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US DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
DEPARTMENTAL CASES HEARINGS DIVISION

Western Watersheds Project and Wilderness Watch, APPELLANTS v. George Wolfgang, Acting Field Office Manager RESPONDENT	Appeal from Field Office Manager's Final Decision dated February 14, 2020 for the Lower Bench, Upper Bench and Battleship Allotments on the Grand Junction Field Office, Colorado; Statement of Reasons; and Request for Stay

Pursuant to 43 C.F.R. § 4.470, Appellants Western Watersheds Project and Wilderness Watch appeal the Bureau of Land Management (BLM's) Decision for Authorization Number 0507008, which authorizes grazing under a ten-year permit on the Lower Bench, Upper Bench, and Battleship Allotments ("Decision"), and supporting Environmental Assessment, DOI-BLM-CO-S081-2017-0006-EA (August 2019) ("EA"). The Decision and EA are arbitrary, capricious, and abuse of discretion and contrary to the requirements of the Wilderness Act, Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, P.L. 106-353 (Oct. 24, 2000) (codified at 16 U.S.C. § 460mmm—1), Omnibus Public Lands Act of

2009, BLM's Wilderness and National Landscape Conservation System Manuals, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA).

STATEMENT OF STANDING

Western Watersheds Project and Wilderness Watch are proper parties to maintain this appeal because they are adversely affected by the Decision, and appeal within 30 days of receiving the Decision, as explained in the Declarations of Mark Pearson, George Nickas, and Jonathan Ratner, filed herewith. *See* 43 C.F.R. § 4.470.

Western Watersheds Project (WWP) is adversely affected by the Decision and flawed EA. WWP is a non-profit organization with 12,000 members and supporters that works to protect and restore western watersheds and wildlife through education, public policy initiatives and litigation. WWP's members regularly visit and recreate on the public lands of the Lower Bench, Upper Bench and Battleship Allotments and intend to continue to do so. WWP and its members have a keen interest in protection of Wilderness values, biodiversity, restoration of damaged public lands, and the protection of important aquatic and terrestrial habitats for native wildlife. WWP's interests in protecting Wilderness values on the Lower Bench, Upper Bench and Battleship Allotments are harmed by the Decision at issue in this appeal as explained in the Declaration of Jonathan Ratner, filed herewith.

WWP has been an Interested Public (IP) on these allotments since January of 2015. WWP commented on the original EA in 2015, which was withdrawn following our protest of the proposed decision. WWP also commented on the reissued EA in 2019 and again protested the proposed decision as the BLM had, again, failed to adequately address our concerns. This appeal is a result of the failure of the BLM to correct the flaws raised again in our second protest. WWP

received the final decision on February 27, 2020, therefore this appeal is filed within 30 days of receiving the Decision.

Wilderness Watch (WW) is adversely affected by the Decision and flawed EA. WW is a non-profit organization with over 2,000 members and tens of thousands of supporters. Wilderness Watch is dedicated to the protection and proper stewardship of Wilderness and Wild and Scenic Rivers. Its members use and will continue to use the Black Ridge Canyon Wilderness for outdoor recreation and professional pursuits of all kinds, including river rafting, hiking, solitude, research, and wildlife viewing. The BLM's unlawful actions adversely affect Wilderness Watch's organizational interests, particularly its interests in ensuring the preservation of wilderness character, as well as its members' use and enjoyment of the Black Ridge Canyon Wilderness. *See* Declaration of Mark Pearson (filed herewith). Wilderness Watch brings this action on its own behalf and on behalf of its adversely affected members.

WW was first notified about the permit analyses and decision in this case on March 20, 2020 when WWP alerted us to it. *See* Declaration of George Nickas ¶ 9 (filed herewith). WW had not previously been informed nor was WW aware of the permit renewal analyses or decision. *See id*. WW received the final decision on March 20, 2020, therefore this appeal is filed within 30 days of receiving the Decision.

STATEMENT OF REASONS

FACTUAL BACKGROUND

On February 14, 2020, BLM issued a Decision to renew a 10-year grazing permit to graze the Upper Bench, Lower Bench, and Battleship grazing allotments managed by the Grand Junction Field Office in Colorado. The allotments lie within the McInnis Canyons National

Conservation Area and Black Ridge Canyons Wilderness. The Decision authorizes grazing as follows:

Allotment	**Livestock**	**Grazing Dates**	**AUMs**
Upper Bench Allotment	55 C 55 C	11/1 to 2/28 3/1 to 5/1	216 212 TOTAL=328
Lower Bench Allotment	147 C 147 C	11/1 to 2/28 3/1 to 5/1	580 300 TOTAL=880
Battleship Allotment	21 C 23 C	10/25 to 12/1 5/20 to 6/20	26 24 TOTAL=50

The Decision also authorizes motorized use in the wilderness to support grazing as follows:

> 23. Structures and installations used for livestock management existing at the time the Black Ridge Canyons Wilderness was designated as wilderness may be maintained. Maintenance may be done by the occasional use of motorized equipment in accordance with the guidelines identified and the annual maintenance authorization. The permittee must request authorization from BLM at least ninety (90) days in advance.
>
> 24. The occasional use of motorized vehicles would be authorized to perform animal husbandry activities <u>such as placing large quantities of salt at distribution points, checking on livestock in order to avoid or detect emergencies while livestock are grazing in the wilderness, or hauling camping supplies to support the annual gather</u>. All motorized and mechanized use for animal husbandry should be done on weekdays (Monday through Friday), and should be performed during the associated allotment's authorized grazing dates. Hauling large quantities of salt may occur up to two weeks prior to the allotment's grazing dates. All travel would occur on existing routes when soil conditions are dry or frozen to reduce impacts. Motorized use would only be allowed where practical, nonmotorized alternatives do not exist.
>
> 25. Except as allowed under Sections 23 and 24 above, the use of motor vehicles, motorized equipment, or mechanical transport in wilderness to carry out a lawful grazing-associated activity is limited to emergencies only, such as rescuing sick animals or placing feed in emergency situations. The permittee does not need prior authorization for the emergency use of motor vehicles, but should notify BLM reasonably soon thereafter following such use.
>
> 26. The use of motor vehicles, motorized equipment, or mechanical transport in wilderness <u>is not allowed for herding animals or routine inspection of the condition of developments or the condition of the range</u>.

Decision, 5.

BLM supported its Decision with an Environmental Assessment, DOI-BLM-CO-S081-2017-0006-EA, dated August 2019. The EA did not discuss its management mandates for the NLCS system or acknowledge that NLCS designation alters BLM's typical multiple use management. It also ignored relevant science regarding utilization and biological soil crusts. The EA purported to analyze the impacts of the grazing and motorized use authorized in Wilderness, and used a Minimum Requirements Decision Guide ("MRDG") to justify its decision. *See* EA, 59-73 & *xii-liii.*

LEGAL BACKGROUND

The McInnis Canyons National Conservation Area (MCNCA) and Black Ridge Canyons Wilderness Area were established in 2000, with the passage of Public Law 106-353.[1] The law provides that certain lands are to be managed as Wilderness and others are to be managed as a Conservation Area.

The Conservation Area lands are to be managed in a manner that "conserves, protects and enhances the resources of the Conservation Area" and the Secretary may only allow uses of the Conservation Area that "will further the purposes for which the Conservation Area is established." 16 U.S.C. § 460mmm—4(a), (b). Those purposes are "to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values…including geological, cultural, paleontological, natural, scientific,

[1] The McInnis Canyons National Conservation Area was originally called the Colorado Canyons National Conservation Area, but its name was changed in 2004. *See* Pub. L. 108-400, 118 Stat. 2254 (Oct. 30, 2004).

recreational, environmental, biological, wilderness, wildlife education, and scenic resources of such public lands." *Id*. § 460mmm—(b).

The Black Ridge Canyons Wilderness lands are to be managed as Wilderness, in accordance to the Wilderness Act, with certain exceptions for grazing. *See* 16 U.S.C. § 460mmm—4(e), (g)(2). The Wilderness Act of 1964 defines Wildernesses as areas where "in contrast with those areas where man and his own works dominate the landscape… the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). It further provides:

> An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id. Agencies charged with managing Wilderness are charged with preserving "wilderness character" under the Act. *Id.* § 1133(b).

The Wilderness Act generally prohibits nonconforming uses that degrade wilderness character. The Act provides that "[e]xcept as specifically provided…and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area." *Id*. § 1133(c). It further provides that "except as necessary to meet <u>minimum requirements</u> for the administration of the area <u>for the purpose of this chapter</u>…there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, <u>no other form of mechanical transport</u>, and no structure or installation within any such area." *Id*. (emphasis added).

However, the Wilderness Act provides a special provision allowing "(2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." *Id*. § 1133(d)(4). The Black Ridge Canyons Wilderness Act states that grazing shall be administered in accordance with that Section as well as Appendix A of House Report 101-405. Because the Black Ridge Canyons Wilderness Act incorporates the Congressional Grazing Guidelines, a violation of the Guidelines is a violation of the Act.

Appendix A of House Report 101-405 is commonly referred to as the Congressional Grazing Guidelines. The Congressional Grazing Guidelines allow for some motorized use to facilitate grazing-related activities, but only where such activities cannot "reasonably and practically be accomplished on horseback or foot" or "for emergencies such as rescuing sick animals or the placement of feed in emergency situations":

> It is anticipated that the number of livestock permitted to graze in wilderness would remain at the approximate levels at the time an area enters the wilderness system.
> …
> The maintenance of supporting facilities, existing in an area prior to its classification as wilderness (including fences, line cabins, water wells and lines, stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment….The use of motorized equipment should be based on a rule of practical necessity and reasonableness. For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available and such use would not have a significant adverse impact on the natural environment. Such motorized equipment uses will normally only be permitted in those portions of a wilderness area where they had occurred prior to the area's designation as wilderness or are established by prior agreement.
> …
> The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees.

> …
> [T]he general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of the area's designation as wilderness should be allowed to remain in place…

Congressional Grazing Guidelines ("CGG"), H.R. No. 101-405, Appx. A (Feb. 21, 1990).

BLM's Wilderness Manual confirms the limited nature of the Congressional Grazing Guidelines exceptions for motorized use. The manual provides:

> [T]he use of motor vehicles, motorized equipment, or mechanical transport to carry out a lawful grazing-associated activity is limited to emergencies only, such as rescuing sick animals or placing feed in emergency situations. In emergencies, permittees do not need prior authorization for these uses, but must notify the BLM of their use reasonably soon thereafter. The use of motor vehicles, motorized equipment, or mechanical transport is not allowed for herding animals or routine inspection of the condition of developments or the condition of the range.

BLM Manual 6340 1.6(C)(8)e.

Both the MCNCA and Black Ridge Canyons Wilderness are also part of the National Landscape Conservation System (NLCS) established in 2009 "to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." 16 U.S.C. § 7202(a). Units of the NLCS are to be managed "in a manner that protects the values for which the components of the system were designated." *Id*. § 7202(c).

NLCS lands are managed differently from other lands that BLM manages under the multiple-use mandate of the Federal Land Policy and Management Act (FLPMA). *See* 43 U.S.C. § 1752 (directing management for multiple-use). Soon after the NLCS was established, in 2010, then-Secretary of the Interior Ken Salazar issued Secretarial Order 3308, providing for management of the NLCS. Secretary of the Interior, Order No. 3308, "Management of the National Landscape Conservation System" (Nov. 15 2010), available at https://www.blm.gov/or/news/files/NLCS_Order.pdf (accessed March 30, 2020). Secretarial

Order 3308 explains that multiple uses in units of the NLCS may only continue "if consistent with …protection [of the values for which NLCS units were designated]," and that "[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship." *Id.*

BLM has provided in its Manual that actions that occur on BLM lands in units of the NLCS "will be managed in a manner consistent with the protection of those values." The BLM Manual states:

> Section 302(a) of the Federal Land Policy and Management Act (FLPMA) states that public lands are to be managed under the principles of multiple use and sustained yield "except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it will be managed in accordance with such law." Therefore, as a general rule, if the Act of Congress or presidential proclamation that designates an NLCS unit conflicts with FLPMA's multiple use mandate, the designating language will apply. Land use planning decisions for each NLCS unit must be consistent with the purposes and objectives of the designating proclamation or Act of Congress.

BLM Manual 6100 at 1-6 (July 13, 2012). Similar direction is reiterated in BLM Manual 6220, which requires BLM managers to analyze whether discretionary uses are consistent with NCA objects and values and document how activities are consistent with designating legislation in approving proposed actions. *See* BLM Manual 6200 at 1-6 to 1-7 (July 13, 2012).

FLPMA also requires that BLM manage lands according to management plans and BLM manages the MCNCA and Black Ridge Canyons Wilderness under the Colorado Canyons National Conservation Area Resource Management Plan, finalized in 2004. But, because that Management Plan was completed before the MCNCA and Black Ridge Canyons Wilderness were included in the NLCS, it does not address the obligations imposed by that designation.

In issuing grazing decisions like the one here, BLM must also comply with NEPA. NEPA requires federal agencies to take a "hard look" at potential environmental consequences of proposed actions. *N. Plains Resource Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th

Cir. 2011). This "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens' Council*, 490 U.S. 332, 349 (1989). "Documents prepared as part of NEPA's 'hard look' requirement 'must not only reflect the agency's thoughtful and probing reflection of the possible impacts associated with the proposed project, but also provide a reviewing court with the necessary factual specificity to conduct its review.'" *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006).

In reviewing BLM decisions, the IBLA must ensure that the BLM supported its decision by a rational basis analysis. *See e.g., Larry Brown & Associates*, 133 IBLA 202, 205 (1995); *Wayne D. Klump v. BLM*, 124 IBLA 176, 182 (1992); *Eddleman Community Property Trust*,106 IBLA 376, 377 (1989). A decision will be vacated where the BLM has made a clear error of law or fact or failed to consider important environmental issues. *Wildlife Damage Review*, 150 IBLA 362, 368 (1999). The IBLA has vacated BLM decisions where the BLM has violated and / or misinterpreted the Wilderness Act in authorizing an agency action. *See Wilderness Watch et al.*, 168 IBLA 16 (Feb. 17, 2006).

ARGUMENT

I. BLM's Decision Violates BLM's Wilderness Management Authorities.

BLM's Decision and EA violate the Administrative Procedure Act, NEPA, the Wilderness Act, the Black Ridge Canyons Wilderness Act, and BLM's own Wilderness Manual because they authorize an increase in grazing above what existed at the time of wilderness designation, authorize regular motorized use not permitted by the applicable authorities, and rely on a flawed and disingenuous assessment to justify the authorized motorized use. The EA also

fails to establish an adequate baseline against which to judge the effects of the permitted activities and consequently fails to take the "hard look" required by NEPA.

A. The Decision Unlawfully Allows More Grazing on the Lower Bench Allotment Than Existed at the Time of Wilderness Designation.

As noted, the Congressional Grazing Guidelines contemplate that "the number of livestock permitted to graze in wilderness would remain at the approximate levels at the time an area enters the wilderness system." The Environmental Assessment supporting the Decision appears not to have considered the extent of grazing on the Allotments prior to Wilderness designation, but the number of AUMs grazed on both Allotments in 2000, when the Black Ridge Canyons Wilderness was designated, was 0. EA, 69-70. The average number of AUMs grazed on the Lower Bench Allotment from 2000-2015 is 324 and the average number of AUMs grazed on the Upper Bench Allotment is 149. *See id*.

BLM proposes to allow the permittee to graze 880 AUMs per year on the Lower Bench Allotment and 328 AUMs per year on the Upper Bench Allotment. *Id*. at 8. It characterizes this number as a "reduction" in permitted grazing on the Lower Bench Allotment and maintaining existing levels of grazing on the Upper Bench Allotment. *Id*. at 12. While evidently, the Lower Bench Allotment has been grazed at 882 AUMs sometime in the last 30 years, it has *never* been grazed at a level as high as 880 AUMs since the Wilderness was designated. *Id*. at 69. The EA does not disclose actual use for the Upper Bench allotment before the Wilderness was designated, but since 2000, the Upper Bench Allotment has only been grazed above 300 AUMs one year. *Id*. at 70.

BLM's decision to increase grazing well beyond what existed at the time of Wilderness designation violates the Wilderness Act and the Congressional Grazing Guidelines.

B. The Decision Unlawfully Authorizes Motorized Access to "Check on Livestock to Avoid or Detect Emergencies," Haul Camp Supplies, and Place Salt in Violation of the Congressional Grazing Guidelines and NEPA.

The Congressional Grazing Guidelines allow otherwise-barred motorized use associated with grazing under strictly limited circumstances. They allow for motorized use for maintenance and "other activities" only "where practical alternatives do not exist." CGG at #2. They specifically provide that "motorized equipment need not be allowed for…activities where such activities can reasonably and practically be accomplished on horseback or foot." *Id*.; *See also* Declaration of Christopher V. Barns ¶¶ 33-38 (filed herewith). As the Subcommittee Chairman noted during discussions on the Congressional Grazing Guidelines, "To simply say whatever you could do before [wilderness designation] you can continue to do, I think is a charade because we better not designate a wilderness if we are just going to have a completely unchanged activity." *Additions to the National Wilderness Preservation System, Hearings Before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs,* 96th Cong., 1st and 2nd Sess., on H.R. 5487 (Oct. 18-19, 1979) at pp. 73-74.

In addition, the Congressional Grazing Guidelines provide an "emergency exception" for "occasional" motorized use to rescue sick animals and place feed. This exception should only be applied "in true emergencies" and this privilege "should not be abused by permittee." CGG at #5. Precedent interpreting the meaning of the word "emergency" in the Wilderness Act context explains that the word "most logically refers to matters of urgent necessity rather than to conveniences for use in an emergency." *Olympic Park Assocs. v. Mainella*, No. C04-5732FDB, 2005 WL 1871114, at *5 (W.D. Wash. Aug. 1, 2005). BLM's Wilderness Manual clearly provides that "[t]he use of motor vehicles, motorized equipment, or mechanical transport is not

allowed for herding animals or routine inspection of … the condition of the range." BLM Manual 6340 1.6(C)(8)e (emphasis added).

1. The Decision's Authorization of Motorized Use for Checking on Livestock Violates the Congressional Grazing Guidelines.

Despite the strict limits on motorized use for "other activities" in Wilderness, the Decision authorizes motorized use every two weeks for "checking on livestock." EA, 11. It justifies this blanket authorization because "[r]equiring overnight trips horseback or on foot to check on livestock condition or location is not practicable for the permittee." EA, 73. However, the EA also states that "[w]here practical alternatives to the use of motor vehicles exist—for example, using horses to distribute small quantities of salt or repair short sections of fence—the BLM would only authorize non-motorized activities." EA, 11. If the permittee plans to distribute small quantities of salt or repair short sections of fence without motorized use, there is no reason why it cannot also check on livestock without motorized use.

The EA's determination that regular motorized access is necessary for checking on livestock seems to conflate what is convenient for the permittee with what is reasonable and practical. To justify the extensive, regular motorized use authorized under the Decision, the EA provides:

> Not being able to check range and range improvement condition by motorized use requires these tasks to be completed by horseback or foot and is estimated to be a 16 hour round trip or overnight trip to perform these tasks. This reduces the permittee's ability to more efficiently detect when livestock need to be moved and keeping improvements in working condition. These are necessary for optimal range management. Permittees were performing all of these tasks by motorized equipment prior to the designation of the Black Ridge Canyons Wilderness.

EA, 72. But horseback access is a practical alternative that BLM requires the permittee to use for fence repairs and moving small quantities of salt. *See* Barns Decl. ¶ 37 ("It is absurd that such a short trip would be considered so onerous as to justify motor vehicle use.") *See also*

Nickas Decl. Att. A (providing examples of projects in Wilderness completed by nonmotorized means). In other grazed Wildernesses checking on livestock is required to be accomplished by nonmotorized means. Barns Decl. ¶ 36.

Finally, the EA misunderstands the Congressional Grazing Guidelines to the extent it presumes that motorized use existing at the time of wilderness designation can continue. The Congressional Grazing Guidelines allow BLM to preserve—but not increase—established nonconforming grazing and allow motorized use to support that grazing where reasonable and practical alternatives do not exist. *See* CGG at #2. That grazing-related activities occurred by motorized means before Wilderness designation does not mean they may continue occurring by motorized means if reasonable and practical nonmotorized alternatives exist. *See id*. The EA does not establish that checking on livestock cannot reasonably and practically be accomplished without motorized use beyond claiming they would be inconvenient for the permittee, and indeed, similar actions are accomplished by nonmotorized means in many wilderness areas in the United States. *See* Nickas Decl. Attachment A (providing examples of projects accomplished by nonmotorized means). Moreover, even if motorized use could be "grandfathered" in, nothing in the EA substantiates BLM's statements about the extent of the permittee's motorized use either before wilderness designation or since.

2. The Decision to Authorize Motorized Use For Hauling Camping Supplies to Support the Annual Gather Violates NEPA and the Congressional Grazing Guidelines.

The EA lumps in hauling camping supplies to support the annual gather with "animal husbandry activities" for which motorized use every two weeks is authorized. EA at 16. But it contains no analysis to support its determination that accomplishing hauling camping supplies by nonmotorized means is not "reasonable and practical." There is no discussion of what the

camping supplies are, how much they weigh, how many pack trains would be needed to transport them, the amount of time that transport would take, or any other information required to make such a judgment. Indeed, Attachment A of the Declaration of George Nickas provides many examples where similar actions (such as setting up spike camps for fire crews) were accomplished by packstock. *See* Nickas Decl. Att. A.

By including this activity along with motorized access for "checking on livestock," BLM evades making the required finding and supporting analysis about the reasonableness and practicality of accomplishing the hauling by nonmotorized means. The EA's claim that this activity was accomplished by motorized means before wilderness designation is equally irrelevant here as in context of checking on livestock—the Congressional Grazing Guidelines preserve the activity of hauling equipment to support the annual gather, not the use of motorized means to do so. *See* Barns Decl. ¶ 39 (discussing difference between activity and means used to accomplish that activity).

3. The Decision to Authorize Motorized Access For Hauling Salt Violates NEPA and the Congressional Grazing Guideliens.

The Decision also authorizes motorized use for placing "large quantities" of salt without describing the actions authorized in sufficient detail to ensure they comply with the law. The Congressional Grazing Guidelines (incorporated in the Black Ridge Canyons Wilderness Act) provide: "Motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points." (Emphasis added).

To determine whether the motorized salt placement authorized complies with the Black Ridge Canyons Wilderness Act and other management authority, BLM must analyze and

disclose what constitutes a "large quantity" of salt, how often hauling "large quantities" of salt will occur by motorized means, and how those trips and salt placements will affect wilderness character. It also must explain why any "large quantities" of salt cannot be transported on horseback, or reduced to smaller quantities distributed over time, to confirm that the salt placement could not be "reasonably and practically be accomplished on horseback or foot." For example, as we stated in our protest, grazing 55 head of livestock on the Upper Bench Allotment can hardly require large quantities of salt.

A careful look at the Decision and analysis illustrates why more specificity is needed. By failing to define what constitutes a "large quantity" of salt, as opposed to a "small quantity" of salt, and authorizing motorized access for placing "large quantities" of salt, BLM fails to provide enough information to determine whether the actions authorized are lawful. BLM's Decision authorizes motorized access every two weeks for "animal husbandry activities," including for placing "large quantities of salt." *See* EA, *ix*. Under these conditions, it's difficult to envision that the permittee would ever place "small quantities" of salt—especially since the EA also claims that requiring access to the allotments on horseback is impracticable.

4. BLM's Effort to Exploit the Emergency Exception to Authorize Otherwise Forbidden Motorized Access Must Fail.

BLM also purports to authorize motorized access every two weeks "to avoid or detect emergencies while livestock are grazing in the wilderness." Decision, 5; *See also* EA at *ix* (Grazing Use Agreement, authorizing motorized access no more than every two weeks). Routine motorized access every two weeks can hardly be characterized as the "occasional" motorized use to address "true emergencies" allowed by the Congressional Grazing Guidelines. The Congressional Grazing Guidelines authorize motorized use for "the rescue of sick animals," not "checking to see if there might be a sick animal." *See* Barns Decl. ¶ 38; Nickas Decl. ¶ 13. This

appears to be an impermissible attempt to exploit the emergency exception to evade the unambiguous bar on motorized use for routine activities.

The Decision's authorization of motorized use exceeds the use contemplated by the Congressional Grazing Guidelines and the Black Ridge Canyons Wilderness Act, and is unlawful.

C. The Decision Relies on a Flawed and Inapplicable Minimum Requirements Decision Guide.

BLM's Minimum Requirements Decision Guide misstates its own purpose, authorizes motorized use beyond what is permitted by the Congressional Grazing Guidelines or its own Wilderness Manual, and overlooks impacts of authorized grazing to the untrammeled and natural elements of wilderness character. In truth, the regular motorized access authorized by the Decision has nothing to do with wilderness character, is not permitted by the Congressional Grazing Guidelines, and will cause harms to wilderness character in ways that that BLM has not considered. BLM's Decision violates the Wilderness Act, the Congressional Grazing Guidelines, and NEPA.

As an initial matter, it is questionable whether the MRDG even applies because the grazing-related motorized use authorized here falls within the special provisions section of the Wilderness Act in 16 U.S.C. § 1133(d) and the Congressional Grazing Guidelines, not the exception to meet the "minimum requirements for administration" described in 16 U.S.C. § 1133(c).[2] But in any case, BLM's MRDG analysis is flawed and biased at the outset because it improperly conflated the action at issue (grazing) with the means of accomplishing that action

[2] The use of the MRDG process has never been subject to formal notice and comment rulemaking, varies from agency to agency, and the MRDG analysis should only be given weight to the extent it is consistent with the standards set forth in the Wilderness Act. *See* Nickas Decl. ¶¶ 5, 17-18.

(motorized use). *See* Barns Decl. ¶¶ 22, 29 (explaining bias in MRDG analysis). Assuming allowing grazing was necessary, the proper question for the MRDG to answer was whether motorized use was required to support that activity. *Id*. By assuming motorized use was required at the outset, BLM introduced bias into its analysis.

Even if BLM had been proceeding from the correct premise, its determination that the authorized motorized use was permissible would fail. BLM's MRDG analysis recognizes the BLM Wilderness Manual language providing that "mechanical transport to carry out a lawful grazing associated activity is limited to emergencies only, such as rescuing sick animals or placing feed in emergency situations [and] is not allowed for herding animals or routine inspection of the condition of developments or the condition of the range." But it nevertheless authorizes mechanical transport for "access for checking on livestock," "placement of salt," "moving and gathering of livestock," and "inspection of range developments." *Id*. at *xxi.*

BLM made no effort to reconcile this obvious contradiction other than trying to construe these authorizations as somehow related to emergencies—but the routine nature of the access authorized shows that they are not. *See id.* at *xlix* ("The MCNCA manager has determined that for this particular allotment, given the time and safety considerations, in order to avoid or detect emergencies while livestock are grazing in the wilderness, there is no reasonable alternative to the use of motorized vehicles for access to livestock to perform these activities, such as checking on cattle while they are grazing in the winter in the wilderness."). BLM's effort to justify the Decision by parsing out the *purpose* of motor vehicle use does nothing to address the problem of *frequency*, i.e., the difference between the occasional use of motor vehicles to respond to "true" emergencies that BLM may authorize and the routine use that it may not.

Still further demonstrating the flaws in BLM's analysis and ultimate determination are its findings that none of the actions authorized under any alternative would have any impact on either the untrammeled or natural qualities of wilderness character. *See id.* at *xxi-xlvi*. *See also* Nickas Decl. ¶ 17 (describing use of MRDG to justify unlawful and harmful projects); Barns Decl. ¶ 19 (discussing grazing impacts to Wilderness character). In fact, the motorized intrusions would promote the persistence of cows—hardly a natural element of Wilderness—in the Wilderness. The presence of cows would in turn cause degradation to both the untrammeled and natural elements of wilderness because cows remove native vegetation, trample riparian areas, and spread invasive weeds, all of which "trammel" natural processes and reduce naturalness. Controlling cows also requires fences, water developments, and salt, ball developments that also "trammel" wilderness. But BLM's MRDG reveals that BLM is either completely ignorant of these effects or else failed to consider them entirely.

BLM's MRDG introduced serious flaws into its wilderness analysis warranting reversal of the EA and Decision.

II. BLM's EA and Decision Violate NEPA

A. BLM Violated NEPA by Failing to Take a Hard Look at the Effects of Authorizing Motorized Use in Wilderness.

a. BLM Violated NEPA by Using Improper Baselines.

"The establishment of a 'baseline is not an independent legal requirement, but rather, a practical requirement in environmental analysis often employed to identify the environmental consequences of a proposed agency action.'" *Or. Natural Desert Ass'n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016) (quoting *Am. Rivers v. FERC*, 201 F.3d 1186, 1195, n.15 (9th Cir. 1999)). "An EIS must 'succinctly describe the environment of the area(s) to be affected . . . by the alternatives under consideration,' and 'insure that environmental information is available to

public officials and citizens *before* decisions are made and *before* actions are taken.'" *Id*. (quoting 40 C.F.R. §§ 1502.15, 1500.1(b)) (emphasis in original) (internal citations omitted).

i. BLM Failed to Disclose and Analyze the Baseline for Motorized Use in Wilderness.

BLM has failed to take a "hard look" at the effects of the motorized access it has authorized here because it presumes that motorized use existing at the time of wilderness designation may be allowed to continue and then provides no quantification of the level of motorized use against which it is comparing its proposed action.[3] BLM relies on cavalier assertions that the impact of its proposed action to wilderness character "would not be as great" as under the No Action Alternative, but there is no way of confirming those statements. EA at 65. Indeed, they appear to be false: the previous motorized use agreement also authorized motorized use for inspecting livestock every two weeks. *Id.* at *liii*, *lv*.

BLM's statement that it cannot determine how much motorized use has been occurring for purposes of effects analysis is also flawed. BLM claims that grazing is presently proceeding as described in Alternative A. *Id*. at 61. Under that Alternative:

> The permittee is required to notify the MCNCA manager prior to the use of any motor vehicles, motorized equipment, or mechanical transport in Black Ridge Canyons Wilderness, providing:
>
> 1. The date(s) of use(s);
> 2. The type of equipment used; and,
> 3. Where motor vehicles, motorized equipment, or mechanical transport are used.

Id. at 62. Despite these required notifications, the EA claims, "No accurate data have been captured documenting the actual level of motor vehicle use inside the wilderness." *Id*. at 61.

[3] As noted, the level of motorized use at the time of wilderness designation is not preserved in any way by the Wilderness Act, Black Ridge Canyons Wilderness Act, or Congressional Grazing Guidelines. But, for NEPA purposes, the failure to quantify the existing level of motorized use in Alternative A is essential for a reasoned alternatives comparison.

Either the permittee is not notifying the MCNCA manager of motorized use as required, or the statement that no data have been captured is not true.

ii. BLM Failed to use a Proper Baseline for Analyzing Effects of Grazing on the Lower Bench Allotment.

BLM also failed to take a "hard look" at the effects of the grazing authorized on the Lower Bench and Upper Bench Allotments because it again used an improper baseline.

On the Lower Bench Allotment, the EA treats the permitted 1,400 AUMs and as the baseline and characterizes the 880 AUMs authorized as a "reduction" to "more accurately reflect the carrying capacity of the allotment." *Id*. at 8. It claims that "actual use has varied from 0 to 882 since 1990. *Id*. at 12. However, from 2000 to 2015, the Lower Bench allotment was *never* grazed at a level as high as 882 AUMs—the greatest number of AUMs grazed was 731, which occurred twice, and the average number of AUMs grazed was 324. *Id*. at 69-70. Grazing 880 AUMs would actually allow more than twice as much use as presently occurs, and that increase would carry attendant impacts that the EA did not consider because it characterized the level of grazing authorized as a reduction.

Similarly, on the Upper Bench Allotment, the EA treats the permitted 328 AUMs as the baseline even though the allotment was grazed at less than 300 AUMs every year but one from 2000 to 2015 and there is no evidence of actual use before the Wilderness was designated. *Id*. at 70. So while the EA characterizes the 328 AUMs permitted as maintaining grazing "unchanged," grazing 328 AUMs would actually allow *more* grazing than has occurred every year for which the EA documents actual use. The EA must consider and disclose how grazing at full permitted levels would affect sensitive resources—for instance, with respect to Threatened and Endangered species, the EA discloses that "[t]he current livestock grazing practices in this allotment may have measurable effect upon the Threatened, Endangered, and Sensitive Species

or habitat if full permitted stocking rates are used" but does not disclose what that effect would be. *Id*. at 36.

III. The Decision Fails To Comply With BLM's Mandates For Managing The National Landscape Conservation System (NLCS) And NEPA.

BLM's Decision and EA completely fail to recognize that the NLCS designation changes FLPMA's multiple-use management framework to require BLM to "conserve, protect, and enhance" the values for which the MCNCA was established and only allow "multiple uses" *if* they are consistent with such protection. *See* 43 U.S.C. § 1732(a) (directing BLM to manage public lands for multiple uses "except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.") *See also* Secretarial Order 3308 (Nov. 15, 2010); BLM Manual 6100 at 1-6 (July 13, 2012). In ignoring the management mandates imposed with NLCS designation, BLM also overlooked management direction set forth in Secretarial Order 3308, and echoed in its own Manuals at 6110 and 6220. "At the very least, NEPA requires the BLM to discuss its own official policies that on their face apply directly to the review at issue." *W. Watersheds Project v. Salazar*, No. 4:08-CV-516-BLW, 2011 WL 4526746, at *14 (D. Idaho Sept. 28, 2011).

A. BLM Failed to Make a Finding That Grazing is Consistent With Conserving, Protecting and Enhancing MCNCA Values.

Indeed BLM's 6100 Manual specifically provides that "[g]razing management practices will be implemented in a manner that protects the values for which NLCS units were designated…." BLM Manual 6100 at 1-12. And BLM's 6220 Manual further provides:

> 2. Through the NEPA process, the manager with decision-making authority for a Monument or NCA will evaluate discretionary uses and will analyze whether the impacts of the proposed use in the Monument or NCA or similarly designated area are consistent with the protection of the area's objects and values. As part of this analysis, the manager will consider the severity, duration, timing, and direct and indirect and cumulative effects

> of the proposed use. If necessary and appropriate, the BLM may use the land use planning process to consider whether to change discretionary use authorizations.
> 3. When approving a proposed action, the decision must document how the activity is consistent with the proclamation or designating legislation.

BLM Manual 6220 at 1-6 to 1-7 (July 13, 2012) (Emphasis added).

But BLM has done none of these things. The EA makes no finding that continued grazing is consistent with protecting the "geological, cultural, paleontological, natural, scientific, recreational, environmental, biological, wilderness, wildlife education, and scenic resources" the MCNCA was designated to protect. 16 U.S.C. § 460mmm(b). Nor does it appear that BLM made such a finding in the Resource Management Plan for the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness. There is no evidence that BLM has considered the severity, duration, timing, and direct, indirect, and cumulative impacts of grazing on the MCNCA values as its own Manuals require.

Rather than recognizing the new management framework imposed by these authorities, BLM appears to assume it may proceed with multiple-use management as usual, without regard for the NLCS designation. The EA repeats that "the No Grazing Alternative would not support the BLM's multiple use mission." *E.g.*, EA at 37, 48. This rejection of a reasonable alternative ignores the modification of BLM's "multiple use mission" in the context of the NLCS.

This is a significant failing; the EA provides no evidence that continuing grazing is consistent with BLM's management mandate for the NLCS and the EA's analysis suggests it is not. For instance, the EA admits that the "no grazing" alternative would have a "beneficial impact" on cultural resources and notes that "[d]irect impacts [to cultural resources] from grazing are well documented, especially in areas where cattle congregate, and along with indirect impacts from removal of vegetation and subsequent erosion the impacts to cultural resources would no longer be attributable to grazing if the No Livestock Grazing Alternative was

selected." *Id.* at 54. The EA fails to address whether this permanent damage and destruction of cultural resources from grazing is consistent with protection of the purpose of the MCNCA—which was established to protect "cultural" values, among other things. 16 U.S.C. § 460mmm(b).

The EA's impacts analysis also relies on the assumption that the Proposed Action would decrease grazing, which it admits would have beneficial impacts, when in truth no grazing reduction would occur. For example, the EA's soils analysis states: "Direct and indirect effects include short term soil disturbance from trailing and animal concentration. These effects are minimized due to the reduction of animals…" EA at 29. But in truth there is no "reduction of animals" and the final decision authorizes far more livestock on these allotments than has been used in nearly two decades. The EA also indirectly admits that even at current levels, grazing has negative impacts on soils, stating that under the "No Action" alternative, "[i]t is anticipated that the health and vigor of vegetation communities would improve under this alternative and overall soil health would indirectly benefit." *Id*. at 30.

Similarly, while the EA suggests that implementation of the proposed action would "help improve water quality from current conditions," it also states that "results would lag behind those observed under the No Grazing Alternative." *Id.* at 31. Again, because the amount of grazing could actually *increase* under the proposed alternative, it's not clear how this would improve water quality, especially in light of the implicit admission that at least some harm to water quality is occurring with existing grazing.

By failing to consider whether continued grazing as proposed is consistent with its mandate to "conserve, enhance, and protect" the purposes for which the MCNCA was designated, BLM violated the Omnibus Public Lands Act of 2009, Secretarial Order 3308, and

its own Manual 6100. Indeed, the EA fails to even mention Secretarial Order 3308 or the 6100 Manual, despite being alerted to their applicability by WWP. By failing to consider its own guidance for managing the MCNCA, as well as by relying on a skewed impacts analysis that fails to take a "hard look" at impacts to the MCNCA purposes, BLM also violated NEPA.

B. BLM Failed to Apply the Best Available Science and Take a "Hard Look" at Biological Soil Crusts and Utilization Rates.

BLM also ignored the mandates in both Secretarial Order 3308 and the 6100 Manual to use the best available science in managing NLCS units. Secretarial Order 3308 requires that "[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship" and the 6100 Manual commits that "[t]he BLM will use the best available science in managing NLCS units." S.O. 3308, Sec. 4(d); BLM Manual 6100 at 1-6. But BLM makes no mention of these authorities and breezed by the issues of scientifically supportable forage utilization rates and impacts to biological soil crust (BSC) in issuing the Decision. At the very least, BLM should have taken a "hard look" at these issues and the environmental impacts they implicated.

First, the EA and Decision ignore current science regarding utilization rates. The proposed action in the EA and the final decision authorize a 50% utilization rate, but current range science, including the USDA NRCS National Range and Pasture Handbook recommend a maximum of 25% in systems such as those found on the MCNCA.[4] Decision, 3. A review of the

[4] *See e.g.,* Range Management - Principles and Practice, Holechek et al., as well as Troxel and While 1989. Balancing Forage Demand with Forage Supply, Texas A&M Publication B-1606, Lacey et al. A Guide for Planning, Analyzing and Balancing Forage Supplies with Livestock Demand, Montana State University Publication E13-101, Galt et al. 2000, Grazing Capacity and Stocking Rate in Rangelands 22(6):7-11 and White and McGinty 1997, Stocking Rate Decisions: Key to Successful Ranching Texas A&M Publication B-1310.

EA shows that they failed to examine any science at all to justify the utilization rates in the grazing alternative and final decision.

The EA and Decision similarly overlook the critical issue of biological soil crust, (BSC) which is a key component of stable soils and soil building in this ecosystem. Again, no scientific literature on BSC was reviewed at all, let alone implemented in the grazing alternative or the final decision. In fact, BSC is not mentioned in the EA except briefly in a response to comments, to dismiss the issue, claiming: "Based on soil types in the allotments biological soil crusts (BSC) are expected to have a low frequency of occurrence within the allotments. This low occurrence minimizes the chance that grazing would impact enough BSC to cause measurable impacts to soil characteristics." EA at *lxxxii*. But this response flies in the face of the current scientific understanding of BSC, which indicates that sandy and loamy soils, where most of the livestock grazing occurs in these allotments, has a high potential for BSC coverage.[5]

Simply dismissing these critical issues without considering any applicable science is hardly the "hard look" NEPA requires, particularly in light of the management mandates in S.O. 3308 and BLM's 6100 Manual. Without considering science concerning BSC and utilization rates, BLM cannot have complied with its mandates to conserve, enhance, and protect MCNCA values and to allow grazing only to the extent compatible with preserving those values.

PETITION FOR STAY

Pursuant to 43 C.F.R. § 4.471 Appellants WWP and Wilderness Watch hereby petition for a stay of the Decision. Requesting a stay is necessary to obtain a judicially reviewable final agency action. *See* 43 C.F.R. §§ 4.21(c).

[5] *C.f.* Bowker et al. 2006. Predictive modeling of biological soil crusts as a tool for improved range management - Final Report for Grand Staircase-Escalante National Monument 2006 Update.

The issuance of stay is appropriate when the relative harm to the parties justifies issuing a stay, the appellant is likely to succeed on the merits of its appeal, imminent and irreparable harm is likely to occur unless a stay is granted, and the public interest favors the granting of the stay. 43 C.F.R. § 4.471; *Oregon Natural Resources Association*, 148 IBLA 186, 188 (1993).

I. Appellants Will Be Harmed If The Decision is Not Stayed.

Appellants interests will be harmed if grazing proceeds under the Decision while this appeal is pending because the grazing and attendant motorized use authorized will have immediate, ongoing effects on wilderness character and on the MCNCA values. Appellants' interests in the wilderness character and MCNCA values will be harmed. *See* Pearson Decl.; Nickas Decl.; Ratner Decl. In addition, the actions will proceed even though they violate the Wilderness Act, the Black Ridge Canyons Wilderness Act, the Omnibus Public Lands Act of 2009, NEPA, Secretarial Order 3308, and BLM's Manuals on Wilderness management and NLCS management. Appellants have strong interests in ensuring that federal agencies comply with the law, and those interests will suffer harms if BLM is allowed to implement an illegal grazing decision.

The harm to BLM, on the other hand, will be nonexistent. In all likelihood, BLM will simply continue to authorize grazing under the previous grazing permit, which is even less restrictive of the permittee and agency.

II. Appellants Are Likely to Succeed on The Merits of Their Appeal.

For the reasons discussed above, Appellants are likely to succeed on the merits of their appeal.

Appellants have demonstrated that BLM has violated the Wilderness Act, the Black Ridge Canyons Wilderness Act, its own Wilderness Manual, and NEPA because the Decision

authorizes routine motorized use for purposes not allowed by the Congressional Grazing Guidelines like "checking on livestock," fails to describe actions proposed in adequate detail, lacks an adequate baseline analysis, and relies on a deeply flawed MRDG.

Appellants have also demonstrated that BLM has violated the MCNCA establishing legislation, the Omnibus Public Lands Act of 2009, NEPA, Secretarial Order 3308 and its own management direction set forth in its 6100 and 6220 Manuals by allowing grazing without making a finding or otherwise showing that it is consistent with protecting the values for which the MCNCA was established and without using the best available science.

III. Absent a Stay, Irreparable Harm Will Occur.

Imminent, irreparable harm to Wilderness character, to the NLCS values, and to Appellants' interests will occur if grazing proceeds under the Decision.

When considering whether equitable relief is appropriate, courts look at whether an injunction is necessary to effectuate the congressional purpose behind the statute. *Biodiversity Legal Foundation v. Badgley,* 309 F.3d 1166, 1177 (9th Cir. 2002). The purpose of the Wilderness Act is to establish Wilderness areas which "shall be administered… in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and … to provide for the protection of these areas, [and] the preservation of their wilderness character…." 16 U.S.C. § 1131(a). The purpose of the Black Ridge Canyons Wilderness Act is "to conserve, protect, and enhance…the unique and nationally important values of the public lands described in section 460mmm–2(b) of this title, including geological, cultural, paleontological, natural, scientific, recreational, environmental, biological, wilderness, wildlife education, and scenic resources of such public lands." 16 U.S.C. § 460mmm. And, the purpose of the NLCS is to "conserve,

protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values." 16 U.S.C. § 7202(a).

These purposes will be irreparably harmed by the grazing slated to occur imminently under the Decision. Authorizing grazing at the levels permitted will allow the Upper Bench and Lower Bench Allotments to be grazed at higher levels than they have typically been grazed in the past. Indeed, the 880 AUMs permitted to be grazed annually under the Decision is more than twice the average level of AUMs grazed annually from 2000 to 2015. This will exacerbate the harms to cultural resources and the environment already occurring with grazing at existing levels and will harm the environmental, biologic, wilderness, and cultural purposes of the MCNCA as well as the wilderness character of the allotments. *See* Ratner Decl. ¶ 18 (describing loss of cool season bunchgrasses, biological soil crusts, and erosion).

The routine motorized use authorized to facilitate the grazing will also degrade wilderness character and cause irreparable harms. Road scars from routine motorized access will persist on the landscape for decades, rather than being allowed to be reclaimed. *See* Declaration of Mark Pearson ¶ 13 (scars from roads closed for 40 years remain in wilderness). Encountering motorized uses will disrupt wilderness experiences of visitors seeking solitude in the Black Ridge Canyons Wilderness. *See id.* ¶ 15 ("The noise and fumes from routine motorized activity by livestock allottees monitoring cattle is a jarring disturbance of the anticipated primitive, non-motorized setting expected by wilderness visitors.") Allowing motorized access will exacerbate the existing trend within BLM of allowing motorized uses for grazing where nonmotorized use would suffice, ultimately increasing the prevalence of motors within the wilderness system. *See* Nickas Declaration ¶ 8 (describing trend). In turn, this will reduce the difference between wilderness and non-wilderness and diminish the values for which the Black Ridge Canyons

Wilderness, in particular, was established. *See* Pearson Decl. ¶ 16 ("If motorized equipment is prevalent and utilized in Wilderness, then it eliminates the distinction between areas managed as Wilderness and those managed otherwise and undermines the purpose for legislating Black Ridge Canyons for management under the Wilderness Act.")

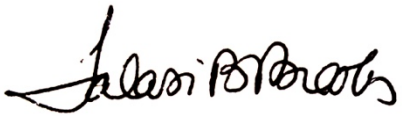
The inadequacies of BLM's NEPA analysis will also cause the Appellants irreparable harm. Judge (later Justice) Breyer, writing for the First Circuit in 1989, explained that "the harm at stake [from failure to comply with NEPA] is a harm to the environment, but the harm consists of the added risk to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision upon the environment." *Sierra Club v. Marsh*, 872 F.2d 497, 500–01 (1st Cir. 1989) (Breyer, J.) (vacating district court decision not to enter preliminary injunction). That risk is particularly pronounced here, where BLM evidently plans to charge ahead with grazing while writing off the potential for impacts to resources without providing an adequate baseline against which to measure those impacts and failing to consider impacts to the MCNCA purposes.

IV. The Public Interest Favors Granting the Stay Requested.

The public interest favors granting a stay. Congress has expressed its unambiguous intent that the values of the MCNCA and Black Ridge Canyons Wilderness be protected for future generations. But BLM here authorized grazing and excessive attendant motorized use in these areas without regard for those values. In so doing, BLM subverted the public interest in enjoying these areas in their natural condition to serve a single grazing permittee.

Moreover, the public interest in having federal agencies comply with the law – in this case the Wilderness Act, Congressional Grazing Guidelines, Omnibus Public Lands Act, NEPA, and its own Manuals – is paramount, and in itself justifies a stay.

Dated this _30th_ day of March, 2020.



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CERTIFICATE OF SERVICE

I, Jonathan Ratner, hereby certify that on March 30th, 2020 the foregoing document will be served, via USPS and email to:

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