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**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

SOUTHERN UTAH WILDERNESS ALLIANCE,)	
WESTERN WATERSHEDS PROJECT, THE)	
WILDERNESS SOCIETY,)	
and GRAND CANYON TRUST,)	IBLA No. 2019-94
)	
Appellants,)	Re: Grand Staircase-Escalante
)	National Monument and Kanab
v.)	Field Offices' Finding of No
)	Significant Impact and Decision
BUREAU OF LAND MANAGEMENT,)	Record for the Skutumpah Terrace
)	Sagebrush Steppe Enhancement
Respondent,)	Project, DOI-BLM-UT-0300-
)	2017-0003-EA
)	
)	

APPELLANTS' STATEMENT OF REASONS

Few places in the world match the jaw-dropping beauty, unique geology, and remoteness of the Grand Staircase-Escalante National Monument in southern Utah. This magnificent maze of slot canyons, multi-hued rock spires, and high-altitude forest reveal a four-billion-year

timeline of the Earth’s geological history—a grandiose stairway of geologic time that descends south from the Pink Cliffs down to the Chocolate Cliffs and the Grand Canyon at its final step. Here, in these stunningly scenic wildlands enjoyed by close to a million visitors each year, the Bureau of Land Management (BLM) is planning the landscape-scale destruction of more than 30,000 acres of pinyon pine and juniper forest as part of its Skutumpah Terrace Sagebrush Steppe Enhancement Project (“Skutumpah Project,” or “Project”). BLM’s approval of this Project runs afoul of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347, and the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701–1782, and should be overturned and remanded to BLM.

STATEMENT OF FACTS

The Skutumpah Terrace is located about 20 miles northeast of Kanab, Utah, within the far northwestern corner of Grand Staircase-Escalante National Monument (“Monument”).



Above: Looking north over the White Cliffs of Grand Staircase-Escalante National Monument, including the Skutumpah Project area, to the Pink Cliffs near Bryce Canyon National Park.

Stretching north over the spectacular White Cliffs that mark one “step” of the vast geologic stairway that rises more than 5,000 feet to the rim of Bryce Canyon National Park in an unbroken series of cliffs and plateaus, the Skutumpah Terrace encompasses a diverse network of canyons, dense forests, washes, and distinctive geologic features. Because of its remoteness, the area contains a high concentration of old-growth trees, shrubs, and other vegetation, the value of which was specifically highlighted in the presidential proclamation establishing the Monument:

The monument contains an extraordinary number of areas of relict vegetation, many of which have existed since the Pleistocene, where natural processes continue unaltered by man. These include... pinyon-juniper communities containing trees up to 1,4000 years old. As witnesses to the past, these relict areas establish a baseline against which to measure changes in community dynamics and biogeochemical cycles in areas impacted by human activity. Most of the ecological communities contained in the monument have low resistance to, and slow recovery from, disturbance.

Proclamation 6920, 61 Fed.Reg. 50223 (Sept. 18, 1996).

Many of these diverse and longstanding plant communities, including pinyon pine and juniper trees, scrub oak, sagebrush, serviceberry, antelope bitterbrush, and tufted evening primrose are found within on Skutumpah Terrace, along with fragile cryptobiotic soil crusts that provide nutrients to these plants and stabilize the highly-erodible desert soils. *See* Ex. A-Photographs. Because the Monument is an important refuge for relict vegetation and native Colorado Plateau plant communities, BLM’s Monument Management Plan emphasizes the protection of these plant communities, with detailed prohibitions and management requirements. *See* AR at K1, 25-31.

In 2016, BLM notified the public of the proposed Skutumpah Project, which proposed various “vegetation treatments” on 19,000 acres of the Skutumpah Terrace to enhance Greater

Sage-Grouse habitat. AR at H6. During scoping, the stated purpose of the project was “to maintain suitable and functional GRSG [(Greater sage-grouse)] habitat at a landscape level to ensure the long-term viability and persistence of GRSG, by removing encroaching pinyon and Utah juniper within GRSG habitat in GSENM [(Grand Staircase-Escalante National Monument)].” *Id.* Appellants submitted scoping comments on the proposed Project detailing the environmental impacts that the agency must consider. AR at H40.

Two years later, BLM released a draft environmental assessment (EA) of the Project, the scale and purpose of which had by then been significantly expanded. AR at D10. In this draft EA, BLM proposed vegetation treatments—a euphemism that includes mechanical mastication, chaining, spraying chemical herbicides, prescribed fires, chain-sawing, and seeding—on more than 30,000 acres of the Skutumpah Terrace within a 55,000 acre project area in order to “to improve land health, enhance sagebrush-steppe habitat, and return vegetative condition to a state that more closely resembles the historical fire regime.” AR at F2, 3. In certain areas, 90 to 100 percent of pinyon pine and juniper trees would be destroyed.

In December 2018, Appellants submitted comments on the draft EA, which included a detailed alternative to the proposed action that achieves BLM’s stated purpose and need with less environmental degradation. AR at H72. Without substantial revisions to address the draft EA’s numerous shortcomings or a detailed analysis of the suggested alternative to the proposed action, BLM issued a final EA on February 27, 2019, along with along with a finding of no significant impact (FONSI) and a Decision Record approving the Skutumpah Project. AR at F2, F3. This appeal followed.

STATEMENT OF STANDING

I. Appellants are Proper Parties to Pursue this Appeal

Appellants Southern Utah Wilderness Alliance (SUWA), Western Watersheds Project, The Wilderness Society, and the Grand Canyon Trust are proper parties to maintain and pursue this administrative appeal. 43 C.F.R. § 4.410(a) has been interpreted to require that an appellant meet two requirements in order to appeal: (1) the appellant must be a party to the case; and (2) must be adversely affected by the decision being appealed. *W. Watersheds Project*, 185 IBLA 293, 298 (2015). Appellants meet both of these requirements.

A. Appellants Are Parties to the Case

A person or group is a “party to a case” if, among other grounds, the appellant “participated in the process leading up to the decision under appeal, e.g., . . . by commenting on an environmental document.” 43 C.F.R. § 4.410(b). Appellants are parties to this case because they submitted extensive comments to BLM throughout the agency’s environmental review process, from scoping through the final EA. AR at H40 (Appellants’ Scoping Comments); AR at A6, H72 (Appellants’ EA Comments).

B. Appellants Have an Adversely Affected, Legally Cognizable Interest

An organization is “adversely affected” by the decision appealed if one or more of its members have “a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be negatively affected by the decision.” *Wildlands Defense and Deep Green Resistance*, 187 IBLA 233, 236 (2016) ((citing 43 C.F.R. § 4.410(d)). A legally cognizable interest can include “cultural, recreational, and aesthetic use and enjoyment of the affected public lands.” *Cascadia Wildlands & Or. Wild*, 188 IBLA 7, 9–10 (2016).

Appellants are adversely affected by BLM's Decision Record approving the Skutumpah Project, and bring this action on their own behalf and on behalf of their adversely affected members. Appellants are organizations whose missions encompass protecting public lands, wilderness, and natural resources, including lands within the Skutumpah Terrace. *See* Exhibit B- Declaration of Ray Bloxham at ¶¶ 4-9; Exhibit C- Declaration of Laura Welp at ¶¶4-7.

Appellants have an interest in the wilderness, wildlife, recreational, scenic, and other natural and cultural resources managed by BLM in Utah, and an interest in BLM's compliance with all federal environmental laws. *Id.* Appellants have members who have visited the Skutumpah Terrace, Timber Mountain, White Cliffs, and adjacent areas many times in the past and intend to do so again. *Id.* at ¶¶ 12-13. Their members have enjoyed, and plan to continue enjoying, the natural beauty and solitude of the area affected by the Skutumpah Project, which they use for hiking, camping, wildlife watching, scientific study, solitude, and photography. *Id.* The Skutumpah Project will adversely affect Appellants' members' recreational, aesthetic, educational, and other interests in the natural environment of Grand Staircase-Escalante National Monument, including the Skutumpah Terrace, Timber Mountain, and surrounding areas. *Id.* Specifically, the removal of some of the Monument's most pristine forests and alteration of its landscapes, wildlife habitat, and un-impeded scenic viewshed will significantly diminish the hiking, exploring, and wildlife watching experiences of those members. *Id.* These injuries will be remedied by a decision vacating BLM's approval of the Skutumpah Project and requiring BLM to comply with federal law.

ARGUMENT

I. BLM's Approval of the Skutumpah Project Violated NEPA

NEPA is our “basic national charter for protection of the environment. 40 C.F.R. § 1500.1. It serves two twin goals: (1) to foster informed decision making by “ensur[ing] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and (2) to promote informed public participation by requiring full disclosure of and opportunities for the public to participate in governmental decisions affecting environmental quality. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989); 42 U.S.C. § 4332(C)(i). To achieve these goals, NEPA requires agencies to take a “hard look” at the environmental consequences of their proposed actions. *Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004) (citing *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1162-63 (10th Cir. 2002)) (internal citation omitted).

To take the “hard look” mandated by NEPA, BLM is required to analyze a proposed action’s ecological, aesthetic, historic, cultural, economic, social, and health effects. 40 C.F.R. § 1508.8. These impacts and effects must be analyzed “whether direct, indirect, or cumulative.” *Id.* To meet this requirement, “an agency must set forth a reasoned explanation for its decision and cannot simply assert that its decision will have an insignificant effect on the environment.” *Public Serv. Co. of Colo. V. Andrus*, 825 F. Supp. 1483, 1496 (D. Idaho 1993) (citing *The Steamboarders v. FERC*, 759 F.2d 1383, 1393 (9th Cir. 1985)) (internal citations omitted). Indeed, the fundamental objective of NEPA is to ensure that an agency “will not act on incomplete information only to regret its decisions after it is too late to correct.” *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 371 (1990). The Board will find that BLM took a

“hard look” when “it conducted a thorough environmental analysis before concluding that no significant environmental impact exists, and its documentation of that analysis shows the bureau’s thoughtful and probing reflection of the possible impacts of its proposed action.”

Southern Utah Wilderness Alliance, 194 IBLA 98, 106 (2019).

A. BLM failed to take a hard look at the cumulative impacts of the Skutumpah Project.

NEPA requires BLM to consider the cumulative impacts of a proposed action, which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable actions. 40 C.F.R. §§ 1508.7, 1508.8. To satisfy NEPA’s hard look requirement for cumulative impacts, BLM must present some quantified or detailed information that results in a useful analysis, “even when the agency is preparing an EA and not an EIS.” *Ctr. for Env’tl. Law & Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1007 (9th Cir. 2011) (citing *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002)). To constitute a “useful analysis,” a proper cumulative impact analysis “must . . . assess the impact the proposed project will have in conjunction with other projects in the same and surrounding areas.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010); *see also San Juan Citizens All. v. Stiles*, 654 F.3d 1038, 1056 (10th Cir. 2011). “[G]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Ctr. for Env’tl. Law & Policy*, 655 F.3d at 1007.

Here, BLM failed to take a hard look at the cumulative impacts of the Skutumpah Project because it failed to analyze the impacts of several other large proposed vegetation treatment projects planned on lands adjacent to the Project area and elsewhere throughout the cumulative effects analysis area, and which will impact the same resources as the Project. Currently, BLM

is undergoing planning for several other large vegetation removal projects within the cumulative effects analysis area. In the proposed Upper Paria River Watershed Project, BLM plans to conduct vegetation treatments—mastication, chain-sawing, chemical treatments, prescribed fire, and seeding—to destroy pinyon and juniper trees in order to promote sagebrush habitat on more than 93,000 acres of land immediately adjacent to the Skutumpah Project area. *See* Exhibit D-SUWA Map, Cumulative Impacts: 2019 Vegetation Treatment Projects in GSENM; AR at F2, 57; BLM Scoping Notice for Paria River Watershed Habitat Improvement Project, *available at* <https://tinyurl.com/yyv729nw>. Similarly, in the proposed Alvey Wash, Coal Bench, and Last Chance Vegetation Restoration projects, BLM plans to conduct vegetation treatments to destroy pinyon and juniper trees on more than 13,000 acres on land nearby the Skutumpah Project area. *See id.*; BLM Scoping notice for Alvey Wash, Coal Bench, and Last Chance Vegetation Restoration Projects, *available at* <https://tinyurl.com/yevxue88>.

The EA, however, has only a single passing reference to BLM’s proposed nearby vegetation treatment projects, tucked into the “Vegetation and Invasive Species” cumulative effects section. AR at F2, 57. That section simply names the projects, recites the total acreage that would be treated, and explains that, together with the Skutumpah Project, “only 10% of the landscape would see any type of vegetation treatment.” But simply listing the percentage of an area that may be cumulatively impacted by the proposed action and reasonably foreseeable future actions does not constitute a hard look when the EA does not describe the proposed projects, analyze their environmental impacts, or analyze the cumulative environmental impacts of the other projects together with the Skutumpah Project. *Id.* Moreover, BLM failed to even mention the other nearly-identical proposed vegetation treatment projects in the cumulative

impact section's discussion of other resources, ignoring that the other proposed treatment projects, like the Skutumpah Project, will impact various resources.

For instance, BLM acknowledged that the Skutumpah Project's pinyon and juniper removal may cause "habitat alteration, fragmentation, and/or loss" for various species of migratory birds that rely on pinyon and juniper trees. AR at F2, 45. And in the longer term, the Project's indirect impacts could "lead to loss of nesting, roosting, or foraging habitat for birds that utilize pinyon-juniper woodlands primarily." *Id.* But even though the 93,000-acre Upper Paria River Watershed vegetation treatment project will also impact migratory birds and is more than three times larger than, and is planned on land immediately adjacent to, the 30,000-acre Skutumpah Project, the EA failed to discuss the Upper Paria project's impacts on migratory birds, let alone analyze the cumulative impacts on migratory bird species of the combined 123,000-acre vegetation treatment area. Likewise, the EA failed to discuss impacts on migratory birds from the planned 13,000-acre Alvey Wash, Coal Bench, and Last Chance vegetation treatment projects. Indeed, the EA's cumulative impacts section does not even mention migratory birds. This lack of cumulative impacts analysis is particularly striking given that BLM downplays the Skutumpah Project's impacts on migratory birds by claiming that any impacts will be minimal because "most birds are highly mobile and the Project area comprises a small fraction of the greater Kanab watershed." *Id.* Although mobility may mitigate adverse impacts to migratory birds when viewing the 30,000 acre Skutumpah Project in isolation, mobility may not effectively mitigate adverse impacts when migratory bird habitat is destroyed or modified on nearly 140,000 mostly-contiguous acres.

Furthermore, the EA statement that reasonably foreseeable future actions within the cumulative effects analysis area are identified in the cumulative impact section's Table 9 cannot

substitute for the EA's lack of analysis of the other proposed treatment projects. Indeed, BLM's proposed vegetation treatment projects are not even mentioned in the Table 9, which simply lists the general category "Rangeland Seedings/Vegetation Manipulation Projects" and explains that "[s]everal large chaining projects in the 1960s and 1970s have occurred to promote primarily livestock," and that "[l]imited use of prescribed fire, hand thin and mechanical mulch re-treatments, have occurred as restoration projects." AR at F2, 53. On its face, this category includes only past vegetation treatment projects.

By failing to analyze the cumulative impacts of the Project and other nearby, nearly-identical vegetation treatment projects on migratory birds, macrobiotic soil crusts, visual resources, lands with wilderness characteristics, and other resources, BLM analyzed the Skutumpah Project "in a vacuum" and failed to "give a realistic evaluation of the total impacts" from the Project, in violation of NEPA's "hard look" mandate. *See Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002). Therefore, BLM's FONSI and Decision Record approving the Project are arbitrary and capricious.

B. BLM failed to take a hard look at the Project's impacts on greenhouse gas emissions and climate change.

Pinyon and juniper trees play a vital role in sequestering atmospheric carbon dioxide. When they are destroyed, in addition to no longer sequestering carbon dioxide, the trees emit their stored carbon dioxide into the atmosphere, thereby exacerbating climate change. *See* Exhibits H and I. BLM, however, failed to adequately analyze the Project's impacts on greenhouse gas emissions and climate change.

The EA's cursory, qualitative discussion of carbon dioxide emissions notes that emissions from a specific vegetation treatment project "vary based on treatment type, vegetation type, acreage, mass of vegetation, combustion completeness, and meteorology," and thus a

specific impacts assessment cannot be conducted. AR at F2, F-6. But this is belied by BLM's detailed analysis of the impacts on carbon dioxide emissions from other BLM-initiated vegetation treatment projects in the past. For example, BLM's environmental review of its South Warner Juniper Removal Project includes a detailed analysis of that project's impacts on greenhouse gas emissions, which quantified the total expected carbon dioxide emissions from burning juniper biomass with prescribed fire. *See, e.g.* South Warner Juniper Removal Project Environmental Assessment, 44-46, available at <https://tinyurl.com/yynd9wrw>. Here, by contrast, the EA did not even attempt to quantify the anticipated carbon dioxide emission from the vegetation treatments proposed in the Skutumpah Project area, which includes prescribed fires and the use of heavy machinery and vehicles. Moreover, various scientific reports have quantified the amount of carbon dioxide stored in southeast Utah's pinyon and juniper landscapes, which could inform an emissions analysis of the Skutumpah Project. Exhibit F - Declaration of Kevin H. Miller at ¶ 15.

BLM attempts to further justify its cursory impacts discussion by stating that, even though it allegedly cannot conduct an emissions analysis, the agency in any event need not conduct a detailed analysis because emissions are anticipated to be below the U.S. Environmental Protection Agency's (EPA) greenhouse gas reporting limits of 25,000 tons per year. AR at F2, C-2. But BLM's conclusion that the Project is not likely to emit more than 25,000 tons of carbon dioxide per year contradicts the agency's contention that it cannot quantify the Project's emissions—without quantification, the agency would not know whether the Project will emit more than 25,000 tons per year. Moreover, there is no evidence in the record to support BLM's conclusory assertion that the Project's emissions will be less than 25,000 tons per year. And, the EA does not articulate why BLM allegedly need not analyze the Project's impacts

on emissions and climate change if the Project emits less than EPA's 25,000-ton threshold, which is merely a reporting limit.

Because the EA lacks a quantified, "thoughtful and probing reflection" of the Project's impacts on emissions and climate change, BLM failed to satisfy NEPA's "hard look" standard. *See Klamath-Siskiyou Wildlands Center*, 190 IBLA 295, 301 (2017). BLM's Decision Record approving the Project was therefore arbitrary and capricious.

C. BLM violated NEPA by failing to use the best available scientific information to develop the proposed action.

NEPA requires BLM's environmental analysis to be based on the best available scientific information. *Custer Cty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1034 (10th Cir. 2001). BLM failed to use the best available scientific information to develop the Skutumpah Project. As a result, the Project does not accomplish its purpose and need.

A primary purpose of the Skutumpah Project is to "return vegetative condition" to a "natural state" that "more closely resembles the historical fire regime." AR at F2, 3, 10, 11. To accomplish this, BLM forecasted the Project area's "expected natural vegetation," which the agency determined based on Ecological Site Description (ESD) data provided by the U.S. Department of Agriculture's Natural Resource Conservation Service. AR at F2, 2, 10, 11, F-7. ESD data describes, among other things, a particular ecological site's general soil characteristics, from which BLM derived the site's expected natural vegetation. AR at F2, 10, F-2. Based on ESD soil-characteristic data for the ecological sites within the Project area, BLM concluded that the expected vegetation on nearly two-thirds of the Project area should be dominated by sagebrush, whereas only about one-third should be dominated by pinyon pine and juniper trees. *Id.* at 10. Because BLM determined that pinyon and juniper is the *current* dominant vegetation on more than two-thirds of the Project area, the agency's conclusion that sagebrush—rather than

pinyon and juniper—is the *expected* natural vegetation on two-thirds of the Project area formed the basis of the agency’s proposal to destroy pinyon and juniper trees on about 30,000-acres within the Project area.

However, BLM’s conclusion that the expected natural vegetation on nearly two-thirds of the Project area should be dominated by sagebrush was not based on the best available scientific information. Ecological sites are described based on the proportions of soil types within a larger soil map unit—a broad area characterized and mapped based on samples of its soil composition.. Exhibit F, ¶¶ 5, 6. Each soil map unit often contains numerous ecological sites because soil map units may contain many different types of soil. *Id.* at ¶ 6. In turn, each ecological site has an expected natural vegetation. *Id.* Rather than analyzing the Project area’s soil map units to determine the several ecological sites—and thus several species of expected natural vegetation—within each soil map unit, BLM looked only at the dominant soil type within each soil map unit, and thereby concluded that the entire soil map unit was a single ecological site, with a single dominant expected natural vegetation. *Id.* In other words, if, for example, 60 percent of a particular unit in the Project area contained a soil type indicating expected natural sagebrush and 40 percent of that same unit contained a soil type indicating expected natural pinyon and juniper, BLM, by looking only at the dominant soil type, concluded that 100 percent of that unit is naturally sagebrush habitat.

By focusing only on the dominant soil type within the Project area’s soil map units—and within the Project area as a whole—BLM erroneously portrayed vast swaths of the Project area as exclusively sagebrush ecological sites, when in fact much of the Project area’s expected natural vegetation is pinyon and juniper. Exhibit G - Soil Units and Corresponding Ecological Sites in the Skutumpah Terrace. As a result, BLM incorrectly determined that pinyon and

juniper does not naturally exist on the 30,000 acres of the Project area slated for vegetation treatments, when the best available scientific information—which describes all of the ecological sites and their expected natural vegetation based on all of the soil types within the Project area, rather than only the dominant soil type—reveals that pinyon and juniper is the expected natural vegetation on a significant portion of the 30,000 acres. *Id.* Accordingly, the Skutumpah Project’s plan to destroy pinyon and juniper trees throughout the entire 30,000 acres does not accomplish the proposed action’s purpose and need to return the Project area to its expected natural vegetative state.¹ BLM’s approval of the Project therefore is arbitrary and capricious.

II. BLM’s Approval of the Skutumpah Project Violated FLPMA

FLPMA requires that BLM’s site-specific actions conform to the terms and conditions of the governing land use plan—here, the 2000 Grand Staircase-Escalante National Monument Management Plan (Monument Management Plan).² *See* 43 U.S.C. § 1732(a); 43 C.F.R. §§ 1610.5-3(a), 1601.0-5(b); *WildEarth Guardians San Juan Citizens Alliance*, 185 IBLA 193, (2015) (stating that “BLM is required to conform its approval of management actions . . . to the dictates of the RMP”). Here, BLM’s authorization of the Skutumpah Project does not conform to the 2000 Grand Staircase-Escalante National Monument Management Plan’s (MMP) prohibition on the use of non-native seed.

¹ In fact, removing pinyon trees from areas where pinyon and juniper are the expected natural vegetation would irreversibly destroy the natural vegetation. A 40-year study of pinyon and juniper removal in the Monument documents that pinyon trees largely never return. *See* Exhibit J- Redmond MD, et al., Long-term effects of chaining treatments on vegetation structure in pinon-juniper woodlands of the Colorado Plateau. *FOREST ECOLOGY & MANAGEMENT* 305 (2019).

² Although Presidential Proclamation 9682, 82 Fed. Reg. 58089 (Dec. 4, 2017), purports to reduce the size of the Grand Staircase-Escalante National Monument such that some lands within the Skutumpah Project area are no longer in the new Monument boundaries, until an updated Management Plan revision is complete, BLM must still conform to the 2000 Grand Staircase-Escalante National Monument Management Plan for the entire area formerly encompassed by the Monument, including the entire Skutumpah Project area.

BLM's Monument Management Plan mandates that native seeds will be "used as a priority for all projects within the Monument," and lists the exceptions to this general non-native-seed prohibition. Monument Management Plan, AR at K1, 28-30. Non-native seeds may be used "in limited, emergency situations" where it is necessary to protect Monument resources by stabilizing soils or displacing noxious weeds, or for "restoration related research" if certain conditions are met. *Id.* at NAT-1, NAT-2, NAT-4. The Monument Management Plan does not grant BLM discretion to determine when to use non-native seeds; non-native seeds "will be used" unless an enumerated exception applies. *Id.* at VEG-1.

The Skutumpah Project, however, authorizes BLM to use non-native seed mixtures in a variety of circumstances when conducting vegetation treatments within the project area. AR at K1, 28-30. For example, in the Skutumpah Project EA, BLM articulates its plans to use non-native seeds in the Project area where non-native seeds will outcompete invasive species, and in previously treated areas where non-native monocultures would be interseeded with a mix of native and nonnative plants to add diversity. *See* AR at F2, 20. However, neither of these situations falls within the exceptions to the Monument Management Plan's general prohibition on the use of non-native seeds—an emergency situation requiring the protection of Monument resources, or restoration related research. Instead of addressing whether the Skutumpah Project's plans to use non-native seed in previously treated areas and in situations where invasive species may outcompete native vegetation meets one of the Monument Management Plan's enumerated exceptions, BLM seemingly attempts to conceive a wholly new exception to the Monument Management Plan based on the fact that non-native seed may have been used in prior treatments, explaining:

...the reality is that some of this area was treated in the past using a mix of native/non-native seed. It is nearly impossible to completely rid an area of non-native seed once it

has been established. Therefore, the limited use of functionally equivalent non-native seed in areas that are currently dominated by non-native grasses essentially has no effect on that particular area.

Id. at F-13. This explanation simply does not show how BLM, in authorizing the use of non-native seed in parts of the Skutumpah Project area, complied with the clear terms of the Monument Management Plan. The Monument Management Plan does not contain an exception for areas where non-natives were seeded in the past, or excuse the use of “functionally equivalent non-native seed in areas that are currently dominated by non-native grasses.” Likewise, the Monument Management Plan does not allow the use of non-native seed if BLM determines that non-native will have “no effect on [a] particular area.” These explanations are merely a pretense for conformance with the actual terms of the Monument Management Plan, and BLM has not met its burden under FLPMA to show that its actions are “clearly consistent with the terms, conditions, and decision of the approved plan.” 43 C.F.R. § 1601.0-5(b). Thus, the Project does not conform to the Monument Management Plan’s terms and conditions regarding non-native seeds.

Additionally, although BLM further attempts to excuse its non-conformance with the Monument Management Plan by asserting in the EA that the Monument Management Plan has been amended by the 2015 Utah Greater Sage-Grouse Resource Management Plan, this argument is unavailing. BLM notes that while the Sage-Grouse Management Plan does indeed require the agency to primarily use native seeds, it “does not state outright that non-natives may not be used.” AR at F2, F-14. BLM, however, neglected to note that the Sage-Grouse Resource Management Plan’s allowance of non-native seeds is specifically limited to sage-grouse priority habitat management areas. AR at F2, 6 (discussing MA-VEG-5). Because the Sage-Grouse Resource Management Plan amended the Monument Management Plan only “to incorporate

appropriate [greater sage-grouse] conservation measures,” AR at K3, 1-6, the Monument Management Plan’s non-native seed prohibition still controls on all areas outside of sage-grouse priority habitat management areas.³ Because most of the areas in which BLM plans to use non-native seed in the Skutumpah Project are outside of sage-grouse priority habitat management areas (*See* Exhibit E- SUWA Map of Skutumpah Terrace Treatments and Sage-Grouse Priority Habitat Management Areas), BLM’s use of non-native seeds in those areas for non-excepted purposes runs afoul of the Monument Management Plan.

Therefore, because the Skutumpah Project violates the Monument Management Plan, BLM’s Decision Record approving the Project violates FLPMA and is arbitrary and capricious.

CONCLUSION

Based on the foregoing, Appellants respectfully request that the Board set aside BLM’s Skutumpah Project Decision Record and FONSI, order BLM to fully comply with NEPA and FLPMA, and order such other relief as the Board may deem appropriate.

Respectfully submitted this 30th day of May, 2019.



Kya Marienfeld
Attorney for Appellants Southern Utah Wilderness Alliance, Western Watersheds Project, and The Wilderness Society

/s/ Kamran Zafar
Kamran Zafar
Attorney for Appellant Grand Canyon Trust

³ Of the 7,747 acres where the Skutumpah Project Decision Record allows non-native seed, i.e. within the “previously treated areas” or “re-treat” areas, only 2,843 acres overlap with sage-grouse priority habitat management areas. *See* Ex. E.

I, Kya Marienfeld, hereby certify that I served the foregoing **Statement of Reasons** by placing a true and correct copy in the U.S. Mail, first-class postage prepaid, certified return receipt requested, this 30th day of May, 2019, to the following:

Bureau of Land Management Return Receipt # 7018 0680 0001 3070 7525
Grand Staircase-Escalante
National Monument
669 S. Highway 89A
Kanab, UT 84741

Bureau of Land Management Return Receipt # 7018 0680 0001 3070 7518
Kanab Field Office
669 S. Highway 89A
Kanab, UT 84741

Interior Board of Land Appeals Return Receipt # 7018 0680 0001 3070 7532
801 North Quincy St., MS 300 QC
Arlington, VA 22203

I also certify that I served the foregoing **Statement of Reasons** via email, this 30th day of May, 2019, to the following:

Cameron Johnson
Regional Solicitor
Salt Lake City Intermountain Region
U.S. Dept. of Interior
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/s/ Kya Marienfeld _____

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