM's cumulative impact analysis in the DEIS):

> Reasonably foreseeable future actions include those activities that are approved but not yet implemented, as well as those activities that are not yet approved but for which the proposed action has been sufficiently defined that their potential effects are reasonably clear and not subject to substantial speculation.

DEIS, Appendix L at L-1; *see also id.* at L-3 to L-19, tbl. L-1 (providing a list of past, present and reasonably foreseeable future actions but not the Nevada Groundwater Development Project). The Nevada Groundwater Development Project, which has been approved by BLM but not implemented, was reasonably foreseeable and thus BLM errored by failing to analyze the cumulative impacts of that project in regard to the Sevier Lake project.

The Utah Geological Survey (UGS) has recognized that western Millard County, Utah, is "hydrologically connected" to the groundwater resources in eastern Nevada – the area encompassed by the Nevada Groundwater Development Project. *See* UGS, Proposed Ground-Water Withdrawal in Snake Valley, Nevada and Utah, https://geology.utah.gov/map-pub/survey-

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[8] Documents related to this project are available at https://eplanning.blm.gov/epl-front-office/eplanning/legacyProjectSite.do?methodName=renderLegacyProjectSite&projectId=95672 (last updated Dec. 22, 2017).

notes/proposed-ground-water-withdrawal-in-snake-valley/ (May 2006). UGS has recognized that development of groundwater resources in this area will be "in or very near . . . important recharge areas." *Id.* Based on these concerns, UGS prepared a detailed groundwater study of the area which emphasized the "sensitivity of the groundwater system to possible increases in groundwater pumping." UGS, Hydrogeologic Studies and Groundwater Monitoring in Snake Valley and Adjacent Hydrographic Areas, West-Central Utah and East-Central Nevada, https://geology.utah.gov/hydrogeologic-studies-and-groundwater-monitoring-in-snake-valley-and-adjacent-hydrographic-areas-west-central-utah-and-east-central-nevada/ (2014) (attached).

The United States Geological Survey (USGS) likewise concluded in a recent study of the area that "[i]ncreased well withdrawals within these high transmissivity areas will likely affect a large part of the study area, resulting in declining groundwater levels, as well as leading to a decrease in natural discharge to springs and evapotranspiration." USGS, Hydrology and numerical simulation of groundwater movement and heat transport in Snake Valley and surrounding areas, Juab, Millard, and Beaver Counties, Utah, and White Pine and Lincoln Counties, Nevada, Scientific Investigations Report 2014-5103 (2014), *Abstract*, https://pubs.er.usgs.gov/publication/sir20145103 (report attached). USGS's "study area" encompassed the Sevier Lake playa. *See id.*

BLM must supplement its NEPA analysis to analyze the cumulative impacts of both the Sevier Lake project and Nevada Groundwater Development Project – both of which will remove significant quantities of groundwater. BLM has failed to do so by limiting its cumulative impacts to "existing stock watering reservoirs" and "the development of the Cricket Bench and Sage Valley pipelines from the existing Mudhole Well." Water Report at 81; *see also* DEIS at 4-116 (same). BLM provided no explanation for limiting its cumulative impacts analysis to only these two activities despite recognizing many more projects with cumulative effects. *See generally* DEIS, Appendix L (providing a list of projects with cumulative effects). Notably, there is no record evidence that BLM considered the cumulative effects of the proposed action in regard to the Nevada Groundwater Development Project, despite UGS and USGS having recognized the potential relationship between the two projects.

G. Noise.

The DEIS failed to take a hard look at direct, indirect, and cumulative impacts of increased noise in this remote area from the industrialization of the Sevier Lake playa. At most, BLM recognized that noise will be an issue affecting resource values such as wildlife but then failed to provide any meaningful consideration of that issue. *See, e.g.*, DEIS at 1-8, tbl. 1.6.1 (stating that noise will impact wildlife and migratory birds). BLM did not analyze potential impacts to other resource values such as recreation or wilderness characteristics (*e.g.*, the ability to enjoy outstanding opportunities for solitude) from increased noise from mining activities including, but not limited to drilling, blasting, and heavy vehicle equipment. *See id.* at 1-8 to 1-9 (failing to identify noise as an issue for other resource values). *See generally S. Utah Wilderness Alliance v. U.S. Dep't of the Interior*, 2016 WL 6909036 at *6-7 (D. Utah Oct. 3, 2016) (holding BLM acted arbitrarily and capriciously when it approved a natural gas development project without considering noise impacts or responding to the Kolano report).

The DEIS does not contain information sufficient to allow BLM to analyze potential noise impacts. Among other things, the DEIS failed to (1) provide baseline data regarding existing noise levels at and/or near the Sevier Lake playa – an area that is extremely remote and quite; (2) provide data regarding the estimated noise levels for activities planned to occur in the development of the playa; (3) estimate the duration of those activities and quantify impacts; and (4) measure the distance to which the noise levels will be audible or impact resources including wildlife and recreational visitors. *See generally* DEIS at 1-8 to 1-9, tbl. 1.6.1 (noise is not identified as an issue to analyze in detail in the DEIS).

This basic information is necessary to inform BLM's decision-making process. Without it BLM lacks any support for its conclusion, for example, that noise impacts to bats "are expected to be minor and are unlikely to affect [them]." DEIS at 4-22; *see also id.* at 4-26 (stating that noise impacts to golden eagles and peregrine falcon will be "temporary and would not cause population level effects"). The "Recreation Report" relied on by BLM in the DEIS likewise failed to analyze noise impacts but instead focused on public access issues to areas in and near the Sevier Lake playa. *See generally* ENValue, Sevier Playa Potash Project, Resource Report, Recreation at16-21 (Oct. 2018).[9]

SUWA incorporates comments prepared on its behalf by an acoustic engineer regarding the West Tavaputs Plateau Natural Gas Full Field Development Plan EIS, an oil and gas development project in Carbon County. *See* Kolana and Saha Engineers, Inc., Review of EIS UT-70-05-055 (May 1, 2008) (attached). Mr. Kolano describes how background noise levels are properly assessed (measured) and explains that "[t]he background noise levels are a key consideration in determining the noise impact of any proposed activity which introduces noise to an otherwise quiet noise sensitive location. Without measuring and analyzing the existing background noise levels at representative locations throughout the [project area], it is not possible to adequately assess the noise impact" of the project." *Id.* at 3. *See also id.* at 6-8 (detailing a "proper noise impact analysis study").

BLM therefore lacks qualitative and quantitative data that is necessary to inform its decision regarding potential noise impacts from its approval of the proposed action.

H. Lands with Wilderness Characteristics.

The DEIS failed to take a hard look at potential impacts to lands with wilderness characteristics. Wilderness-caliber lands is not an issue brought forward for analysis by BLM. *See, e.g.*, DEIS at 1-8 to 1-9, tbl. 1.6.1 (providing a list of issues analyzed in detail in the DEIS, none of which include wilderness-caliber lands). BLM's brief – and dismissive – discussion of wilderness characteristics is in Appendix F to the DEIS. *See* DEIS at 1-10 (stating that "lands with wilderness characteristics . . . [was] analyzed in sufficient detail (in Appendix F) [of the DEIS] to determine that they are not present and would not be affected by any alternatives for the Project"); *see also id.*, DEIS, Appendix F at F-9, tbl. F-3 (listing wilderness characteristics as a

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[9] Available at https://eplanning.blm.gov/epl-front-office/projects/nepa/67624/163237/199227/SPP_ResourceReport_Recreation_181029.pdf (last visited Jan. 14, 2018).

resource issue “not present”). However, Appendix F does not contain any impact analysis for wilderness character values. *See generally* DEIS, Appendix F.

BLM’s dismissive approach to impacts analysis for wilderness characteristics is arbitrary and unlawful. First, in August 2016, SUWA provided to BLM two separate wilderness characteristics inventories for the Red Tops and Black Hills proposed wilderness units. *See generally* SUWA, Black Hills Wilderness Character Submission (Aug. 19, 2016) (submission and exhibits thereto attached); SUWA, Red Tops Wilderness Character Submission (Aug. 19, 2016) (submission and exhibits thereto attached). BLM has never responded to these submissions nor, importantly, conducted the necessary on-the-ground review to confirm the accuracy of SUWA’s wilderness character information. BLM must respond to these submissions, based on the information provided therein – including updated proposed wilderness boundaries, not the arbitrary 1970s vintage boundaries of the original wilderness inventory units – before approving the proposed action. *See S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1266 (D. Utah 2006) (setting-aside BLM’s decision for failure to analyze SUWA’s new wilderness characteristics information).

Second, BLM must analyze all potential impacts from the project to wilderness character values in the Red Tops, Black Hills, and San Francisco Mountain areas to make an informed decision. As noted above, BLM has never considered or responded to SUWA’s submissions for the Black Hills and Red Tops units. In addition, in April 2016 BLM determined that the San Francisco Mountains contain wilderness values – years after completion of BLM’s land use plan. *See generally* BLM, UT-C-010-199C (April 12, 2016) (relevant forms and map attached). Notably, BLM has never considered in a land use planning process whether or not to manage these proposed wilderness areas to protect their wilderness values. The Warm Springs RMP was completed more than 30 years ago and obviously did not take into account or consider information and decisions that post-date its completion. Therefore BLM must consider these resources and impacts in this analysis. *See generally S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d at 1266.

Notably, BLM Manual 6310 requires BLM to analyze impacts to wilderness character, including opportunities for solitude, based on activities that take place on lands *outside* of the wilderness character area but whose impacts will be experienced *inside* the wilderness-caliber lands (*i.e.*, through a loss of outstanding opportunities for solitude). *See* BLM, 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands (Public) § 6310.06.C.2.b.iii (March 15, 2012) (“If . . . a major outside impact exists, it should be noted in the overall inventory area description and evaluated for its direct effects on the area.”) (attached); *see also id.* § 6310.06.C.2.c.i (“In making [BLM’s solitude] determination . . . consider the impacts of sights and sounds from outside the inventory area on the opportunity for solitude if these impacts are pervasive and omnipresent.”). BLM in the past has relied on impacts arising outside of wilderness-caliber areas to justify decisions *not* to document wilderness characteristics within the wilderness character unit. *See, e.g.*, BLM, Utah Wilderness Inventory at 12 (1999) (concluding that areas within the Pilot Peak range lacked wilderness character because of telecommunication towers located outside of the unit) (excerpts attached). Federal agencies must follow their own internal policies or provide a rational basis for failing to do so. *See Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d at 1178 (citations omitted).

Here, BLM, despite having identified wilderness character values in the San Francisco Mountain area in 2016, has failed to analyze potential impacts to those values such as lost opportunities for solitude, even though the proposed action will disturb over 120,000 acres of public land including land located less than three miles away from the wilderness unit. This approach to NEPA analysis is unlawful.

SUWA appreciates your consideration of these comments and prompt attention to the issues discussed herein.

Sincerely,

/s/ Laura Peterson

Laura Peterson
Stephen H.M. Bloch
Landon Newell