

Director's Protest Resolution Report

**Kemmerer
Resource Management Plan**

April 2, 2010



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

Issue Topics and NEPA — Topic heading

Submission number — Submission number

Protest issue number — Protest issue number

Issue Number: PP-CA-ESD-08-0020-10 — Protest issue number

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Issue Excerpt Text: — Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary — General statement summarizing the issue excerpts (optional).

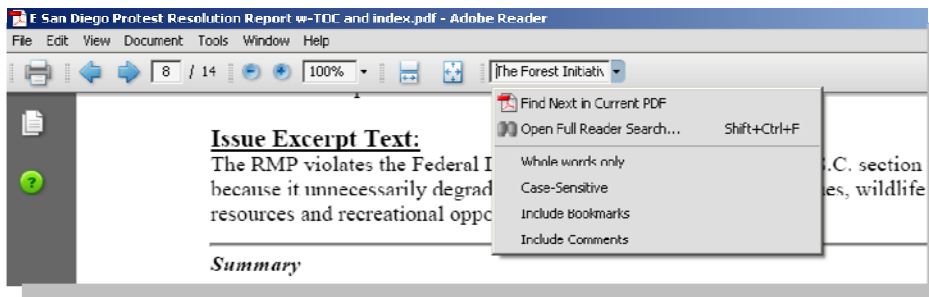
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response — BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IM	Instruction Memorandum
APD	Application for Permit to Drill	MOU	Memorandum of Understanding
BA	Biological Assessment	NEPA	National Environmental Policy Act of 1969
BLM	Bureau of Land Management	NHPA	National Historic Preservation Act of 1966, as amended
BMP	Best Management Practice	NOA	Notice of Availability
BO	Biological Opinion	NOI	Notice of Intent
CAA	Clean Air Act	NRHP	National Register of Historic Places
CEQ	Council on Environmental Quality	NSO	No Surface Occupancy
CFR	Code of Federal Regulations	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
COA	Condition of Approval	RFDS	Reasonably Foreseeable Development Scenario
CSU	Controlled Surface Use	RMP	Resource Management Plan
CWA	Clean Water Act	ROD	Record of Decision
DM	Departmental Manual (Department of the Interior)	ROW	Right-of-Way
DOI	Department of the Interior	RPPA	Recreation and Public Purposes Act
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VRM	Visual Resource Management
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		
IB	Information Bulletin		

Protesting Party Index

Protester	Organization	Submission Number	Determination
Michael Azeka	AES Alternative Energy	PP-WY-Kemmerer-08-01	Denied
Jonathan B. Ratner	Western Watersheds Project	PP-WY-Kemmerer-08-02	Denied
Scott Sobie	Fortuna (US) L.P.	PP-WY-Kemmerer-08-03	Denied
Brooke S. Bell	Anadarko Petroleum Corporation	PP-WY-Kemmerer-08-04	Granted in Part
Coalition of Local Governments	Coalition of Local Governments		Denied
	Sweetwater County		Denied
	Uinta County Commissioners	PP-WY-Kemmerer-08-05	Denied
	Lincoln Conservation District	PP-WY-Kemmerer-08-05a - f	Denied
	Sweetwater County Conservation District		Denied
	Uinta County Conservation District		Denied
	Lincoln County Commissioners		Granted in Part
David R. Brown	BP America Production Company	PP-WY-Kemmerer-08-06	Granted in Part
Kathleen M. Sgamma	Independent Petroleum Association of Mountain States (IPAMS)	PP-WY-Kemmerer-08-07	Granted in Part
Tim Howard	Gary-Williams Production Company	PP-WY-Kemmerer-08-08	Granted in Part
R. Jeff Richards	Rocky Mountain Power	PP-WY-Kemmerer-08-09	Denied
Bruce Pendery	Wyoming Outdoor Council, et al	PP-WY-Kemmerer-08-10	Denied

Issue Topics and Responses

National Environmental Policy Act

Issue number: PP-WY-KEMMERER-08-0002-54

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue Excerpt Text:

This not only violates FLPMA and its regulations, but it also violates NEPA's policy of full public disclosure of the significant environmental impacts, affected environment, reasonable alternatives, and changed circumstances. 40 C.F.R. § 1500.1(b) (requiring "that environmental information is available to public officials and citizens before decisions are made and before action is taken"); id. § 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse

impacts or enhance the quality of the human environment"). See also id. § 1506.6 (public involvement); id. § 1501.7(a) (1) (public participation in scoping); id. § 1502.9(c) (requiring agency to prepare supplements to draft or final EISs if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "ensures that the agency. . . will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience."); *Blue Mtns. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (agency analysis must be "fully informed and well-considered").

Summary: The BLM did not subject the Proposed Resource Management Plan to full public disclosure under the National Environmental Policy Act.

Issue 1

NEPA- Response to Comments: The BLM failed to adequately respond to comments and ignored information submitted during the planning process.

Response

The BLM complied with the NEPA regulations at 40 CFR § 1503.4 by assessing and considering all substantive comments received on the DRMP/DEIS. All comments received were reviewed and analyzed to determine whether the comments were substantive. All substantive comments were analyzed to determine if the comment warranted adding or modifying the analyses by making factual corrections or explained why the comment did not warrant any action. Some of the information received was not pertinent to an RMP-level document and more appropriate for use on a site-specific basis. The BLM summarized the issues raised by each comment letter and provided a substantive and meaningful response, including the BLM's basis or rationale. This process led to revision and clarification of decisions and analysis that were presented in the PRMP/FEIS.

Issue 2

Impact Analysis: The BLM failed to provide an adequate analysis of the impacts related to particular resources/uses.

Response

The PRMP/FEIS assesses and discloses the environmental consequences of the Proposed Plan and alternatives in Chapter 4. The PRMP/FEIS, as required by 40 CFR § 1502.16, includes a discussion of the environmental impacts for each alternative, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between the short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

The PRMP/FEIS presented the decision-maker with sufficiently detailed information to aid in whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with the alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent NEPA analyses for site-specific project and implementation level actions when such activities are proposed. This activity-level analysis will tier to the RMP analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be afforded the opportunity to participate in the NEPA process for these specific implementation actions.

Range of alternatives

Issue number: PP-WY-KEMMERER-08-0002-10

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM eliminated consideration of a No Grazing Alternative using arguments of multiple uses and sustained yield and the Taylor Grazing Act. However, the BLM is not obligated to continue authorizing uses which degrade resources and create conflicts, such as livestock grazing. A recent decision by Interior Board of Land Appeals, Department of Hearing and Appeals (f.3), cited *NWF v. Bolten Ranch, Inc.* (f.4), stating, "The Secretary of the Interior is not limited by 43 CFR 4113.1 in determining whether to renew a grazing license. The secretary or his delegate is not obligated to issue a license or permit to an applicant. The issuance of such permits or licenses is committed to agency discretion." Beyond this, the BLM has described allotments in the Richfield (UT) Planning Area that it has already closed to livestock grazing covering 138,952 acres. Merely analyzing a No Action Alternative does not provide an adequate baseline with which to compare direct, indirect or cumulative impacts. Through its analysis, the BLM has accepted

the status quo as its baseline, therefore burying the impacts occurring under the current land use plan for the past two decades and now adding the impacts of its proposed action as if past impacts did not occur.

Issue number: PP-WY-KEMMERER-08-0002-46

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, the RMP does not analyze the baseline condition of the planning area OHV use. The BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, micro-biotic crusts, fish and wildlife, and native vegetation. There is no analysis of the extent of user created roads and trails, or the loss in wilderness or ACEC quality resources due to OHVs. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential environmental consequences. See 40 C.F.R.

§ 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment"). Unless and until the BLM provides this information, the public lands should be closed to OHV use. Likewise, as a recognized surface-disturbing activity, livestock grazing and trampling has similar impacts and until its effects are disclosed and corrected, the BLM should close the lands to livestock grazing.

Issue number: PP-WY-KEMMERER-08-0002-9

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In addition to no differentiation in stocking rates, there is no difference in the amount of acres of public lands the BLM considered leaving open, or available, for grazing. All alternatives continued the status quo of maintaining the entire Field Office open to grazing by livestock. In doing so, the BLM has failed to resolve livestock conflicts with low-impact recreation, fish and wildlife, erodible soils, biological

crusts and other resources by including meaningful alternatives to protect these important resources. This is unreasonable. The FEIS states that conflicts will be resolved at the site-specific level, yet fails to analyze the effectiveness of this method from the current RMP. NEPA requires that all alternatives must be reasonable. See 40 C.F.R. §§ 1502.14 (EISs must "[r]igorously explore and objectively evaluate all reasonable alternatives") (emphasis added); 1508.25 (scope of alternatives considered in an EIS must consist of "reasonable courses of actions"). Note also that a 2001 BLM Instruction Memorandum states, "The impacts of all alternatives addressed must be fully analyzed in the NEPA document. They must also reflect the actual situation on the ground. (f.2). The alternatives in the RMP do not satisfy this requirement because they do not reflect the actual situation on the ground. The Proposed RMP, like the Draft, still fails to present and analyze a reasonable range of alternatives that comply with the planning criteria and existing law. Furthermore, the BLM, by leaving the entire Field Office open to livestock grazing, with its documented impacts to sensitive, unique and irreplaceable resources, has failed to meet one of FLPMA's major objectives, to accelerate restoration (43 CFR 4100.0-2).

Summary

The BLM failed to analyze a reasonable range of alternatives and use adequate baseline data in its analysis.

Issue 1

Range of Alternatives- Grazing: The PRMP FEIS does not provide a reasonable range of alternatives with respect to livestock grazing.

Response

The BLM considered a reasonable range of alternatives with respect to livestock grazing. The BLM Kemmerer Field Office identified potential areas of no livestock grazing in the range of alternatives (FEIS Table 2-3, Pg 2-80, 81). Alternative B identified the following areas as potentially closed to livestock grazing: Lost Creek/Ryan Creek Cooperative Resource Management Plan area, isolated BLM tracts, coal mines, sensitive cultural sites, designated camping areas, oil and gas production facilities, and the Mike Mathias Wetlands at Wheat Creek Meadows. The preferred alternative (Alternative D) allocated 827 AUMs in the Lost Creek/Ryan Creek CRMP area solely to wildlife, and closed designated camping areas to livestock grazing. In addition, the Mike Mathias Wetlands at Wheat Creek Meadows and some sensitive cultural sites are generally excluded from livestock grazing. The planning area is considered suitable for

consideration of livestock grazing and adjustments to authorized use will follow 43 CFR 4100. An alternative, closing the planning areas to all grazing, was not considered in detail because it did not meet the purpose and need of the PRMP/FEIS (See FEIS pg 2-5).

The discussion of the comparative impacts of the livestock grazing management scenarios acknowledges potential adverse and beneficial impacts to the vegetation, soils, wildlife habitat, air and water of the planning area through the application of the various alternatives for livestock grazing. (See FEIS pgs 4-11 through 25; 4-66, 67, 69, 70, 72; 4-77, 79, 81, 83; 4-118, 120, 122, 123; 4-130; 4-135, 139, 140, 143, 144, 147, 148, 150, 152.) The FEIS states that reductions in AUMs (the amount of authorized livestock grazing use in Animal Unit Months) may occur if rangeland health standards and/or monitoring indicates a grazing use adjustment is necessary (FEIS Table 2-3, Pg 2-80). In accordance with current policy, such adjustments in grazing use are analyzed on a site-specific basis.

Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. After appropriate NEPA analysis, changes to livestock management deemed necessary to meet or progress towards meeting management objectives are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and to maintain or enhance land health. Appendix O of the FEIS discusses Best Management Practices, which will be evaluated to make determinations about specific projects when further analysis is done on a site-specific basis.

Issue 2

Range of Alternatives - OHV use: The PRMP/FEIS does not provide a reasonable range of alternatives with respect to OHV use.

Response

In addition, the BLM identified a range of potential management actions to resolve resource conflicts, including closing areas to OHV use, in the alternatives discussion in Chapter 2 (FEIS Table 2-3, pages 2-91 thru 2-94). The BLM considered the affects of OHV use on air quality (see FEIS Appendix J, Air Quality Technical Support Document) and analyzed these and other consequences of the range of alternatives for OHV use in the planning area in Chapter 4 (Air Quality – page 4-9; Soils – pages 4-16 & 17; Water – pages 4-20 & 21.) In addition, the FEIS identifies OHV use as a specific impact to biological resources, including vegetation, invasive nonnative species spread, wildlife habitats including special status species, migratory game birds and neotropical migrants in an extensive discussion from page 4-58 through page 4-161. The discussion also identifies impacts of OHV use as a surface disturbing and wildlife disruptive activity.

Issue 3

Baseline Data-Grazing: The BLM did not use adequate baseline data with respect to grazing and grazing impacts.

Response

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of baseline data associated with livestock grazing use. Chapter 3 includes livestock grazing use information and trends in the planning area as well as discussion of livestock grazing use/resource conflicts (FEIS 3-123 to 3-126).

Issue 4

Baseline Data - OHV use: The BLM did not use adequate baseline data with respect to OHV use and OHV impacts.

Response

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of baseline data associated with OHV use. Chapter 3 includes OHV use descriptions and trends in the planning area as well as discussion of OHV use/resource conflicts (pages 3-130 & 131.) Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively). The BLM KFO also continually inventories and monitors the planning area with respect to wilderness values, soils, vegetation, riparian condition, invasive non-native species, and OHV and livestock use. Areas in the planning area that experience high levels of OHV use are identified - see FEIS appendix I. The expansion of trails by OHVs is also discussed. As described in Chapter 3, increased OHV use during the past 10 years in the planning area has created some identifiable concerns such as degradation of water quality, loss of vegetation, and impacts on wildlife in crucial winter habitat (page 3-131.)

New proposal in Final EIS was not in Draft EIS

Issue number: PP-WY-KEMMERER-08-0002-44

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In order to develop a reasonable range of alternatives and analyze the impacts that each alternative will have, it is essential to know the baseline conditions of the planning area. Yet, The BLM has not presented baseline inventories and evaluations of the impacts that livestock grazing has had, and continues to have, on ecosystems and specific ecosystem components such as soils, micro-biotic crusts, fish and wildlife, and native vegetation. This violates NEPA's

requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential direct, indirect and cumulative environmental consequences. See 40 C.F.R. § 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment"). Unless and until the BLM provides this information, the public lands should be closed to livestock grazing.

Issue number: PP-WY-KEMMERER-08-0002-47
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP did not reveal the extent of its surveys, whether they included the entire planning area or portions thereof, or represented all plant and soil communities. No data was presented for ecological site inventories to document the current condition of plant and soil communities relative to potential. There was no analysis of the percent of sites (acres of plant and soil communities) experiencing accelerated erosion.

Issue number: PP-WY-KEMMERER-08-0002-48
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP fails to demonstrate that the BLM has complied with its continuing inventory mandate, for several key resources, including the wilderness resource, native vegetation, riparian areas, micro-biotic crusts, weeds, invasive, OHV and livestock-damaged areas. FLPMA requires the BLM to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values)." 43 U.S.C. § 1711(a). The "inventory shall be kept current so as to reflect changes in condition and to identify new and emerging resource and other values." Id. (emphasis added). See also 43 C.F.R. § 1610.4-3 (requiring District or Area Manager to "arrange for resource, environmental, social, economic and institutional data and information to be collected" and stating that "[i]nventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements"); Public Rangelands Improvement Act, 43 D.S.C. §§ 1901-1908, 1903(a) (Secretary "shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands") (emphasis added). FLPMA requires the land use planning process under which the RMP has been developed to rely upon the inventory of the public lands. 36 C.F.R. § 201(a). The BLM does not provide the requisite inventory data pursuant to these requirements.

Issue number: PP-WY-KEMMERER-08-0002-56
Organization: Wyoming Western Watersheds

Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

In order to engage in a meaningful RMP process, and one that complies with the BLM's management statutes, regulations, and internal guidance, the BLM must inventory for soils and crusts, and the effects of grazing (and OHV use) on soils and crusts. See 43 C.F.R. § 1610.4-3 (requiring data and information collection with an eye to subsequent monitoring); Handbook at 111-3. The BLM must assess the existing and collected information. See Manual at 1601.02B (evaluate resource information considering biological resources); Handbook at 111-1 (discussing the differences among inventory, assessment and monitoring). The BLM must establish soil and biological crust condition goals and objectives to be attained. 43 C.F.R. § 1601.0-5(k) (3); 43 C.F.R. § 4100.0-8; Manual at 1601.06.A.2 (desired outcomes); Handbook at II-I. Further, the BLM must establish program constraints and general management practices, including standards needed to achieve soil and biological crust condition goals and objectives. 43 C.F.R. § 1601.0-5(k) (4); 43 C.F.R. § 4100.0-8; Handbook at 11-2 to 11-3; 111-5 (defining standards to include "land health standards" and requiring the BLM to "identify how land health standards are to be considered in relationship to the management prescription for, and uses and activities occurring on, public lands" and discussing "allowable uses and actions to achieve desired outcomes"). Finally, the BLM must provide for continued monitoring of biological crusts. 43 C.F.R. § 1610.4-3. The RMP falls far short of these requirements.

Issue number: PP-WY-KEMMERER-08-0002-58
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

C) Inventory of Weeds and Vectors for the Spread of Weeds The RMP fails to present any baseline or other inventory data on weeds and invasive, in particular, the most significant vectors spreading weeds: livestock grazing, oil and gas, roads and OHVs. The RMP fails to mention or discuss several very important scientific studies discussing the interaction between livestock grazing, biological crusts, weeds, and native plant species. See Valone et al. (2002); Stohlgren et al. (2001); Anderson & Inouye (2001); Belsky & Gelbard (2000). This lack of analysis coupled with the agency's masking of livestock grazing as a primary cause of the spread of weeds suggests that the agency is in denial with

respect to the main causes of this epidemic problem on the public lands, which is related to the current fire issue as well. The problem cannot be controlled if broad-scale documents such as this RMP do not begin by acknowledging the main causes of the problem, discussing the best available science, and presenting baseline inventories that can be used to

address the problem. Until the BLM has undertaken the required inventory of weeds and their primary vectors of spread, and at least assessed the planning areas in light of the best available science, it is arbitrary and capricious to authorize grazing at continued levels and on status quo allotted lands with no current inventory data to support these decisions.

Summary

The BLM did not adequately inventory resources in the Kemmerer PRMP, in violation of FLPMA.

Issue 1

Baseline Data: The BLM did not use adequate baseline data for its analysis and necessary inventories and studies were not conducted.

Response

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of baseline data associated with resource uses, social and economic conditions, and current status of air quality, water quality, soils, vegetation, and wildlife including special status and Threatened and Endangered Species (See FEIS 3-4 through 3-184.) The latest monitoring and inventory data were used including, but not limited to, rangeland health assessments, coordinated weed management reports, PFC assessments, sage grouse lek counts, soils inventories, OHV use inventories, authorized rights-of-way information, and VRM inventory including the visual quality evaluation. Chapter 3 provides the overview of this data which is part of the greater management situation analysis dataset for the Kemmerer Field Office.

Issue 2

Baseline Data- Weeds and Invasives: BLM did not use adequate baseline data for its analysis and necessary inventories and studies were not conducted.

Response

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of baseline data associated with invasive non-native species (See FEIS 3-90 through 3-93.) The latest monitoring and inventory data were used including, but not limited to, rangeland health assessments, coordinated weed management reports, and reclamation monitoring information. Chapter 3 provides the overview of this data which is part of the greater management situation analysis dataset for the Kemmerer Field Office.

Issue 3

Baseline Data-Biological Crusts: BLM did not use adequate baseline data for its analysis and necessary inventories and studies were not conducted.

Response

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of soil biological and physical crusts and the issues and importance of these features (See FEIS 3-15.) Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.1.2 of the PRMP/FEIS (p. 3-12 to 3-17). The latest monitoring and inventory data were used including, but not limited to, rangeland health assessments and soils inventories. Chapter 3 provides the overview of this data which is part of the greater management situation analysis dataset for the Kemmerer Field Office.

The RMP does not address the more site-specific issues related to soils and biological soil crusts. The goal of the management plan is to allow for and ensure maintenance and improved soil biological crust management. The BLM does not dispute the discussion given or the importance of biological crusts in reducing erosion, retaining soil moisture, and reducing impacts from invasive weeds (FEIS pg 3-15). Currently, the BLM does not have a sufficient inventory or identified ecological site characteristic that would allow a detailed discussion of impacts to these resources. Site-specific impacts to biological soil crusts would be covered in implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

Issue 4

FLPMA - Inventory Mandate: The BLM failed to comply with its continuing inventory mandate under FLPMA for key resources.

Response

Section 201 of FLPMA (43 USC § 1711(a)) states: “The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values...”
Section 202 of FLPMA (43 USC § 1712(c)(4)) states: “In the development and revision of land use plans, the Secretary shall... rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.”

The KFO used information collected since the time of the 1986 RMP primarily through monitoring and project inventories as a baseline inventory of information for the planning area, which has been updated on a continuing basis.

Chapter 3 provides the overview of this data which is part of the greater management situation analysis dataset for the Kemmerer Field Office. The Chapter 3 description of baseline data includes resource uses, social and economic conditions, and current status of air quality, water

quality, soils, vegetation, and wildlife including special status and Threatened and Endangered Species (See FEIS 3-4 through 3-184.) The latest monitoring and inventory data were used including, but not limited to, rangeland health assessments, livestock authorized use reports and billed AUMs reports, coordinated weed management reports, PFC assessments, sage grouse lek counts, wildlife observation reports, cultural resources inventory data, soils inventories, OHV use inventories, OHV and snow machine license data, authorized rights-of-way information, wilderness study area monitoring data, and VRM inventory including the visual quality evaluation. Data and information that was not specifically collected by the BLM was provided by state and local government cooperators. Baseline data regarding livestock grazing is included in Section 3.6.2 of the FEIS and includes information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-123 to 3-126). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in FEIS Chapter 3 (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 and 3.4.3 respectively). Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.1.2 of the PRMP/FEIS (p. 3-12 to 3-17). Baseline data on noxious weeds and invasive plant species is included in Section 3.4.9 of the PRMP/FEIS (p. 3-89 to 3-93).

Designations, withdrawals, and “administratively unavailable”

Issue number: PP-WY-KEMMERER-08-0005-17
Organization: Coalition of Local Governments
Protester: Constance Brooks

Issue excerpt Text:

The BLM misunderstands CLG's objection to the use of the administratively unavailable classification because there is no question that the BLM may elect not to allow mineral leasing on public lands under the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §226. As explained in the legal memorandum, there is also no question that after 1976, Section 204 of FLPMA establishes the procedures that BLM must follow to do so. 43 U.S.C. 1714c. The 1920 MLA must be exercised in accordance with the new and mandatory procedures enacted in 1976 after the passage of FLPMA.

Issue number: PP-WY-KEMMERER-08-0007-14
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

5. Management Areas: The PRMP specifies two Management Areas - Rock Creek/Tunp at 45,863 acres (Table 2-3, page 2-104), and Bear River Divide at 74,258 acres ((Table 2-3, page 2-105) - that are unavailable for new fluid mineral leasing. However, Management Areas are not provided for under FLPMA and 43 CFR 1600 planning regulations as a means for placing large areas off limits to

development. Doing so violates the principle of multiple use.

Issue number: PP-WY-KEMMERER-08-0007-16
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

The DRMP is clear that the resources contained in Rock Creek/Tunp and Bear River Divide are not sufficiently unique to warrant designation as an Area of Critical Environmental Concern. Land managers already have several tools that can be applied in these areas to protect wildlife, such as timing stipulations, controlled surface use, and mitigation. Therefore, this classification should be removed in the final RMP/ROD.

Issue number: PP-WY-KEMMERER-08-0007-18
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

By a 2006 Directive from the BLM Director, the BLM cannot effect a de facto closure of thousands of acres of public lands to oil and gas leasing without following FLPMA's Section 204 withdrawal procedures: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly

justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 OM 1, and the BLM regulations at 43 C.F.R. 2310.” BLM Energy and Non-Energy Mineral Policy (April 21, 2006). The BLM formally adopted this policy through IM 2006-197. Consequently, the 2006 Energy and Non-Energy Mineral Policy with which the BLM must comply, conditions the closure of lands available to mineral exploration and development on FLPMA’s withdrawal procedures.

Supp. 383, 392-93 (0. Wyo. 1980) (The BLM could not decline to issue leases in RARE II areas without complying with §204 of FLPMA); Mountain States Legal Foundation v. Hodel, 668 F. Supp. 1466, 1474 (0. Wyo. 1987) (Forest Service violated FLPMA when it imposed an oil and gas leasing moratorium pending completion of its land use plan). These decisions do not hold that the BLM must offer public lands for mineral leasing, only that it must follow FLPMA’s withdrawal and reporting procedures, when it wishes to foreclose that land use.

This direction is consistent with legal precedent. See Mountain States Legal Foundation v. Andrus, 499 F.

Summary

The BLM improperly designated lands in the Kemmerer PRMP, thereby removing such lands from multiple use consideration, including mineral development.

Issue 1

Withdrawals: BLM cannot administratively withdraw more than 5,000 acres

Response

There are no withdrawals of greater than 5,000 acres proposed under the Proposed Plan. The action alternatives do propose removing areas from mineral leasing which is discretionary and does not require a withdrawal.

Withdrawals are defined by FLPMA § 103(j) as follows:

the term “withdrawal” means *withholding an area of Federal land from settlement, sale, location, or entry*, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (emphasis added).

The terms “settlement,” “sale,” “location,” or “entry” are all terms contemplating transfer of title to the lands in question, particularly the patenting or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a “sale” of public land under Section 203 of FLPMA and making public lands unavailable to leasing is not a “withdrawal” as described in Section 204 of FLPMA. Therefore,

the BLM was not required to complete the procedures associated with a withdrawal when it decided to close 77,679 mineral lease acres in the 1.6 million acre planning area.

Issue 2

Areas of Critical Environmental Concern: The resources contained in the Rock Creek/Tunp and Bear River Divide ACECs do not sufficiently warrant designation.

Response

These areas were assessed for ACEC designation and found that they do not meet importance criteria as defined in the handbook. The assessment sheets are available on line at <http://www.blm.gov/rmp/kemmerer/docs.htm>. The Rock Creek/Tunp and Bear River Divide areas were not provided a formal designation, but were identified as a land use allocation of specific prescriptive management. The areas are placed under the “Special Designations” section for ease in identifying prescriptions.

Issue 3

Administratively unavailable is the same as withdrawal: The BLM improperly designated lands in the Kemmerer PRMP, thereby removing such lands from multiple use consideration.

Response

The quotation in the above protest, apparently taken from the BLM Energy and Non-Energy Mineral Policy (April 21, 2006), says in part “...unless withdrawal or other administrative actions are clearly justified...” Thus, administrative action (e.g. “administratively unavailable”) is an option for removing lands from consideration for leasing. In addition, the FLPMA withdrawal language cited by (protester) does not apply to those acres administratively unavailable to oil and gas leasing outside Wilderness or WSAs.

Withdrawals are defined by FLPMA § 103(j) as follows: the term “withdrawal” means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency. 43 U.S.C. § 1702(j) (emphasis added).

The terms “settlement,” “sale,” “location,” or “entry” are all terms contemplating transfer of title to the lands in question, particularly the patenting or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a “sale” of public land under Section 203 of FLPMA, and a closure to leasing is not a “withdrawal” as described in Section 204 of FLPMA. Therefore, the BLM was not required

to complete the procedures associated with a withdrawal when it decided to designate acres administratively unavailable to oil and gas leasing in the Kemmerer PRMP/FEIS.

Issue 4

Terminology misuse - “Management areas”: Management Areas are not provided for under FLPMA and 43 CFR 1600 planning regulations as a means for placing large areas off limits to development. Doing so violates the principle of multiple use.

Response

The BLM H-1601 Land Use Planning Handbook provides the means to identify land use allocations and prescriptions on a landscape scale. The term “management area” was used in the PRMP FEIS to describe a physical land area and not as an Administrative Designation (H-1601-1, Appendix C pg. 27). The management prescriptions for Rock Creek/Tunp and Bear River Divide are consolidated under the “Special Designations” section of the document for organizational reasons. This method provides for public disclosure of the consequences of the management prescriptions for these areas.

Air Quality

Issue number: PP-WY-KEMMERER-08-0002-15

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP also fails to analyze impacts that surface disturbing activities such as off road vehicle use and livestock grazing have on air quality. These activities reduce soil cover and increase soil erosion and increase the ability of wind and water to erode soil erosion and increase the ability of wind and water to erode soils (f.8, 9). (Papers enclosed). The BLM did no dispersion modeling to account for the effects of reduced soil cover from decades of livestock grazing. EPA publishes manuals, factors and formulas for calculating these effects for air quality from area sources, mobile sources, stationary sources and roads

(f.10). This information has been available for many years and is updated on an ongoing basis. Recent research has shown human activities, including livestock grazing, have increased dust deposition rates by 500% post-settlement (f.11).

Issue number: PP-WY-KEMMERER-08-0007-7

Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen Sgamma

Issue excerpt Text:

The PRMP states the BLM will 'Consider a program to offset emissions proposed by the RMP, and consider a regional program to reduce emissions from existing sources. . ." (P 2, 38). The PRMP provides no description of the types of mitigation measures these programs would require.

Summary

The BLM's air quality analysis is flawed in its estimation of effects from OHV use and grazing.

Response

The PRMP/FEIS considered the affects of OHV use and livestock grazing on air quality. PRMP/FEIS Appendix J, Air Quality Technical Support Document: tables J-60 through J-68,

and table J-103. The FEIS fully assesses and discloses the environmental consequences of the PRMP and alternatives in Chapter 4. As required by 40 CFR § 1502.16, the PRMP/FEIS includes a discussion of the environmental impacts of the alternatives including the proposed action, adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented (FEIS chapter 4). The FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the PRMP or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with the alternatives.

Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action. The BLM will conduct subsequent NEPA analyses for site-specific project and implementation-level actions, such as for oil and gas field development, realty actions, allotment management plans, public land use authorizations, or other proposed ground disturbing activities. PRMP/FEIS Section 2.3.18, p. 2-20. These activity plan-level analyses will tier to the RMP EIS and expand the environmental analysis when more specific information is known. As required by NEPA, the public will be offered the opportunity to participate in the process.

It is not possible to anticipate specific projects and specific air quality mitigation needs at the resource management planning development phase. Mitigation will be considered when specific projects are proposed and when additional site specific information is available. Special requirements to alleviate air quality impacts may be included on a case-by-case basis in future use authorizations. Appendix L of the PRMP/FEIS includes general air quality mitigation measures that may be considered and applied in the planning area as appropriate (including control technologies). These control technologies are not requirements. The PRMP/FEIS does not prescribe a particular mitigation measure. The BLM may require that potential direct impacts from the proposed action be no greater than a specified level (i.e., no more than one day of visibility impact of one deciview from the project alone), however, the proponent would then determine how to meet that requirement.

Quantitative vs. qualitative analysis

Issue number: PP-WY-KEMMERER-08-0006-2
Organization: BP America Production Company
Protester: Dave Brown

Issue excerpt Text:

Unfortunately, the RMP does not provide detailed information on how emissions were calculated. Thus, it was not possible for BP to evaluate the calculation procedures, nor the specific assumptions used, to estimate changes in emissions as a result of the proposal. This procedural irregularity is of significant concern and prevented a critical portion of the analysis from being appropriately critiqued. In

reviewing the provided oil and gas emission estimates, BP has identified issues that merit further critical review but a complete analysis was not possible because the data were unavailable.

Issue number: PP-WY-KEMMERER-08-0006-4
Organization: BP America Production Company
Protester: Dave Brown

Issue excerpt Text:

In reality, emissions will decrease over time as production decreases. Any new project will need to address how emissions will change over time in

response to declining production. This seriously overestimates the air quality emissions from production operations.) BP presented detailed comments on control technology applicability; however, the BLM did not accept any of our comments. The largest area of concern regarding control technology is the suggested application of selective catalytic reduction (SCR) on engines. The BLM analysis should be revised. (See attached comment letter dated 10-11-2007).

Issue number: PP-WY-KEMMERER-08-0010 -61
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

This "analysis" is insufficient to meet the requirements of NEPA. An EIS must consider the environmental impacts of a Federal action; it must consider the effects of the action. A consideration of the environmental effects of an action requires a consideration of both the direct and indirect effects. 40 C.F.R. § 1508.8. Here the BLM has provided no such analysis, it has presented an inventory of the likely increase in pollutants but it has made no attempt to consider the direct effects that "are caused by the action and occur at the same time and place" nor has it made any attempt to consider indirect effects "that are caused by the action and are later in time or farther removed in distance." Id. All that the BLM does is state that the tonnage of pollutants will increase and it anticipates that air quality will remain within legal standards. Yet it also states that there is the "potential" for significant impacts relative to Prevention of Significant Deterioration (PSD) increments, visibility impacts in Class I areas, and deposition levels exceeding thresholds. Table 2-4. There is even some potential for violation of Wyoming and National Ambient Air Quality Standards (NAAQS). Id. Given these potential impacts far more was required to meet the requirements of NEPA than a simple inventory of anticipated pollution emission levels.

Issue number: PP-WY-KEMMERER-08-0010 -62
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The Kemmerer RMP does not present the "detailed statement" on the "environmental impact of the proposed action" or the "adverse environmental effects which cannot be avoided should the proposal be implemented" that NEPA requires. 42 U.S.C. §§ 4332(2)(C)(i)-(ii). It is nothing more than an inventory of emissions with no concrete conclusions

whatsoever regarding potential impacts of the emissions. This is a violation of NEPA. The BLM is required to "consider every significant aspect of the environmental impact of a proposed action." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 98 S.Ct. 1197, 1216 (1978). As recognized by the courts, "an agency may not avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from an RMP merely by saying that the consequences are unclear or will be analyzed later when an [environmental assessment] is prepared for a site-specific program proposed pursuant to the RMP." [T]he purpose of an [EIS] is to evaluate the possibilities in light of current and contemplated plans and to produce an informed estimate of the environmental consequences. ... Drafting an [EIS] necessarily involves some degree of forecasting." Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002) (underlines added).

Issue number: PP-WY-KEMMERER-08-0010 -64
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The BLM acknowledges that implementation of the RMP may at a minimum cause significant impacts to visibility, PSD increments and deposition threshold, which is more than enough to trigger a requirement for a full and complete analysis regardless of what DEQ may require or do at some point in the future. And as will be discussed below, the Kemmerer Field Office already exceeds the NAAQS for ozone, which emphasizes the need for a quantitative analysis.

Issue number: PP-WY-KEMMERER-08-0010 -65
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We must note that this situation stands in inexplicable contrast to what is going on just across the border in Colorado. In the Little Snake Field Office the BLM is conducting a quantitative air quality impacts analysis as part of that RMP revision. It is utterly arbitrary to have one Field Office engaging in a quantitative analysis while a nearly-adjacent Field Office engages in a qualitative analysis. The two analyses are entirely incomparable and therefore of greatly reduced utility. This is totally contrary to rational land use planning and management, as well as NEPA. This raises many of the consistency and coordination issues discussed above. The BLM should not approve the proposed

Kemmerer RMP until a far more useful and informative quantitative air quality impacts analysis is completed so as to allow for fully informed land management.

Issue number: PP-WY-KEMMERER-08-0010 -72

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

Moreover, framed in the negative, the BLM cannot

possibly claim that the Kemmerer RMP will "provide for compliance" with the Clean Air Act and other air quality standards and plans because it affirmatively states in the RMP that it has almost no idea of what impacts will result as a consequence of implementation of the RMP due to the fact it has only engaged in a qualitative analysis. Ignorance does not allow the BLM to find-as it must under the explicit terms of FLPMA-that the Kemmerer RMP will "provide for compliance" with clean air protection requirements.

Summary

The BLM inappropriately relies on a qualitative approach to address potential impacts to air resources, and is inconsistent with the more quantitative analysis of air quality impacts adopted by the BLM Little Snake Resource Area office in Colorado.

Response

Per agreement with the air quality stakeholders, including the Wyoming Department of Environmental Quality (WDEQ) and EPA, a qualitative methodology was used to identify air emissions and determine relative impacts (FEIS Appendix J, Page J-9.) The planning area activities that impact air quality have not changed appreciably since 2001 (FEIS 4-9), so a qualitative method was selected in the Kemmerer planning area because of a lack of specific information on location, types and magnitude of potential projects (FEIS Appendix J, Page J-9.) Emissions summaries and estimates of development were made based on historic trends in the KFO (FEIS Appendix J, Page J-10.) These estimates were used to calculate potential emissions for activities occurring on BLM-administered surface. In most cases, year 2011 and 2020 are presented in the summary tables (FEIS Appendix J, Tables J-6 through J-113.) The detailed emission calculation tables used for the qualitative analysis can be provided on a CD, upon request.

The RMP does not authorize any development that will result in air quality impacts. Any proposed project would be subject to additional analysis of possible air effects before approval. Appropriate site-specific air quality analysis will be done on future projects, including appropriate NEPA analysis. The BLM's Little Snake Field Office took the same approach that was taken by the Kemmerer Field Office when completing air quality analysis in the Little Snake DRMP/DEIS (released in early 2007). However, upon their review of the document, the EPA requested that the BLM Little Snake Field Office provide more detailed analysis showing how Class I airsheds, such as the Flattops and Mount Zirkel Wilderness Areas, will be affected by planning decisions. The BLM's willingness to respond to this specific request by the EPA for further information in the Little Snake RMP is not and should not be considered a reflection upon the adequacy of air quality analysis within the Kemmerer PRMP/FEIS.

Ozone impacts

Issue number: PP-WY-KEMMERER-08-0010 -66

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

B. The BLM Must Consider Ozone Pollution Impacts in the Kemmerer RMP. As currently written, the Kemmerer RMP provides no analysis of potential impacts from ozone pollution. The emissions of particulate matter (PM10 and PM2.5), nitrogen oxides (NOx), sulfur dioxide, volatile organic compounds (VOC) and hazardous air pollutants are specified, but ozone formation and pollution is not addressed, even though it is a criteria pollutant under the Clean Air Act. This is unacceptable and does not meet the requirements of NEPA.

Issue number: PP-WY-KEMMERER-08-0010 -67

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

Based on data presented in the Kemmerer RMP, the background concentration of ozone in the Kemmerer

Field Office is 75 parts per billion (Ppb), which equals the NAAQS. See Table J-3. (f.5) Thus, the Kemmerer Field Office is already in violation of the ozone NAAQS, which is 75 ppb. This clearly means a careful analysis of ozone issues is required before the Kemmerer RMP is approved and it heightens the need for a quantitative analysis of air quality issues, as discussed above. When the BLM's own cited data show it is already violating a legal standard this issue cannot be passed over.

Issue number: PP-WY-KEMMERER-08-0010 -69

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

This Table in the RMP continues to present the old, no-longer applicable NAAQS for ozone. The BLM seems to not acknowledge or consider the fact that the NAAQS has been changed by EPA and that the BLM's own data presented in the Table shows that the new NAAQS is violated in the Kemmerer Field Office.

Summary

The BLM does not acknowledge ozone in the PRMP/FEIS yet concentrations in the planning area already meet or exceed allowable limits.

Response

The potential impacts on air quality from the management decisions included in the PRMP/FEIS are included in Section 4.1.1.2 of the PRMP/FEIS (p. 4-7 to 4-12). Ozone pollution and impacts are described on page 3-6 and 4-8 of the PRMP/FEIS. The Wyoming Department of Environmental Quality (WDEQ) is responsible for developing and implementing the CAA and air quality standards (FEIS 3-11).

New NAAQS were effective in May 2008 (FEIS 3-6). There is one regulatory monitoring station in the planning area in Uinta County at Murphy Ridge (on the Wyoming/Utah border). Monitored ozone concentrations at Murphy Ridge are less than the applicable NAAQS. Monitored ozone exceedences were identified outside of the Kemmerer planning area in Sublette County in 2005 and 2006 (FEIS page 3-6). WDEQ is in the process of revising its air quality standards with regard to ozone. WDEQ has proposed that part of SW Wyoming be redesignated as non-attainment for 8 hour ozone. The area includes all of Sublette County, and parts of Lincoln and Sweetwater Counties; "The State of Wyoming recommended that all areas outside of the Upper Green River Basin under the jurisdiction of the Wyoming Department of Environmental Quality (exclusive of tribal lands) be designated as attainment/unclassifiable.

This recommendation is based on the quality assured and certified ozone monitoring presented in the following tables.” (Technical Support Document II, For Recommended 8-Hour Ozone Designation, For All Areas of the State Outside the Upper Green River Basin, March 26 2009). Please be advised, however, that none of the non-attainment area overlaps any part of the Kemmerer planning area.

The BLM is currently working in conjunction with WDEQ on the development of mitigation measures to comply with the new ozone standard (FEIS page 2-37, 3-11).

The PRMP does not actually authorize any development that will result in air quality impacts. A proposed project would be subject to additional analysis of possible air effects before approval. When a project is proposed with potential air quality impacts, a site-specific analysis would be done as part of the permitting process. No development of a new or modified source of air pollutants would be allowed to proceed unless it could be demonstrated that the proposed source or facility will not prevent attainment or maintenance of any state or federal ambient air quality standard, including ozone standards.

Clean Air Act compliance

Issue number: PP-WY-KEMMERER-08-0004-7
Organization: Anadarko Petroleum Corporation

Issue excerpt Text:

Thus, it is clear that Wyoming Air Quality Division (WAQD), which has the responsibility and authority to establish a monitoring network to ensure compliance with the ambient air quality standards for criteria pollutants, has done so. Therefore, the BLM's proposal is unnecessarily duplicative. The WAQD's monitoring network is more than sufficient to "define the background air quality associated with the federal actions approved under this RMP" as well as "track the changes in air quality over time." Therefore, the BLM should remove this proposal from the draft document.

Issue number: PP-WY-KEMMERER-08-0004-8
Organization: Anadarko Petroleum Corporation

Issue excerpt Text:

This policy addresses both potential offsets and potential controls for existing sources and is attached for your reference. Therefore, the BLM's proposal is again unnecessarily duplicative of the State's efforts. Moreover, as noted above, the BLM lacks the authority to impose any such reductions. Thus, APC requests removal of Record Numbers 1003, 1004, 1009 and 1011 from the PRMP.

Issue number: PP-WY-KEMMERER-08-0007-10
Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen Sgamma

Issue excerpt Text:

Another problem with the proposed air quality management actions is vague statements about the need for an air quality strategy. On page 2-37, table 2-3, record 1003 it states, "Establish within 1 year of approval of the RMP ROD, an air quality strategy to define the background air quality associated with federal actions under this RMP." This vague statement seems to be somewhat redundant with another management prescription to "Enhance existing criteria pollutant and AQRV monitoring on a project-specific or as-needed basis. Locations of AQRV monitors will be determined through a cooperative process" (Table 2-3, page 2-38, Record 1009). IPAMS supports monitoring, and industry certainly would like to be involved in discussions on the placement of monitors. However, we request that the ambiguous language on establishing an air quality strategy be removed in the ROD, as defining "the background air quality" is better described by record 1009 as establishing a monitoring program.

Issue number: PP-WY-KEMMERER-08-0007-6
Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen Sgamma

Issue excerpt Text:

2. The BLM Inappropriately Attempts to Regulate Air Emissions: In table 2-3, page 2-38, the PRMP states that the BLM would "facilitate discussions with

Wyoming DEQ and stakeholders to implement mitigations beyond the BLM's authority to reduce emissions from the current levels in the planning area." This language should be removed from in the final RMP Record of Decision, as clearly the BLM cannot implement something that is beyond its authority or jurisdiction.

Issue number: PP-WY-KEMMERER-08-0007-9
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

Further, IPAMS is very concerned that the vague language in the PRMP leaves the window open for the BLM to promulgate air quality mitigation measures in the future that may be separate from this RMP (without providing any assurances that such measures would go not beyond the BLM's authority

to regulate air emissions under the CAA). IPAMS requests that the BLM revise the vague language with regards to air quality management actions in the ROD. The BLM's attempt to limit emissions falls outside of the Congress's deliberate regulatory scheme. The CAA does not confer upon the BLM the ability to regulate air emissions. See generally 42 HS.e. §§ 7401 - 7671q (as amended). Instead, under the CAA, the WDEQ-AQD and EPA must establish such emission controls through a formal rulemaking process. The Federal Land Policy and Management Act then obligates the BLM to provide for compliance with existing air quality regulations established by WDEQ-AQD or, where applicable, EPA. See 43 U.S.C. § 1712(c)(8) ("In the development and revision of land use plans, the Secretary shall. . . provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans [.]"). "

Summary

The BLM inappropriately claims regulatory authority to enforce requirements under the CAA and duplicates the work of the WDEQ.

Response

The BLM must comply with and cannot authorize any action unless it complies with all applicable local, state, tribal or federal laws, rules, regulations and implementation plans, as required by the FLPMA. The State of Wyoming has primacy with regard to implementation of the Clean Air Act (FEIS 3-11). In accordance with FLPMA, any activities authorized by the BLM are required to comply with substantive environmental laws, including the Clean Air Act. The PRMP/FEIS appropriately identifies the regulatory authority of the air quality regulatory agencies and the relationship between the BLM and these agencies (FEIS 3-11). The Goals, Objectives, and Management Actions for Air Quality in the PRMP were developed through a collaborative process with WDEQ and EPA. Management Actions 1003, 1004 and 1009 (FEIS page 2-37, 38) describe the BLM's commitment to work cooperatively with the State of Wyoming to maintain monitoring as needed within the scope of the BLM's authority. The State of Wyoming would lead any effort to establish new air quality compliance monitoring. Management Action 1011 describes the BLM's commitment to work cooperatively with the State of Wyoming to establish any land management levels-of-concern for air quality (FEIS page 2-38).

Because the PRMP does not actually authorize any oil and gas development, any proposed project would be subject to additional analysis of possible air effects before approval. Site-specific NEPA air quality analyses, including modeling, as appropriate, would be done when specific projects are put forth by potential proponents. Project-specific photochemical grid model analyses are currently underway for several oil and gas drilling projects in SW Wyoming.

(Please see <http://www.blm.gov/wy/st/en/info/NEPA/documents.html> for the BLM Wyoming NEPA documents).

No development of a new or modified source of air pollutants would be allowed to proceed unless it could be demonstrated that the proposed source or facility will not prevent attainment or maintenance of any state or federal ambient air quality standard.

Definition of terms

Issue number: PP-WY-KEMMERER-08-0010 -55

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

A second need for improvement in the oil and gas provisions applicable to the Kemmerer RMP before it is adopted is a need to adopt a provision like is made in the Rawlins RMP for the application of "intensive management" to certain oil and gas leasing and development activities. To ensure consistency between nearby Field Offices, the provision for intensive management should be provided for in all plans under revision. To have this provision applicable in one nearby-adjacent Field Office but not in another is not rational. As discussed in our protest of the Rawlins RMP, which is pending before the BLM, the application of intensive management should be made to all oil and gas development activities, not just those in "special places," and the definition of intensive management should be modified as specified in the Rawlins RMP protest.

Issue number: PP-WY-KEMMERER-08-0010 -57

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

In a similar vein, there is a need for the following

change in the Kemmerer RMP before it is approved. Repeatedly in the RMP for many different resources or resource concerns it is stated that various activities will be "avoided" or that the BLM must "avoid" taking the action. As we discussed on pages 8-9 of our comments on the RMP draft EIS, this term must be defined. "Avoid" is an inherently vague term. The use of this term if it is undefined will assure future delay, uncertainty and conflict. The objective of the BLM land use planning is to provide for a "rational, consistently applied set of regulations and procedures which promote the concept of multiple use management. . . ." 43 C.F.R. § 1601.0-2 (emphasis added). There is no guarantee that the term "avoid" will be "consistently applied" if it is undefined, rather it is all but certain there will be great inconsistency and variability in its application. As we stated in our comments, this provision should be defined to mean that an activity will not be permitted unless there is "no practicable alternative available." This or a similar definition would ensure consistency in application as required by the BLM's planning regulations, but which assurance is currently lacking when the term "avoid" remains undefined. Providing this definition could also be a part of assuring that "intensive management" is applied to oil and gas activities in the Kemmerer Field Office, as will be required in Rawlins.

Summary

The BLM uses terminology for mitigation and management that is either vague or applied inconsistently in comparison to other recently completed BLM RMPs.

Response

The Kemmerer PRMP/FEIS defined action avoidance in the Glossary (Glossary pg 1) as follows: Action Avoidance: Utilizing guidance to allow an action only if all other options have been examined and it remains the only practicable solution. In addition, the Rawlins definition and application of "intensive management" is described in the Kemmerer PRMP/FEIS as the

application of “site-specific” and “project-specific” conditions of approval and best management practices (FEIS pg. 3-25, Appendix N).

Endangered Species Act

Issue number: PP-WY-KEMMERER-08-0002-86
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

At a minimum, the biological assessments and biological opinion(s) should have been made available to the public in the Final EIS so that the public could review and provide comments on them. See 40 C.F.R. § 1502.25(a). The U.S. Fish and Wildlife Service (FWS) will not be able to make a no jeopardy determination, because the RMP does not contain any standards.

Issue number: PP-WY-KEMMERER-08-0002-87
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP has failed to address the Colorado River Threatened and Endangered species that might be affected by tributary flows and watershed alteration in the planning area. WWP in its comments on the Draft EIS provided detailed comments and citations relating to the role of livestock and other activities on watersheds, water quality, the Colorado River Salinity Control Act and stream habitat. The RMP has not addressed these issues. The FEIS

admits significant adverse impacts to ESA listed species but then states mitigation will be applied at a site-specific level. This violates the ESA. The RMP must put in place required actions to protect and restore listed species, not further impact them.

Issue number: PP-WY-KEMMERER-08-0002-88
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

In the RMP, the BLM ignores impacts to T & E species from livestock grazing which can directly alter habitats for T & E, Wyoming and BLM-sensitive species and Conservation Agreement species. The RMP provides no standards or criteria to provide protection to these species from impacts of OHVs, livestock grazing, oil and gas and their associated habitat alterations. The RMP should be designed with sufficient restrictions, closure, standards and numerical criteria to prevent this situation. Furthermore, the BLM should be acting proactively to protect habitats for these species instead of relying vague prescriptions and BMPs that lack teeth. Because livestock trample and degrade riparian habitats and consume riparian vegetation, including willows, the same surface disturbing activity controls should apply to grazing as to other surface-disturbing activities.

Summary

The PRMP fails to adequately identify and mitigate impacts of its decisions on threatened and endangered species in the planning area, failed to afford the public an opportunity to comment on the biological assessment or biological opinion as part of the FEIS, and did not adequately address special status species.

Response

The BLM has complied with Section 7 of the Endangered Species Act (ESA) and CEQ regulations (40 CFR 1502.25). The U.S. Fish and Wildlife Service (FWS) is responsible for the administration of the provisions of the ESA. Section 7(c) of the ESA consultation process requires Federal agencies to consult with the FWS to ensure that its actions are not likely to jeopardize the continued existence of any listed species.

As noted in Appendix C of the FEIS (p. C11-22), the BLM consulted with the FWS, as required. As part of the formal consultation process, the BLM prepared a biological assessment based on the Proposed RMP and provided this to the FWS. A draft copy of the biological assessment was made available to the public on the Kemmerer RMP website in July 2007 and the Final Biological Assessment for the Kemmerer Field Office Proposed Resource Management Plan was uploaded to the website in September 2008 (<http://www.blm.gov/rmp/kemmerer/docs.htm>).

Since the BLM used the same information and biological data to prepare both the biological assessment and the environmental analysis in the DRMP/DEIS and PRMP/FEIS, the public was provided an opportunity to review and comment on the BLM's analysis of endangered and threatened species habitat. The Biological Opinion is the formal opinion of the FWS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The BLM has completed Section 7 consultation with the FWS, and will receive a Biological Opinion. A copy of the Biological Opinion will be included in the BLM Kemmerer RMP Record of Decision and all resulting terms and conditions will be incorporated into the BLM's decisions appropriately.

In addition, FEIS Section 4.4.7 (Special Status Species – Fish) discusses the impacts to federally listed fish species that may occur downstream of the planning area. Section 4.4.4 (Fish and Wildlife Resources – Fish) also discusses impacts to fish species in greater detail in relation to livestock. The RMP states that impacts to fish could occur through depletion of water in the Colorado River system or through degradation of the water quality. Water quality is regulated by the Wyoming DEQ, and activities affecting water quantity are regulated by the Wyoming State Engineer's Office. However, the RMP states that sedimentation would be minimized by implementing appropriate BMPs and through the development and implementation of Erosion, Re-vegetation, and Reclamation Plans (ERRPs). And finally, the Biological Assessment for the RMP states that for actions projected to deplete water from the Colorado River Watershed, the BLM will initiate formal consultation with the USFWS prior to activity approval, and the BLM will continue to participate in the Cooperative Agreement for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (USFWS 2001).

Finally, the PRMP will take proactive management actions to benefit special status wildlife by restricting activities of other resources programs (e.g., mineral development, livestock grazing). These management actions are identified in Table 2-3 in the Soils, Water, Biological Resources, and Special Management sections (pgs. 2-36 through 2-109). Impacts to wetland species are commensurate with impacts to riparian and wetland habitats. Surface disturbing activities are prohibited within 500 feet of riparian and wetland areas. Range improvements and managed livestock grazing methods disperse livestock and minimize livestock concentrations, therefore minimizing impacts to riparian habitats. The PRMP/FEIS includes site specific management actions and BMP's for special status species that may be implemented when site specific actions are proposed and more information about specific projects is available.

Fire

Issue number: PP-WY-KEMMERER-08-0002-22
Organization: Wyoming Western Watersheds

Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM has ignored the well known and documented scientific information that livestock grazing leads to lowered productivity of native grasses and altered fire regimes, leading to creation of ladder fuels through increased recruitment of conifers and loss of the cool, ground fires which limited recruitment. These conditions have created conditions leading to high intensity fires. Papers by Arnold (f.16), Belsky & Blumenthal1 (f.17), Madany and West (f.18), and Rummell (f.19) are enclosed, providing this information.

Issue number: PP-WY-KEMMERER-08-0002-23

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM did not review the role livestock play in denuding shrub inner-spaces, leading to accelerated shrub recruitment. Sagebrush canopy cover increases alone do not result in increased bare ground (f.20). A review of the Welch publication cited by downloading from the link provided should be included in the analysis. The RMP should have reviewed this publication as well as the paper by Wambolt et al. that studied the effects of sagebrush treatments on sagebrush and the herbaceous community, finding no benefit to the herbaceous community while the shrub values were lost for decades (f.21). (Paper enclosed) Key to this analysis is exposing the role livestock have played in the current distribution of communities, altered fire frequency, invasion by cheat grass and other non-native weeds and invasives, and loss in production of native grasses and forbs which have occurred in sagebrush and other communities.

Summary

Impacts of livestock grazing on potential fire hazards were not adequately considered

Response

The PRMP/FEIS fully assesses and discloses the environmental impacts associated with fire regimes and natural fire return intervals alternatives in Chapter 3 and 4 of the FEIS (3-40, 4-49). The BLM acknowledges that livestock grazing has the potential to lower productivity of native grasses and can alter natural fire regimes if not done correctly. However, the vegetative composition and fire susceptibility of plant communities in the Kemmerer Field Office Area is more of a result of past fire suppression. Inappropriate levels or timing of livestock grazing could also contribute to increased cheatgrass fuel loading which could result in a shorter fire return interval causing an increase in the invasives, and decrease the native shrub component (FEIS pages 3-124, 3-90, and 3-51).

Sage-grouse

Issue number: PP-WY-KEMMERER-08-0002-16

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM further ignores the impact that livestock grazing has had, and will continue to have under the Proposed RMP, on native vegetation and fire regimes. The RMP did not disclose or analyze the current condition of vegetation communities in the planning area and how that condition compares to

historical or potential condition other than generic descriptions of the general community types. The RMP fails to discuss the 50% reduction in soil productivity that has occurred due to BLM permitted activities over the last century. The RMP fails to tie this current condition to wildlife, particularly sage grouse and migrant birds. Deer, elk and pronghorn are impacted by these conditions. There is no analysis of the forage competition and habitat loss due to livestock grazing, oil and gas and OHVs, habitat fragmentation effects due to roads, range improvements (fences, water developments,

vegetation treatments). Migratory birds are not addressed.

Issue number: PP-WY-KEMMERER-08-0002-19

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In spite of the well recognized science showing that habitat loss and fragmentation from agricultural encroachment, urbanization, and overgrazing are the primary threats to the greater sage-grouse, the BLM continues to propose livestock grazing on over 99% of the planning area. The PRMP proposes no standards to meet the needs of sage brush obligates other than the few oil and gas related measures, nor does the few measures proposed incorporate current science or the issue of cumulative impacts. Livestock will continue to access the planning area without any analysis of the specific impacts to sage grouse and migrant bird habitat. No alternatives were proposed that would provide significant restoration and protection of these habitats. Two additional publications are enclosed that up sage grouse management recommendation (f.13, 14).

Issue number: PP-WY-KEMMERER-08-0004-11

Organization: Anadarko Petroleum Corporation

Issue excerpt Text:

2. Greater Sage-grouse Lek Buffers: The Proposed RMP calls for a 0.6 mile No Surface Occupancy (NSO) restriction and a 3 mile controlled surface use restriction (CSU) surrounding active Greater Sage-grouse leks. This is in contrast to the maximum NSO lek buffers of 0.25 miles NSO and 2 mile CSU analyzed in the Draft RMP. Hence, it becomes necessary for the BLM to provide both its reasoning (e.g. cites to appropriate scientific literature and resultant conclusions) and an analysis of the impacts to other management actions (e.g. oil and gas exploration and development) within the PRMP.

Issue number: PP-WY-KEMMERER-08-0007-12

Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen Sgamma

Issue excerpt Text:

IPAMS believes this revision was arbitrary and capricious, as these expanded buffer zones were never discussed in any of the alternatives in the draft document. Because the preferred alternative in the DRMP called for 1/4 mile NSO and 2 mile CSU buffer zones, the DRMP never analyzed how the

expanded 0.6 mile NSO and 3 mile CSU buffer zones would impact management of the planning area. The 0.6 mile NSO buffer zones would make 140,765 acres of BLM administered mineral estate off limits to resource development. That is up from 30,442 acres analyzed in the Preferred Alternative of the DRMP - a 362% increase. IPAMS requests that the NSO buffer for sage-grouse leks be revised to 1/4 mile and the CSU buffer to two miles consistent with the DRMP.

Issue number: PP-WY-KEMMERER-08-0008-49

Organization: Gary-Williams Production Company

Protester: Tim Howard

Issue excerpt Text:

a. The Sage Grouse Restrictions Were Not Part of the Draft EIS. The National Director should not impose the new 0.6-mile and 3-mile sage grouse restrictions because they were not subject to comment in the Draft EIS. Gary-Williams did not have the opportunity to analyze these restrictions or present comments on them. See Draft EIS at 2-28, 2-62 to 2-63. Without the benefit of comments on the new restrictions, the BLM could not have sufficiently analyzed the impacts of and issues involved with the new restrictions.

Issue number: PP-WY-KEMMERER-08-0008-50

Organization: Gary-Williams Production Company

Protester: Tim Howard

Issue excerpt Text:

b. The Field Office Should Not Impose Sage-Grouse Restrictions Without Finding That Grouse Actually Occupy the Habitat. The Proposed RMP should not impose restrictions designed to protect sage grouse habitat on leased parcels of land, including (Gary-Williams' leased land, without specifically finding that the species of concern occupies the specific habitat. Arizona Cattle Growers' Ass'n v. United States Fish and Wildlife, 273 F.3d 1229, 1243-44 (9th Cir. 2001); see also SDR No. WY-2006-13, Decision of the Wyoming State Director at 5 (July 12, 2006); SDR No. WY-2006-13, Decision of the Wyoming State Director at 11, 13 (June 19, 2006). The BLM should follow those decisions. See Bush-Quayle '92 Primary Comm., 104 F.3d at 453. The Proposed RMP and EIS does not make that finding with respect to land leased to Gary-Williams. It does not limit the sage grouse buffers or timing restrictions to areas where sage grouse are present. The sage grouse restrictions are arbitrary to the extent they apply to suitable yet unoccupied habitat. Arizona Cattle Growers' Ass'n, 273 F.3d at 1243-44. The National Director should specifically limit their

application to the time when, and areas where, the BLM has a rational basis to determine that the sage grouse are present and actually occupy the habitat.

Issue number: PP-WY-KEMMERER-08-0008-51
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

c. The Aggregate Impact of the Sage Grouse Restrictions is Contrary to 43 C.F.R. § 3101.1-2. The aggregate impact of the sage grouse restrictions on Gary-Williams' development of its oil and gas leases is contrary to 43 C.F.R. § 3101.1-2 because the restrictions create an exclusion zone and are more restrictive than necessary to protect the sage grouse.

Issue number: PP-WY-KEMMERER-08-0008-53
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The 0.6 and 3-mile restrictions are also unreasonable because they more restrictive than necessary to protect the sage grouse. The Draft RMP and EIS found that the 0.25 and 2 mile restrictions were sufficient to protect sage grouse. See Draft EIS at 2-28, 2-62 to 2-63. The National Director should impose the restrictions as proposed in Alternative D of the Draft RMP and Draft EIS.

Issue number: PP-WY-KEMMERER-08-0010 -17
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We find the discussion of cumulative impacts in the Kemmerer RMP lacking in several important respects. First, the one-page discussion of cumulative impacts (at 4-275) appears to be limited to a review of the impacts of habitat fragmentation in the planning area. Although fragmentation of habitat is arguably the most significant threat to the continued viability of the species, indirect and secondary threats must also be considered. Since most of the recent habitat fragmentation in the Kemmerer planning area is related to oil and gas development, particularly roads and well-pads, indirect impacts such as "road kill" and poaching should be considered as these impacts are the unfortunate result of increased access into and use of the area.

Issue number: PP-WY-KEMMERER-08-0010 -19
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Clearly, a more appropriate cumulative impacts assessment area for properly assessing cumulative impacts to sage-grouse would be WAFWA Sage-Grouse Management Zone 2 (MZ II). See Exhibit 4.A careful examination of impacts in a larger CIIA delineated on the basis of well-established principles of conservation biology - i.e., MZ 2, an area that includes all of Wyoming and portions of Montana and Colorado, would reveal that threats to the biological viability of Greater sage-grouse are varied and substantial and have the potential to cause a dramatic and perhaps irreparable impact on the population of this species.

Issue number: PP-WY-KEMMERER-08-0010 -22
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Third, the discussion of cumulative impacts (Kemmerer RMP at 4-275) ignores the significant and growing threat of West Nile Virus, a relatively new and insidious threat to sage-grouse that has potential to significantly impact the species across its range.

Issue number: PP-WY-KEMMERER-08-0010 -34
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The Kemmerer RMP demonstrates that a number of crucial wildlife habitats are present in the Kemmerer Field Office. At a minimum, these include the extensive big game crucial winter ranges portrayed in Map 22 and the widespread crucial sage-grouse habitats shown in Map 26. A comparison of these maps with the leasing categories provided for in Map 11 shows that only a small fraction of the crucial ranges are unavailable for future leasing. This is inconsistent with the WGA policy, which as noted calls for the preservation of crucial wildlife habitats.

Issue number: PP-WY-KEMMERER-08-0010 -43
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Putting in place new leases in these areas will create built-in management conflicts that will likely make it impossible to achieve the stated management direction-these areas will be less likely to retain either large or contiguous shrub plant communities if the property right represented by an oil and gas lease is superimposed over these areas. These large

contiguous blocks contain large areas of crucial big game habitat as well as crucial sage-grouse habitat. Compare Maps 21, 22 and 26.

Issue number: PP-WY-KEMMERER-08-0010 -44
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

As just discussed, it will be impossible to meet the WGA policy regarding crucial wildlife habitats and the Wyoming sage-grouse EO if these areas are open to leasing before much more rigorous analysis has been completed and effort made to "preserve these crucial habitats as recognized in the Governors' policy. In essence these "contiguous vegetation blocks" are another way of saying "crucial wildlife habitat," and a comparison of Maps 22 and 26 'with Map 21 confirms that this is largely true. The BLM recognizes the significance of these habitats in preventing habitat fragmentation. See Kemmerer RMP at 3-45 to -46. Given this, these large contiguous habitat blocks should be unavailable for leasing so as protect the crucial wildlife habitats they contain. This would ensure compliance with State wildlife policy.

Issue number: PP-WY-KEMMERER-08-0010 -5
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We believe this is a severe shortcoming in the Kemmerer RMP and it should be rectified before the Record of Decision (ROD) is adopted. The Kemmerer RMP should explicitly adopt the terms of the EO and agree to abide by them. As quoted above, the Wyoming State Director has said that this would be done. That is not to say that the existing sage-grouse protective provisions in the RMP should be dropped-they should be retained but better yet improved in accordance with the scientific information presented in Exhibit 2-but in addition to these, the RMP should ensure compliance with the EO. As the Fish and Wildlife Service observed, this is "a sound framework for a policy by which to conserve greater sage-grouse in Wyoming." We are

unaware of any like statement by the Fish and Wildlife Service or any other scientific organization regarding the BLM's traditional management actions based on protections within a certain radius of a lek during certain periods, and if anything these measures have been determined to be scientifically unfounded. Exhibit 2. These kinds of protections are outdated, in addition to not being in compliance with the EO.

Issue number: PP-WY-KEMMERER-08-0010 -9
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

To better compliment and abide by the EO, the large, contiguous vegetation blocks that are managed for sage grouse should also include areas in the core areas that are currently excluded. Map 21 should be revised to include contiguous vegetation blocks that encompass the currently excluded core areas. Extending the requirement to "manag[e] projects to minimize construction disturbance to the smallest acreage possible," Kemmerer RMP at 2-56, would complement and help implement the provisions in the EO to "focus on the maintenance and enhancement" of sage-grouse habitats and populations in core areas and ensure that new development is only done when it is demonstrated that "the activity will not cause declines" in sage-grouse populations (f.2).

Issue number: PP-WY-KEMMERER-08-0008-49
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

a. The Sage Grouse Restrictions Were Not Part of the Draft EIS. The National Director should not impose the new 0.6-mile and 3-mile sage grouse restrictions because they were not subject to comment in the Draft EIS. Gary-Williams did not have the opportunity to analyze these restrictions or present comments on them. See Draft EIS at 2-28, 2-62 to 2-63. Without the benefit of comments on the new restrictions, the BLM could not have sufficiently analyzed the impacts of and issues involved with the new restrictions.

Summary

The analysis supporting the BLM decisions on protecting sage-grouse habitat is flawed, and the public was not given adequate opportunity to comment on revisions in the PRMP/FEIS.

Issue 1

Failure to adopt the Wyoming Governor's Executive Order: The analysis supporting the BLM sage grouse habitat decision is flawed.

Response

The Kemmerer PRMP/FEIS used the best available information, research and data. Because Governor Freudenthal's Executive Order 2008-2 was issued on August 1, 2008 during final production and printing of the FEIS, it was not possible to reference it in the document. The Wyoming BLM has since issued Instruction Memoranda (IM) WY-2010-012 and WY-2010-013. These memoranda direct the consideration and evaluation of the Governor's sage-grouse core areas (Wyoming E.O. 2008-2) and support of Wyoming Game and Fish Department population objectives into the Wyoming BLM sage-grouse management strategy. These IMs are to be applied on a project specific case-by-case basis. The Kemmerer PRMP/FEIS states that recommended management actions can change based on new information (Table 2-3, Record 4041). In addition, the KFO provided management actions that conform to the objectives of the EO in Record 4015 (pg 2-56) and 4040 (pg 2-63) for contiguous blocks of sage brush, mountain shrub and aspen habitat. Specific management actions for big game (Records 4012, 4013, 4028, 6041) and sage brush obligate species (Records 4041, 4042, 4043, 4045) are identified. Although the specifics of the EO are not contained within the PRMP/FEIS, the objectives can be fulfilled through actions that would comply with the Kemmerer RMP ROD. The ROD will further clarify application of the EO for the KFO.

Contiguous habitat blocks were only identified where BLM management is extensive and uninterrupted. This management decision would not apply to the checkerboard area in the KFO. Although areas of "core sage-grouse habitat" (Wyoming Governor's EO) do occur in the checkerboard, the BLM has no jurisdictional authority to apply management to private sections. Because the RMP does not authorize any specific activities which may impact Sage-grouse, any impacts that may occur will depend upon how future activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures for Sage-grouse and Sage-grouse habitat.

Sage brush obligate life-cycle requirements were carefully considered during the RMP revision and are identified in the FEIS (pages 3-84 & 3-85). Further discussions regarding the condition of habitats and threats to those habitats are identified in Chapter 3 (pages 3-40, 3-45 thru 3-47, 3-51 thru 3-57, 3-60 & 61). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-123 to 3-126). Discussions of current soil productivity, vegetation and habitat conditions, rangeland health, and wildlife habitat including available baseline data are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively). Migratory birds are addressed in FEIS Section 3.4.5 (Fish and Wildlife Resources – Wildlife) under the Migratory Game Birds section and the Nongame section. Special status migratory birds are covered under section 3.4.8 (Special Status Species – Wildlife) under Game Birds (greater sage grouse), Nongame (Raptors), and Nongame (Neotropical Migrants).

Proactive management actions are anticipated to benefit vegetation communities and wildlife by appropriately managing activities of other resources programs (e.g., mineral development, livestock grazing). These management actions are identified in Table 2-3 in the Soils, Water, Biological Resources, and Special Management sections (pgs. 2-36 through 2-109). The management actions include but are not limited to the following examples: The PRMP/FEIS requires subsequent travel management planning above the identified management actions that would protect wildlife, vegetative and soil resources; The PRMP/FEIS also identified areas opened and closed to OHV and motor vehicle use and areas of limited use, which will benefit wildlife by reducing habitat fragmentation, erosion, and pollutant runoff coming from roads and trails; Wildland fire would be used to meet desired wildlife management objectives which would benefit certain desirable wildlife habitats. Management of large contiguous blocks of sagebrush, aspen, and mountain shrub habitat would maintain or enhance the vegetative communities and maintain connectivity by minimizing construction disturbance within these habitats (Table 2-3, Record 4015, page 2-56); BLM controlled fence barriers would be eliminated or modified on a case-by-case basis; there would be greater restrictions for placing new structures within the 100 year floodplain (Table 2-3, Record 1032, 1033, page 2-43).

Goals and objectives for Special Status Species habitat were identified in the FEIS (Table 2-3, page 2-52). These goals and objectives included but were not limited to:

BR:4 Manage or restore forage vegetation and habitat on *BLM-administered lands within the planning area to facilitate the conservation, recovery and maintenance* of populations of native, desirable non-native, and special status species consistent with appropriate local, state, and federal management plans.

BR: 3-5.6 Capitalize on opportunities to maintain and enhance rangeland conditions and wildlife habitat capability and functionality, and provide adequate habitat, protection from disturbance, and barrier-free movements in identified wildlife migration routes and fish passages within the planning area.

BR: 3-5.7 Manage for habitat necessary to support well-distributed healthy populations of special status fish and wildlife species by developing habitat management plans, other management documents, or other mechanisms as appropriate to conserve special status species.

BR: 3-5.8 Strive for no net loss of crucial habitat function occurs in the planning area for any special status species.

The KFO provided management actions that conform to these objectives in Records 4015 and 4040 for contiguous blocks of sage brush, mountain shrub and aspen habitat. Specific management actions for sage brush obligate species (Records 4041, 4042, 4043, 4045) are identified. These management actions apply broadly, not solely to oil and gas related activities. In addition, limitations on placement of livestock supplements are proposed to protect riparian habitats which are important for sage grouse life-cycle requirements (Table 2-3, Record 4024). Further discussion of the interaction and consequences of management actions on resources are located in Chapter 4. The FEIS identifies livestock grazing as a specific impact to biological resources, including vegetation, INNS spread, wildlife habitats including special status species,

migratory game birds and neotropical migrants in an extensive discussion from page 4-58 through page 4-161. In addition, new information collected after the DEIS was incorporated into the PRMP/FEIS. Additional regional projects that impact wildlife habitats, vegetative conditions, and ecological conditions on a landscape level were also considered during the process.

However, the specifics of project-level analysis were not applicable to RMP-level analysis and ongoing project-level analysis will continue. Therefore, Section 4.4.5 discusses impacts to wildlife, including but not limited to, fragmentation of habitat. Section 4.9 (Cumulative Impacts) states that it is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, the analysis focuses on meaningful impacts, which were based on identified key planning issues. West Nile Virus was not previously identified as a planning issue. In addition, the presence of the virus has not yet been identified within the planning area. Since this virus is specifically identified as a threat to sage grouse in CBM development areas, and there are no current or potential CBM developments in the planning area, the BLM will further assess the potential impacts on a project-specific basis (FEIS pg 2-15).

Issue 2

Inadequate NEPA analysis: The BLM introduced a new proposal for protecting sage-grouse in the Final EIS without the benefit of public comment.

Response

The BLM manages special status species and their habitat in accordance with BLM Manual 6840. The intent of the BLM Wyoming sensitive species designation is to ensure that actions on BLM administered lands consider the welfare of these species and do not contribute to the need to list any species under the provisions of the Endangered Species Act (ESA). This includes avoiding or minimizing adverse impacts and maximizing potential benefits to the species. Therefore, it is appropriate for the BLM to apply stipulations and/or conditions of approval to sage grouse habitat when it is determined to be suitable.

Recently published data on sage grouse response to natural gas development was made available between the draft and final EIS¹. This science was especially pertinent because of implications to Wyoming Greater Sage-Grouse habitats. The new data, coupled with the BLM sensitive species management guidance, prompted a state-wide discussion between the BLM Wyoming State Office and representatives from all field offices in October 2007 on management direction for sage-grouse habitats. The timing of these discussions in relationship to the Kemmerer RMP

¹ Holloran, M.J. 2005. Greater Sage-Grouse (*Centrocercus urophasianus*) Population Response to Natural Gas Field Development in Western Wyoming. PhD. Dissertation. University of Wyoming. Laramie, Wyoming; Holloran, M.J., R.C. Kaiser, and W.A. Hubert. 2007. Population Response of Yearling Greater Sage Grouse to the Infrastructure of Natural Gas Fields in Southwestern Wyoming. U.S. Geological Survey and Wyoming Cooperative Fish and Wildlife Research Unit. Laramie, Wyoming; Kaiser, R.C. 2006. Recruitment by Greater Sage-Grouse in Association with Natural Gas Development in Western Wyoming. M.S. Thesis. University of Wyoming. Laramie, Wyoming; Naugle, D.E., B.L. Walker, and K.E. Doherty. 2006. Sage-Grouse Population Response to Coal-Bed Natural Gas Development in the Powder River Basin: Interim Progress Report on Region-wide Lek count Analysis. University of Montana. Missoula, Montana; Naugle, D.E., B.L. Walker, and K.E. Doherty. 2006b. Sage-Grouse Winter Habitat Selection and Energy Development in the Powder River Basin: Completion Report. University of Montana. Missoula, Montana.

revision caused the BLM to modify the protective boundaries for sage grouse in the Proposed RMP/FEIS (Table 2-3, record 4041, page 2-64 and 2-65).

The Kemmerer Draft RMP/Draft EIS very clearly indicated the .25 and 2 mile buffers – which applied to all DEIS alternatives - and also discussed seasonal and timing restrictions. The Proposed RMP/FEIS changed these parameters by expanding the surface use restrictions around leks by 0.35 miles from the surface use restrictions presented in the DEIS. The analysis for the FEIS was based on additional acreage of buffers as calculated using the GIS layers. The one-mile addition to the nesting/brood rearing habitats resulted in additional overlap with raptor and big game restrictions. This was analyzed in the FEIS as additional acres of major constraints. See FEIS Table 2-1 (page 2-10, pages 4-31 to 4-35, and Maps 8 -11 and 8A – 11A. The additional 0.35 mile of lek protection buffer was primarily analyzed as a surface use restriction, as opposed to a potential NSO area. The result is identified as a “major constraint” in the FEIS; however, the full effect to development activities was not clearly presented.

The BLM has decided to grant this protest. The KFO ROD will reflect the preferred alternative buffers for sage grouse as presented in Alternative A of the FEIS (Page 2-64) as illustrated in the following language:

The following distances and timeframes will be utilized to manage activities that may impact greater sage-grouse or their habitats. These distances and timeframes are based on current information, but may be subject to change in the future based upon new information.

Greater sage-grouse leks: (1) Avoid surface disturbance or occupancy within ¼ mile of the perimeter of occupied greater sage-grouse leks; (2) Avoid human activity between 8 p.m. and 8 a.m. from March 1 through May 15 within ¼ mile of the perimeter of occupied greater sage-grouse leks.

Greater sage-grouse nesting and early brood-rearing habitats: Avoid surface-disturbing and disruptive activities in suitable greater sage-grouse nesting and early brood-rearing habitats within 2 miles of an occupied lek, or in identified greater sage-grouse nesting and early brood-rearing habitats outside the 2-mile buffer from March 15 through July 15.

Greater sage-grouse winter habitats: Avoid surface disturbance and disruptive activities in occupied greater sage-grouse winter habitats from November 15 through March 14.

Mid-scale mapping of sagebrush ecosystems and sage-grouse seasonal habitats will be completed within one year of the ROD. Detailed mapping of sagebrush ecosystems and sage-grouse seasonal habitats in the Slate Creek and Moxa Arch areas will be completed within two years of the ROD.

Appropriate restrictions will be determined on a site-specific basis and will consider project size.

Exceptions to CSU and timing restrictions will continue to be considered on a case-by-case basis.

Migratory Birds

Issue number: PP-WY-KEMMERER-08-0002-17

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Migratory birds are not addressed in violation of NEPA, FLPMA and Executive Order 13186 requiring a memorandum of understanding with the Fish and Wildlife Service and to consider the effects that planned or authorized activities will have on migratory birds and their habitats and to consider migratory birds in their land use planning efforts. No analysis was presented considering effects of livestock grazing and trampling, OHVs and other uses, habitat fragmentation from vegetation treatments and infrastructure, including range improvements. A summary of management recommendations for migrant birds and sage grouse, taken from the literature is enclosed (f.12).

Issue number: PP-WY-KEMMERER-08-0002-19

Organization: Wyoming Western Watersheds

Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In spite of the well recognized science showing that habitat loss and fragmentation from agricultural encroachment, urbanization, and overgrazing are the primary threats to the greater sage-grouse, the BLM continues to propose livestock grazing on over 99% of the planning area. The RMP proposes no standards to meet the needs of sage brush obligates other than the few oil and gas related measures, nor does the few measures proposed incorporate current science or the issue of cumulative impacts. Livestock will continue to access the planning area without any analysis of the specific impacts to sage grouse and migrant bird habitat. No alternatives were proposed that would provide significant restoration and protection of these habitats. Two additional publications are enclosed that up sage grouse management recommendation (f.13, 14).

Summary

Migratory birds are not addressed in the PRMP/FEIS in violation of NEPA, FLPMA and Executive Order 13186.

Response

The BLM signed Instruction Memorandum (IM) 2008-050 on December 18, 2007. The purpose of this IM is to provide interim migratory bird conservation policy for the BLM prior to completing and signing an MOU with FWS, and to meet the BLM's responsibilities under the Migratory Bird Treaty Act and Executive Order 13186. The IM provides land use planning level guidance that RMPs include migratory bird species of concern in the affected environment discussion. It also requires that goals, objectives and management actions/use restrictions concerning migratory birds and major habitat types be incorporated into the alternatives analysis. Finally, the RMP must evaluate the effects of authorized actions on migratory birds and their habitats and identify best management practices to avoid or minimize these impacts. The Kemmerer planning effort complies with this guidance. Migratory birds are addressed in FEIS

Section 3.4.5 (Fish and Wildlife Resources – Wildlife) in two sections on pg 67-68, “Migratory Game Birds” and “Nongame (Neotropical Migrants).” Special status migratory birds are covered under section 3.4.8 (Special Status Species – Wildlife, pg 84-87) under Game Birds (greater sage grouse), Nongame (Raptors), and Nongame (Neotropical Migrants). Impacts to these species are disclosed in Chapter 4 (pg 89-114 and pg 130-152). Due to the broad nature of the RMP the impacts addressed were broad and limited to issues identified through the scoping process, such as surface-disturbing activities like OHV use and habitat fragmentation from activities such as vegetation treatments. Additional analysis of impacts to migratory birds will be completed at the project level on a site-specific basis.

Wildlife Habitat Areas

Issue number: PP-WY-KEMMERER-08-0002-17
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

Migratory birds are not addressed in violation of NEPA, FLPMA and Executive Order 13186 requiring a memorandum of understanding with the Fish and Wildlife Service and to consider the effects that planned or authorized activities will have on migratory birds and their habitats and to consider migratory birds in their land use planning efforts. No analysis was presented considering effects of livestock grazing and trampling, OHVs and other uses, habitat fragmentation from vegetation treatments and infrastructure, including range improvements. A summary of management recommendations for migrant birds and sage grouse, taken from the literature is enclosed (f.12).

Issue number: PP-WY-KEMMERER-08-0002-20
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

Northern goshawk may be present in the planning area, yet no specific management recommendation were proposed to protect or restore goshawk habitat and no analysis of livestock grazing impacts was provided. Livestock impacts on prey species were not addressed. Forest Service research shows the need to allow only an average of 20% utilization of herbaceous forage species in goshawk home ranges, which are 6,000 acres or less and stresses the importance of maintaining any corrhizal fungi function in these home ranges (f.15). (Report enclosed).

Issue number: PP-WY-KEMMERER-08-0002-21
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

While other communities such as sagebrush and mountain shrub are barely mentioned, there was no analysis of their current status or how that status has been affected by BLM management in the past or under the current RMP. The RMP does not disclose the role livestock play in decreasing the native grasses and frequency of low intensity ground fires that control conifer recruitment and alter forest stands, increase fire intensity and loss of habitat for wildlife. Conifer communities occupy a small, but important part of the planning area, providing unique habitats for wildlife.

Issue number: PP-WY-KEMMERER-08-0008-41
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

a. The Field Office Should Not Impose Restrictions On Suitable Yet Unoccupied Habitat. The Proposed RMP would impose restrictions without limitation to whether the species actually occupies the area at issue. That is inappropriate. In *Arizona Cattle Growers' Ass'n v. United States Fish and Wildlife*, the Ninth Circuit Court of Appeals found that the U.S. Fish and Wildlife Service ("USFWS") acted beyond its authority when it sought to impose land use conditions without showing that any threatened or endangered species actually existed on and used the land in question. 273 F.3d 1229, 1243-44 (9th Cir. 2001).

Issue number: PP-WY-KEMMERER-08-0008-43
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The Proposed RMP would impose restrictions in a manner that is contrary to Arizona Cattle Growers' Ass'n and the Wyoming BLM State Director's Decisions on this very issue. The BLM should follow that federal precedent and the State Director Review Decisions. See Bush-Quayle '92 Primary Comm., 104 F.3d at 453. While the Proposed RMP finds that most of the wildlife species at issue covered are present somewhere in the Planning Area, it does not limit the restrictions to occupied habitat. The National Director should state in the Record of Decision for the Final RMP that the wildlife timing restrictions and buffer zones apply only where the BLM has a rational basis to determine that the species of concern actually occupies the specific habitat.

Issue number: PP-WY-KEMMERER-08-0010 -17
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We find the discussion of cumulative impacts in the Kemmerer RMP lacking in several important respects. First, the one-page discussion of cumulative impacts (at 4-275) appears to be limited to a review of the impacts of habitat fragmentation in the planning area. Although fragmentation of habitat is arguably the most significant threat to the continued viability of the species, indirect and secondary threats must also be considered. Since most of the recent habitat fragmentation in the Kemmerer planning area is related to oil and gas development, particularly roads and well-pads, indirect impacts such as "road kill" and poaching should be considered as these impacts are the unfortunate result of increased access into and use of the area.

Issue number: PP-WY-KEMMERER-08-0010 -19
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Clearly, a more appropriate cumulative impacts assessment area for properly assessing cumulative impacts to sage-grouse would be WAFWA Sage-Grouse Management Zone 2 (MZ II). See Exhibit 4.A careful examination of impacts in a larger CIAA delineated on the basis of well-established principles of conservation biology - i.e., MZ 2, an area that includes all of Wyoming and portions of Montana and Colorado, would reveal that threats to the

biological viability of Greater sage-grouse are varied and substantial and have the potential to cause a dramatic and perhaps irreparable impact on the population of this species.

Issue number: PP-WY-KEMMERER-08-0010 -34
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The Kemmerer RMP demonstrates that a number of crucial wildlife habitats are present in the Kemmerer Field Office. At a minimum, these include the extensive big game crucial winter ranges portrayed in Map 22 and the widespread crucial sage-grouse habitats shown in Map 26. A comparison of these maps with the leasing categories provided for in Map 11 shows that only a small fraction of the crucial ranges are unavailable for future leasing. This is inconsistent with the WGA policy, which as noted calls for the preservation of crucial wildlife habitats.

Issue number: PP-WY-KEMMERER-08-0010 -43
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Putting in place new leases in these areas will create built-in management conflicts that will likely make it impossible to achieve the stated management direction-these areas will be less likely to retain either large or contiguous shrub plant communities if the property right represented by an oil and gas lease is superimposed over these areas. These large contiguous blocks contain large areas of crucial big game habitat as well as crucial sage-grouse habitat. Compare Maps 21, 22 and 26.

Issue number: PP-WY-KEMMERER-08-0010 -44
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

As just discussed, it will be impossible to meet the WGA policy regarding crucial wildlife habitats and the Wyoming sage-grouse EO if these areas are open to leasing before much more rigorous analysis has been completed and effort made to "preserve these crucial habitats as recognized in the Governors' policy. In essence these "contiguous vegetation blocks" are another way of saying "crucial wildlife habitat," and a comparison of Maps 22 and 26 'with Map 21 confirms that this is largely true. The BLM recognizes the significance of these habitats in preventing habitat fragmentation. See Kemmerer RMP at 3-45 to -46. Given this, these large

contiguous habitat blocks should be unavailable for leasing so as protect the crucial wildlife habitats they contain. This would ensure compliance with State wildlife policy.

Issue number: PP-WY-KEMMERER-08-0010 -5

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

We believe this is a severe shortcoming in the Kemmerer RMP and it should be rectified before the Record of Decision (ROD) is adopted. The Kemmerer RMP should explicitly adopt the terms of the EO and agree to abide by them. As quoted above, the Wyoming State Director has said that this would be done. That is not to say that the existing sage-

grouse protective provisions in the RMP should be dropped-they should be retained but better yet improved in accordance with the scientific information presented in Exhibit 2-but in addition to these, the RMP should ensure compliance with the EO. As the Fish and Wildlife Service observed, this is "a sound framework for a policy by which to conserve greater sage-grouse in Wyoming." We are unaware of any like statement by the Fish and Wildlife Service or any other scientific organization regarding the BLM's traditional management actions based on protections within a certain radius of a lek during certain periods, and if anything these measures have been determined to be scientifically unfounded. Exhibit 2. These kinds of protections are outdated, in addition to not being in compliance with the EO.

Summary

Restrictions with regard to wildlife habitat fragmentation are inadequate or inappropriate, and fail to meet the findings of the Wyoming Governor's Executive Order.

Response

The BLM manages special status species and their habitat in accordance with BLM Manual 6840 "with the objectives to: (1) conserve listed species and the ecosystems on which they depend and (2) ensure that actions requiring authorization or approval by the BLM are consistent with the conservation needs of special status species and do not contribute to the need to list special status species either under the provisions of the ESA or BLM Manual 6840." Therefore, it is appropriate for the BLM to apply stipulations and/or conditions of approval to sage grouse habitat when it is determined to be suitable.

Migratory birds are addressed in Section 3.4.5 (FEIS pg 67-68)(Fish and Wildlife Resources – Wildlife) in two sections "Migratory Game Birds" (FEIS pg 84) and "Nongame (Raptors, Neotropical Migrants)" (FEIS pg 85-87). Special status migratory birds are covered under section 3.4.8 (Special Status Species – Wildlife) under Game Birds (greater sage grouse), Nongame (Raptors), and Nongame (Neotropical Migrants). Due to the broad nature of the RMP the impacts addressed were broad and limited to issues identified through the scoping process. Impacts to migratory bird species of the management actions described in the PRMP are disclosed in Chapter 4. Additional analysis of project-specific impacts to migratory birds will be completed at on a site-specific basis as projects are proposed.

Specific management recommendations for Northern Goshawk are identified within all of the proposed management alternatives. Table 2-3 record 4044, identifies a ¾ mile buffer for all species of raptor including Northern Goshawk. Northern Goshawk nesting is anticipated to occur between April 1 through July 31 and disturbances would be prohibited during those times.

Extensive discussion on the condition and importance of sagebrush and mountain shrub communities exists in Chapter 3 and Chapter 4 of the PRMP/FEIS. In addition, the KFO developed specific management prescriptions for these important habitats (Record 4015, Table 2-3, pg 2-56).

The best available data and information was used in preparation of the PRMP/FEIS. Baseline data regarding livestock grazing is included in Section 3.6.2 of the PRMP/FEIS including information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-123 to 3-126). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively).

Because Governor Freudenthal's Executive Order 2008-2 was issued on August 1, 2008 during final production and printing of the Final EIS, it was not possible to reference it in the document. The Kemmerer PRMP/FEIS identifies that recommended management actions can change based on new information (Table 2-3, Record 4041). In addition, the KFO provided management actions that conform to the objectives of the EO in Record 4015 and 4040 for contiguous blocks of sage brush, mountain shrub and aspen habitat. Specific management actions for big game (Records 4012, 4013, 4028, 6041) and sage brush obligate species (Records 4041, 4042, 4043, 4045) are identified. Although the specifics of the EO are not contained within the PRMP/FEIS, the objectives can be fulfilled through actions that would comply with the identified RMP ROD. Additional guidance on implementing the EO is forthcoming from the Wyoming State Office and the specifics of implementing the EO will be further clarified in the ROD.

Environmental analyses of Resource Management Plans are used to evaluate broad management policies and provide an analytical foundation for subsequent project-specific NEPA documents. As required by NEPA, the cumulative analysis in the PRMP/FEIS considered the present effects of past actions, to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) Federal and non-federal actions taking into account the relationship between the proposed action and these reasonably foreseeable actions. This structure determined the level of analysis in the PRMP/FEIS. Thus the cumulative impacts analysis in Section of the PRMP/FEIS differs from analysis in a NEPA document analyzing the specific implementation activity or permit. The BLM has complied fully with the NEPA requirements for cumulative impacts and prepared an analysis to the extent possible on the broad nature and scope of the proposed management options under consideration in the RMP.

Western Governors Association and Wyoming Game and Fish Department policy

Issue number: PP-WY-KEMMERER-08-0005-53

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

13 The MOU was entered into pursuant to the Sikes Act of 1974, which provides for the development of comprehensive plans with state agencies for the conservation and rehabilitation of fish and wildlife, 16 U.S.C. §670g. Nothing in the Act, however, limits

the authority of the Secretary of the Interior to manage the public lands for wildlife and fish and other purposes in accordance with applicable authority. 16 U.S.C. §670h(c). Under FLPMA, the BLM may only enter into cooperative agreements involving the management and protection of public lands "[s]ubject to the provisions of applicable law." 43 U.S.C. §1737.

Issue number: PP-WY-KEMMERER-08-0005-54
Organization: Coalition of Local Governments
Protester: Constance Brooks

Issue excerpt Text:

By accepting WGFD population objectives, habitat management plans, and identification of habitat, the BLM is delegating its decision making authority to a state agency which violates federal law.

Subdelegations to outside parties, as opposed to agency subordinates, are assumed to be improper absent an affirmative showing of congressional authorization. See *High County Citizens' Alliance v. Norton*, 448 F. Supp.2d 1235, 1247 (D. Colo. 2006); *United States Telecom Association v. Federal Communications Assn.*, 359 F.3d 554,566 (D.C. Cir. 2004), cert. denied, 543 U.S. 925 (2004).

Issue number: PP-WY-KEMMERER-08-0005-55
Organization: Coalition of Local Governments
Protester: Constance Brooks

Issue excerpt Text:

Game populations in the Kemmerer planning area have increased, and in some cases, significantly,

since the MOU was originally signed in 1990. The planning documents do not show that the BLM has verified the crucial game ranges as delineated by WGFD or the capacity of those ranges to meet the population numbers without requiring management changes. Much of the planning area, including land in the Checkerboard, is classified as crucial habitat. Map 22. The RMP commits to the WGFD game populations and habitat determinations without questioning the underlying habitat or game use and without independently verifying the extent and quality of the crucial habitat. This is an unlawful subdelegation and needs to be corrected. Thus, while the BLM may look to WGFD for advice or recommendations, the BLM must ultimately conduct its own fact-finding and make the final decisions itself. See *Natl. Park & Conservation Assn. v. Stanton*, 54 F. Supp.2d 7, 18 (D. D. C. 1999) (agency must nevertheless retain final reviewing authority and responsibility). With respect to issues of habitat management and vegetation, the BLM must meet livestock grazing commitments as well as wildlife. It cannot allow unchecked game numbers that cause degradation of the resources.

Summary

The BLM has not done an adequate job of coordinating its decisions on wildlife with the WY Department of Fish and Game (“WGFD”).

Response

The Umbrella MOU between WGFD and BLM Wyoming establishes a cooperative working relationship, and does not delegate any BLM decision making to the WGFD. See the MOU page 9, Point "I." "The Bureau agrees to.....Recognize existing State comprehensive or strategic long-range plans and cooperatively manage toward these goals and objectives." And Point "A." the "Department and the Bureau Mutually agree to.... Cooperate in restoration and management of wildlife and their habitats on public lands. Such cooperative efforts shall be consistent with agency responsibilities as outlined in this memorandum; namely, the Department is responsible for wildlife and the Bureau is responsible for habitat."

The WGFD has the authority to manage populations of "state owned" wildlife, which includes everything but migratory birds and species listed under the ESA. It is the WGFD's responsibility to collect the wildlife population data and create the game range maps. The BLM relies on the expertise of the WGFD biologists, who collect population and harvest estimates, to make more informed land management decisions. If the BLM biologists have data to support a change in the designated wildlife range boundaries or population numbers, the MOU authorizes the agencies to share data and work cooperatively to meet the goals of both agencies (see the MOU appendix

4B). The BLM conducts Standards and Guidelines assessments to identify and manage the effects of livestock and wildlife on the vegetation.

Invasive plants

Issue number: PP-WY-KEMMERER-08-0002-13

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

2) Failure to Adequately Discuss Impacts and Best Available Information. The RMP fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate best available information into the analysis. WWP highlighted this issue in its comments on the Draft RMP /EIS with respect to riparian area management, biological crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species, loss of ecosystem resiliency in the face of climate change and other issues. Dozens of scientific papers and government reports were cited. The RMP ignored this information and the PRMP continues to provide no explanation for the omission of relevant scientific research on topics critical to the management of the public lands, or for that matter, research that has documented the impacts of livestock grazing and OHVs to forests, riparian areas, soils and wildlife that was published decades ago and remains accurate today.

Issue number: PP-WY-KEMMERER-08-0002-14

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

For example, the RMP does not discuss the best available science on the interaction between grazing, micro-biotic crusts and weed invasions. This research demonstrates that grazing causes severe destruction of crusts, which are critical in reducing soil erosion, restoring vegetative communities, reducing the risk of future fires, and preventing the spread of invasive and noxious weeds (f.6). (Paper enclosed) This research found exotic species richness strongly negatively correlated with crust cover, and that crusts often present a "physical barrier to invasive species establishment and growth." Crusts are the primary Nitrogen fixers in desert grassland, shrub land and woodland systems, increasing surrounding soil N by as much as 200%. Id. at 47-48 (f.7). As barriers to the spread of exotic species such as cheat grass, crusts prevent these species from reaching the necessary density to carry catastrophic fires. With livestock

grazing over 90% of the planning area for decades, trampling of sensitive soils and crusts has inevitably and predictably diminished crusts and accelerated erosion.(footnotes)5 Alt A (Table 2.1, page 2-50) shows 6199 miles of motorized routes currently exist.6 Thomas J. Stohlgren et al. (2001) Patterns of Plant Invasions: A Case Example in Native Species Hotspots and Rare Habitats, 3 Biol. Invasions 37-50.7 See also Jayne Belnap et al., (2001) Biological Soil Crusts: Ecology and Management, U.S. Dept. of the Interior (...illegible, check original).

Issue number: PP-WY-KEMMERER-08-0002-23

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM did not review the role livestock play in denuding shrub inner-spaces, leading to accelerated shrub recruitment. Sagebrush canopy cover increases alone do not result in increased bare ground (f.20). A review of the Welch publication cited by downloading from the link provided should be included in the analysis. The RMP should have reviewed this publication as well as the paper by Wambolt et al. that studied the effects of sagebrush treatments on sagebrush and the herbaceous community, finding no benefit to the herbaceous community while the shrub values were lost for decades (f.21). (Paper enclosed) Key to this analysis is exposing the role livestock have played in the current distribution of communities, altered fire frequency, invasion by cheat grass and other non-native weeds and invasives, and loss in production of native grasses and forbs which have occurred in sagebrush and other communities.

Issue number: PP-WY-KEMMERER-08-0002-25

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP contains no analysis of the area affected by invasive species or that suffer from reduced native species and production compared to potential. WWP commented on the role of OHVs and livestock grazing on invasive in its comments on the Draft RMP/EIS. Numerous references explaining the

effects to be expected were provided in those comments and cited above in this protest. Additional references are provided here that elucidate the role of livestock in creating conditions suitable for invasive by weakening native plant communities due to lack of rest from grazing or over use (f.22, 23, 24, 25). (Papers enclosed).

Issue number: PP-WY-KEMMERER-08-0002-32

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Despite WWP's and others comments and the scientific literature they provided, the BLM continues to ignore the effects of livestock grazing and the epidemic proportions of the spread of weeds in the affected environment, alternatives, and environmental consequences sections of the document. The BLM did not analyze the actual causes of the spread of invasive species within the planning area. There was no mention of the effects of livestock grazing on invasive or the effectiveness of current control methods. The BLM ignores the role of livestock on soil disturbance and cheat-grass establishment. Domestic livestock are probably the major cause of weed invasions in the arid West: These animals move in large numbers from watershed to watershed, carrying seeds in their coats, guts, and on the mud on their hooves. See, e.g., Blue Mtns. Biodiversity Project v. U.S. Forest Serv., Civ. No. 01-703-HA (Order issued Sept. 6,2002) (noting that weed control "is impossible without acknowledging significant sources of weed introduction, such as the fact that 111,000 cows coming on to the forest is a 'major seed transport system. ").

Issue number: PP-WY-KEMMERER-08-0002-33

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The reality is that livestock occupy over 99% of the planning area, that they remove ground covering vegetation, destroy soil crusts and disturb the soil. The RMP ignores the role livestock play in weed infestations, cheat grass infestations and increases in non-palatable species. Literature was cited earlier in this protest regarding the role of livestock in promoting invasive. Despite the availability of this information throughout the RMP process, it has not been considered.

Issue number: PP-WY-KEMMERER-08-0002-35

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM also failed to disclose and discuss recent research indicating that there may be a significant "lag phase" in recovery of native perennial grasses following removal of livestock (f.31). The authors conclude that "there may be time lags of 20 years or more in the response of perennial grasses to removal of livestock in historic grassland ecosystems dominated by shrubs." Jay E. Anderson & Richard S. Inouye (2001) (f.32) refuted state-and transition model opinions that shrub-dominated high desert habitats are stable over the long-term and would not recover following removal of livestock, instead finding that perennial grasses increased significantly over a 45-year period and that adequate native species cover can make semiarid vegetative communities more resistant to exotic species invasion. Although not evaluated in the RMP and EISs, there are very likely vast weed or invasive dominated acreages within the planning area that would convert back to native plant communities if native seed sources are present and if disturbance factors -such as livestock grazing - are removed. Belsky and Gelbard (2002), cited above, described many such communities in which weeds have been replaced by native species. This conversion may take tens of years-which is the temporal scale that this resource management plan ostensibly considers.

Issue number: PP-WY-KEMMERER-08-0002-37

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Conversion also may require the total removal of livestock, which selectively graze native species, and the removal of OHVs. The BLM did not analyze these options for weed control purposes. As discussed above, both livestock and ORVs disturb the soil and biological soil crusts. Removal of livestock and ORVs occurs so rarely on public lands that few have ever seen weedy communities converted to native grasslands. But if left alone with only natural disturbances and native wildlife, the scientific literature demonstrates many weed-dominated communities will eventually become dominated by native species. This is a low cost, non-toxic alternative that must be assessed. Most weed specialists and land managers admit that prevention is the most effective and least expensive way of

managing introduced plant species and preventing new infestations. See, e.g., Bureau of Land Management, "Partners Against Weeds," BLM/MT/ST-9603+1020 (1996). Nevertheless, the RMP fails to analyze these options and the best, available science, which support them. (footnotes) 29 Jones, Allison. 2000. Effects of cattle grazing on North American arid ecosystems: a quantitative review. *Western North American Naturalist* 60(2):155-164.30 Mack, Richard N., and John N. Thompson. 1982. Evolution in steppe with few large, hooved mammals. *American Naturalist* 119(6):757-773.31 Valone T. J., Meyer M., Brown J. H. & Chews R. M. 2002. Timescale of perennial grass recovery in desertified arid grasslands following livestock removal. *Cons. Bio.* (16):995 - 1002. 32 Anderson, Jay E. and Richard S. Inouye. 2001. Landscape-scale changes in plant species abundance and biodiversity of a sagebrush steppe over 45 years. *71 Eco. Monographs* 71:531.

Issue number: PP-WY-KEMMERER-08-0002-58

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

C) Inventory of Weeds and Vectors for the Spread of

Weeds The RMP fails to present any baseline or other inventory data on weeds and invasive, in particular, the most significant vectors spreading weeds: livestock grazing, oil and gas, roads and OHVs. The RMP fails to mention or discuss several very important scientific studies discussing the interaction between livestock grazing, biological crusts, weeds, and native plant species. See Valone et al. (2002); Stohlgren et al. (2001); Anderson & Inouye (2001); Belsky & Gelbard (2000). This lack of analysis coupled with the agency's masking of livestock grazing as a primary cause of the spread of weeds suggests that the agency is in denial with respect to the main causes of this epidemic problem on the public lands, which is related to the current fire issue as well. The problem cannot be controlled if broad-scale documents such as this RMP do not begin by acknowledging the main causes of the problem, discussing the best available science, and presenting baseline inventories that can be used to address the problem. Until the BLM has undertaken the required inventory of weeds and their primary vectors of spread, and at least assessed the planning areas in light of the best available science, it is arbitrary and capricious to authorize grazing at continued levels and on status quo allotted lands with no current inventory data to support these decisions.

Summary

The PRMP/FEIS fails to address the impacts of livestock grazing on biological crusts, native plant species, and the spread of invasive plant species.

Response

The references provided in comment PP-WY-KEMMERER-08-0002-35 were not provided to the BLM Kemmerer Field Office prior to this protest, and were therefore not included in the PRMP/FEIS. The BLM recognizes the validity and value of many scientific documents and strives to incorporate modern science into its decision making processes, however the BLM is not required to include every scientific document related to natural resource management in the PRMP/FEIS. All of the information received by the BLM during the RMP revision process was considered.

The best available data and information was used in preparation of the PRMP/FEIS. Baseline data regarding livestock grazing is included in Section 3.6.2 of the PRMP/FEIS including information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-123 to 3-126). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively). Baseline data on noxious weeds and invasive plant species is

included in Section 3.4.9 of the PRMP/FEIS (p. 3-89 to 3-93). Presence of weeds is documented by the Lincoln & Uinta County Weed and Pest. As BLM staff identifies weeds, they share the information with Weed and Pest and coordinate on treatment.

The PRMP/FEIS fully assesses and discloses the environmental impacts associated with invasives and fire regimes and natural fire return intervals alternatives in Chapter 3 and 4 of the PRMP/FEIS (3-40, 3-43, 4-49). The BLM agrees that improperly managed livestock grazing has the potential to increase cheat grass and other invasives which could alter natural fire regimes. Overgrazing from livestock could also contribute to increased cheatgrass fuel loading which would result in a shorter fire return interval causing an increase in the invasive, and decrease the native shrub component. However, the PRMP/FEIS states that over the last ~50 years, there has been an overall improvement in range condition in the Kemmerer Field Office planning area (Section 3.6.4 Pg 3-126). This improvement has been achieved as a result of site-specific management. Thus, the BLM has determined that it will continue site-specific management in the future.

Appendix O of the PRMP/FEIS discusses Best Management Practices, stating: “It is not possible to evaluate all the known practices and make determinations as to which are best. What is best must be determined as a result of site-specific investigation of the proposed management action. No one management practice is best suited to every site or situation” (PRMP/FEIS Appendix O, Pg O-1).

Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. After the BLM has conducted appropriate NEPA analysis, changes to livestock management deemed necessary to meet or progress towards meeting management objectives are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance land health.

In addition, soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.1.2 of the PRMP/FEIS (p. 3-12 to 3-17). The BLM acknowledges the importance of biological crusts in reducing erosion, retaining soil moisture, and reducing impacts from invasive weeds (FEIS pg 3-15).

The goal of the management plan is to allow for and ensure maintenance and improved soil biological crust management. The RMP does not address more site-specific issues related to soils and biological soil crusts because site characteristics for specific projects are not known at this time. Site-specific impacts to biological soil crusts would be covered in implementation

level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

Leasable Minerals

Issue number: PP-WY-KEMMERER-08-0003-12

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

Unfortunately, these instructions were not followed in preparation of Kemmerer proposed RMP and FEIS. Specifically, the proposed plan did not consider "lesser stipulations" for the Rock Creek/Tunp Management Area and the Bear River Divide Management Area as required by the BLM H-1624-1 manual. Instead, the Kemmerer proposed RMP chose to limit its consideration of alternatives of "no leasing" or "no surface occupancy", neither of which comport to the spirit or letter of the BLM's own planning guidance for fluid minerals. Not only is this a violation of internal BLM policy but it is a clear violation of multiple binding decisions of the Interior Board of Land Appeals ("IBLA") which have repeatedly admonished the BLM for not considering lesser stipulations in relation to oil and gas leases.

Issue number: PP-WY-KEMMERER-08-0003-13

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

statements of where the BLM State Director erred in his decision.

Issue number: PP-WY-KEMMERER-08-0003-14

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

The BLM H-1624-1 handbook in Chapter III, under the heading, 7. Formulate Alternatives to Existing Management, the BLM manual unequivocally directs the BLM to consider "d (I) the least restrictive stipulations that effectively accomplish the resource objectives or uses for a given alternative..." "The BLM manual goes on to provide examples on how this could be done in the very next subsection "e." which states in part:"Several alternatives may be developed to address these problems or conflicts and to allow for multiple uses in the area. In one alternative, the team may identify any changes (from existing management) in surface and/or subsurface management constraints for fluid minerals activities that would be required to meet the resource condition

objective and manage the area as special recreation area. Such constraints, if greater than those that could be imposed under the terms and conditions of the standard lease form, would be translated into lease stipulations for that alternative. In another alternative, more constraints on recreation use may be imposed to resolve conflicts with relatively fewer constraints on fluid minerals activities as a result. In yet another alternative, the area may be closed to additional leasing."

Issue number: PP-WY-KEMMERER-08-0003-15

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

The BLM manual goes even further in its requirements by providing direct instruction of how this concept is to be applied in BLM planning efforts. Page III-14 in paragraph (h) states the following, "For the preferred alternative the RMP EIS should provide evidence that less restrictive measures were considered but found inadequate to provide effective protection for other land uses or resource values..." "The Kemmerer RMP failed to follow this guidance. Instead it considered only no leasing throughout all of the developed alternatives other than the existing RMP decisions. An alternative B 1 was included in Appendix Q of the FEIS but it only considered the most restrictive stipulation possible, which is "no surface occupancy." This is a hardly a "lesser stipulation" analysis as both intended and required in the BLM H-1624-1 manual.

Issue number: PP-WY-KEMMERER-08-0003-17

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

Not only has the State Director erred by failing to follow current BLM policy but he has failed to abide by the legal precedent established in numerous IBLA decisions. The IBLA has admonished the BLM on multiple occasions for failing to consider lesser stipulations. In Melvin A. Brown 53 IBLA 45 (1981) the IBLA noted the longstanding rule that "a no surface occupancy stipulation should only be imposed when there is evidence that 'less stringent alternatives would not adequately accomplish the intended purpose by containing the adverse effects of

oil and gas operations within acceptable limits.’ "Id. at 46 (quoting Bill J. Maddox, 17IBLA 234, 237 (1974).

Issue number: PP-WY-KEMMERER-08-0003-24
Organization: Fortuna U.S. L.P.
Protester: Scott Sobie

Issue excerpt Text:

The establishment of a 6 mile wide viewshed has the immediate effect of adding a new stipulation to our existing oil and gas rights which were granted subject to the provisions of the Kemmerer RMP/EIS approved in 1986, which were subject only to a 0.5 mile wide viewshed, being 14 mile on either side of a NHT. This increased view shed area will have a severe impact on the development of oil and gas resources within the Black Bear Canyon Unit Area and in proximity to the NHT. Fortuna objects to the inclusion of all or portions of certain NHT within the Class I designation as it is clearly evidenced from a site-visit that such portions do not meet the defined criteria. This includes but is not limited to the following pages, tables and maps: Table 2-3, record #6055, page 2-100. Chapter 2.4.4.2, page 2-31, 2nd paragraph. Chapter 3.5-1.2, pages 3-99 to 3-101. Map 60

Issue number: PP-WY-KEMMERER-08-0003-26
Organization: Fortuna U.S. L.P.
Protester: Scott Sobie

Issue excerpt Text:

Imposition of these restrictions would make it virtually impossible for Fortuna to reach full field development of its existing oil and gas leases. Fortuna can mitigate many if not most of the visual concerns but not all. This would be the equivalent of adding additional stipulations to already issued leases. Failure to allow Fortuna to develop its oil and gas resource under the lease rights granted would be a clear taking of those rights.

Issue number: PP-WY-KEMMERER-08-0003-33
Organization: Fortuna U.S. L.P.
Protester: Scott Sobie

Issue excerpt Text:

If these "after the fact" requirements are added to our existing leases, Fortuna would not be able to reach full field development. This is a flagrant taking of our lease rights.

Summary

The BLM adopts unnecessary restrictions on oil and gas leases, in violation of BLM policy.

Response

This RMP does not modify existing leases. 43 C.F.R. § 3101.1-2 identifies lease rights provided to an existing lease which states that a lessee’s rights are subject to “reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values” which “may include...modification to siting or design of facilities....” (pg 3-25) KFO’s management objectives for NHT Class 1 and Class 2 Trails conform with these requirements and therefore, comply with 43 C.F.R. § 3101.1-2.

To ensure compliance with section 106 of NHPA, Appendix C of the Programmatic agreement among the Bureau of Land Management, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers regarding the manner in which BLM will meet its responsibilities under the National Historic Preservation Act (Wyoming State Protocol) provides guidance on the methods required to assess the effects of undertakings on historic properties for which settings are defining characteristics of their significance. Current management to preserve setting provided in the Kemmerer FEIS on Page 3-94 “When an undertaking is determined to be visible in the setting of a property and the setting retains sufficient historic character to contribute to the property’s NRHP eligibility, the Visual Contrast

Rating system is used to analyze potential visual impacts on the setting.” Under current management the distances used for potential visual impacts is undefined. In addition, specific text in Appendix C of the Wyoming State Protocol (pg. 2) identifies standard measures to reduce visual contrast. This information is also available on the following website: http://www.blm.gov/wy/st/en/programs/Cultural_Resources/protocol.html.

While NHT management utilizes VRM class objectives, it is important to note that the identified NHT classes do not correlate directly with VRM classes. The FEIS pages 3-99 thru 3-101 provide the management classes for National Historic Trails Management that are different from VRM Classes. The only lands identified as VRM Class I in the Kemmerer RMP planning area are part of the Raymond Mountain WSA.

The objectives for NHT settings can be effectively managed by using guidance from VRM Manual 8400 which states that the BLM must identify key observation points (i.e. highways, major roads, scenic byways, points of interest, etc.) and evaluate the effects of a proposed action from these key observation points. NHTs within the KPA would be a key observation point. Where those NHT qualities would require a Class II VRM Objective the management would retain the existing character of the landscape. The level of change to the characteristic landscape should be low. This management does not prohibit surface disturbance, and allows for a variety of flexible alternatives to be developed to meet the objectives. Existing leases will be managed in accordance with the 43 CFR 3101.2-2 requirements through the use of site-specific conditions of approval to reduce overall impacts to key observation points Map 66 provides the identified key observation points for sensitive viewsheds.

Developments that do not meet the identified management objectives may require additional NEPA analysis to disclose potential adverse impacts to resources identified during project development. All of the existing development in proximity to the NHTs has been completed within the lease rights granted to the operator and within the constraints of the existing management of the NHTs.

The Kemmerer Field Office considered applying lesser stipulations for the Rock Creek/Tunp (RC/Tunp) and Bear River Divide (BRD) areas. These stipulations were considered as “Alternative C” (Table 2-3, Record numbers 7014 and 7015). Under this alternative the areas would be managed similar to adjacent lands. New oil and gas leases and other developments in these areas would be subject to stipulations identified in Alternative C. Currently, the referenced lands are managed by timing stipulations to protect wintering big game, raptor nesting areas, and sage grouse habitats. Areas are also subject to limitations regarding development on steep slopes and soils with limited or poor reclamation potential. In addition, under the proposed management in Alternative C, the management around NHTs would be specific to the quality of the trail and associated viewshed, which would decrease the protection level around NHT areas that no longer maintain their significance of place and setting (Table 2-3, Record 5010).

The Kemmerer Field Office (KFO) considered and analyzed a range of alternatives, including the current management or “No Action” alternative in devising possible management scenarios for the RC/Tunp and BRD areas (FEIS 2-104, 2-105). The KFO added the consideration of NSO upon Fortuna’s request between the DEIS and FEIS. Based on a preliminary analysis of this

scenario, the BLM decided not to include NSO in the PRMP or analyze it in detail. The analysis of the NSO proposal was provided in FEIS Appendix Q-1 through Q-15. The BLM focused the preliminary analysis on key resources and resources that could be impacted by the potential new alternative, called B1, including Air Quality, Soil, Water, Grassland and Shrubland Communities; Vegetation; Wildlife; Special Designations; Soil; Water; and Economic Conditions (FEIS Q-1). The impacts of placing an NSO restriction on the identified large block areas increases and displaces disturbance to adjacent private and state lands. The increased disturbance in the alternative does not provide the BLM a means to achieve established goals and objectives for surface resources (FEIS Q-1). This alternative also creates additional conflict between the BLM and private and State land owners by displacing disturbance on those lands.

(FEIS Q-14). Alternative A (Table 2-1, Record 5010) provides the current management strategy for protection of NHTs, stating that the “objective is to protect NHT from visual intrusion and surface disturbance and to maintain the integrity of setting.” The BLM currently manages the setting on all segments of NHT in accordance with its agreements with the State Historical Preservation Officer (SHPO) utilizing VRM techniques to attain settings of VRM Class II (FEIS 3-94). However, distance of analysis is not provided or limited and may extend many miles depending upon the visibility of the project in question. Therefore, distances used in considering impacts may reach beyond the distances proposed in the analysis (FEIS 4-222). Impacts associated with Alternative A are greatest since integrity of setting is applied to all NHTs, regardless of current physical or setting condition. The 1986 RMP contains a ¼ mile NSO designation to protect the actual NHT physical trace, and contains wording to allow for additional management to preserve trail setting. Alternatives B and C restrict the management of setting based on the overall condition of the NHT (FEIS 2-100, 2-101).

Livestock Grazing

Issue number: PP-WY-KEMMERER-08-0002-10

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM eliminated consideration of a No Grazing Alternative using arguments of multiple uses and sustained yield and the Taylor Grazing Act. However, BLM is not obligated to continue authorizing uses which degrade resources and create conflicts, such as livestock grazing. A recent decision by Interior Board of Land Appeals, Department of Hearing and Appeals (f.3), cited *NWF v. Bolten Ranch, Inc.* (f.4), stating, “The Secretary of the Interior is not limited by 43 CFR 4113.1 in determining whether to renew a grazing license. The secretary or his delegate is not obligated to issue a license or permit to an applicant. The issuance of such permits or licenses is committed to agency discretion.” Beyond this, the BLM has described allotments in the Richfield Planning Area that it has already closed to livestock grazing covering 138,952

acres. Merely analyzing a No Action Alternative does not provide an adequate baseline with which to compare direct, indirect or cumulative impacts. Through its analysis, the BLM has accepted the status quo as its baseline, therefore burying the impacts occurring under the current land use plan for the past two decades and now adding the impacts of its proposed action as if past impacts did not occur.

Issue number: PP-WY-KEMMERER-08-0002-14

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

For example, the RMP does not discuss the best available science on the interaction between grazing, micro-biotic crusts and weed invasions. This research demonstrates that grazing causes severe destruction of crusts, which are critical in reducing soil erosion, restoring vegetative communities, reducing the risk of future fires, and preventing the spread of invasive and noxious weeds (f.6). (Paper enclosed) This

research found exotic species richness strongly negatively correlated with crust cover, and that crusts often present a "physical barrier to invasive species establishment and growth." Crusts are the primary Nitrogen fixers in desert grassland, shrub land and woodland systems, increasing surrounding soil N by as much as 200%. Id. at 47-48 (f.7). As barriers to the spread of exotic species such as cheat grass, crusts prevent these species from reaching the necessary density to carry catastrophic fires. With livestock grazing over 90% of the planning area for decades, trampling of sensitive soils and crusts has inevitably and predictably diminished crusts and accelerated erosion. (footnotes) 5 Alt A (Table 2.1, page 2-50) shows 6199 miles of motorized routes currently exist.6 Thomas J. Stohlgren et al. (2001) Patterns of Plant Invasions: A Case Example in Native Species Hotspots and Rare Habitats, 3 Biol. Invasions 37-50.7 See also Jayne Belnap et al., (2001) Biological Soil Crusts: Ecology and Management, U.S. Dept. of the Interior (...illegible, check original).

Issue number: PP-WY-KEMMERER-08-0002-15

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP also fails to analyze impacts that surface disturbing activities such as ORV use and livestock grazing have on air quality. These activities reduce soil cover and increase soil erosion and increase the ability of wind and water to erode soil erosion and increase the ability of wind and water to erode soils (f.8, 9). (Papers enclosed). The BLM did no dispersion modeling to account for the effects of reduced soil cover from decades of livestock grazing. EPA publishes manuals, factors and formulas for calculating these effects for air quality from area sources, mobile sources, stationary sources and roads (f.10). This information has been available for many years and is updated on an ongoing basis. Recent research has shown human activities, including livestock grazing, have increased dust deposition rates by 500% post-settlement (f.11).

Issue number: PP-WY-KEMMERER-08-0002-16

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM further ignores the impact that livestock grazing has had, and will continue to have under the Proposed RMP, on native vegetation and fire regimes. The RMP did not disclose or analyze the

current condition of vegetation communities in the planning area and how that condition compares to historical or potential condition other than generic descriptions of the general community types. The RMP fails to discuss the 50% reduction in soil productivity that has occurred due to the BLM permitted activities over the last century. The RMP fails to tie this current condition to wildlife, particularly sage grouse and migrant birds. Deer, elk and pronghorn are impacted by these conditions. There is no analysis of the forage competition and habitat loss due to livestock grazing, oil and gas and OHVs, habitat fragmentation effects due to roads, range improvements (fences, water developments, vegetation treatments). Migratory birds are not addressed.

Issue number: PP-WY-KEMMERER-08-0002-22

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM has ignored the well known and documented scientific information that livestock grazing leads to lowered productivity of native grasses and altered fire regimes, leading to creation of ladder fuels through increased recruitment of conifers and loss of the cool, ground fires which limited recruitment. These conditions have created conditions leading to high intensity fires. Papers by Arnold (f.16), Belsky & Blumenthal (f.17), Madany and West (f.18), and Rummell (f.19) are enclosed, providing this information.

Issue number: PP-WY-KEMMERER-08-0002-23

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM did not review the role livestock play in denuding shrub inner-spaces, leading to accelerated shrub recruitment. Sagebrush canopy cover increases alone do not result in increased bare ground (f.20). A review of the Welch publication cited by downloading from the link provided should be included in the analysis. The RMP should have reviewed this publication as well as the paper by Wambolt et al. that studied the effects of sagebrush treatments on sagebrush and the herbaceous community, finding no benefit to the herbaceous community while the shrub values were lost for decades (f.21). (Paper enclosed) Key to this analysis is exposing the role livestock have played in the current distribution of communities, altered fire

frequency, invasion by cheat grass and other non-native weeds and invasives, and loss in production of native grasses and forbs which have occurred in sagebrush and other communities.

Issue number: PP-WY-KEMMERER-08-0002-25

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP contains no analysis of the area affected by invasive species or that suffer from reduced native species and production compared to potential. WWP commented on the role of OHVs and livestock grazing on invasive in its comments on the Draft RMP/EIS. Numerous references explaining the effects to be expected were provided in those comments and cited above in this protest. Additional references are provided here that elucidate the role of livestock in creating conditions suitable for invasive by weakening native plant communities due to lack of rest from grazing or over use (f.22, 23, 24, 25). (Papers enclosed).

Issue number: PP-WY-KEMMERER-08-0002-26

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP does not address the conditions of streams accessible to and grazed by livestock relative to those that are not accessible. The extent (total miles and acres) of perennial; ephemeral and intermittent streams within the planning area is not disclosed, nor is the condition of seep; springs and ephemeral and intermittent stream channels. The BLM did not reveal what percent of the riparian/wetland resource has actually been monitored to ascertain its reported conditions, nor did it analyze the loss in productivity occurring under continued livestock grazing compared to cessation of grazing (f.26). (Paper enclosed).

Issue number: PP-WY-KEMMERER-08-0002-30

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP shows that numerous allotments are in Category I (Improve). The RMP does not reveal the current condition of allotments, plant and soil communities nor does it analyze the impacts of water developments and other "range improvements." It

also fails to discuss why the allotments are still in the "I" category after 20 years of supposed actions to correct the problems. This was addressed in WWP's comments on the Draft RMP/EIS, citing well known range scientists regarding the "sacrifice areas" extending for a mile or more from livestock water developments. There was no analysis of the effectiveness of the various grazing systems, stocking rates, fences, water developments and vegetation treatments. There is no analysis of Ecological Site Inventory data, Trend data, or Utilization data or permittee compliance data. The BLM has not determined the effectiveness of management under the current land use plan and amendments as required by NEPA and FLPMA.

Issue number: PP-WY-KEMMERER-08-0002-31

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP failed to adjust stocking rates to account for the increase in livestock weights, birth rates/times and forage consumption that has occurred since the adjudication of the allotments following range surveys in the 1950's and 1960's. Thus, the data on which the BLM bases its stocking rates in the RMP is out of date and should have been updated for this RMP by reducing stocking rates accordingly (50%). WWP provided the report, "Updating the Animal Unit Month" showing that current forage consumption for cattle is almost double the amount the BLM allocates. This information should have been incorporated into the BLM's analysis for all alternatives. By not accounting for the actual forage present (lb/acre), and the amounts (lb/month, lb/AUM) actually utilized by livestock and wildlife, the BLM cannot properly allocate forage. Since livestock numbers remain unchanged, the increased forage demand must come from that needed by wildlife or the residual vegetation needed to maintain the native plant communities. The BLM has failed to review the best available information and present an analysis that reflects actual on-the-ground conditions.

Issue number: PP-WY-KEMMERER-08-0002-32

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Despite WWP's and others comments and the scientific literature they provided, the BLM continues to ignore the effects of livestock grazing and the epidemic proportions of the spread of weeds in the

affected environment, alternatives, and environmental consequences sections of the document. The BLM did not analyze the actual causes of the spread of invasive species within the planning area. There was no mention of the effects of livestock grazing on invasive or the effectiveness of current control methods. The BLM ignores the role of livestock on soil disturbance and cheat-grass establishment. Domestic livestock are probably the major cause of weed invasions in the arid West: These animals move in large numbers from watershed to watershed, carrying seeds in their coats, guts, and on the mud on their hooves. See, e.g., *Blue Mtns. Biodiversity Project v. U.S. Forest Serv.*, Civ. No. 01-703-HA (Order issued Sept. 6, 2002) (noting that weed control "is impossible without acknowledging significant sources of weed introduction, such as the fact that 111,000 cows coming on to the forest is a 'major seed transport system.'").

Issue number: PP-WY-KEMMERER-08-0002-33
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The reality is that livestock occupy over 99% of the planning area, that they remove ground covering vegetation, destroy soil crusts and disturb the soil. The RMP ignores the role livestock play in weed infestations, cheat grass infestations and increases in non-palatable species. Literature was cited earlier in this protest regarding the role of livestock in promoting invasive. Despite the availability of this information throughout the RMP process, it has not been considered.

Issue number: PP-WY-KEMMERER-08-0002-35
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM also failed to disclose and discuss recent research indicating that there may be a significant "lag phase" in recovery of native perennial grasses following removal of livestock (f.31). The authors conclude that "there may be time lags of 20 years or more in the response of perennial grasses to removal of livestock in historic grassland ecosystems dominated by shrubs." Jay E. Anderson & Richard S. Inouye (2001) (f.32) refuted state-and transition model opinions that shrub-dominated high desert habitats are stable over the long-term and would not recover following removal of livestock, instead

finding that perennial grasses increased significantly over a 45-year period and that adequate native species cover can make semiarid vegetative communities more resistant to exotic species invasion. Although not evaluated in the RMP and EISs, there are very likely vast weed or invasive dominated acreages within the planning area that would convert back to native plant communities if native seed sources are present and if disturbance factors -such as livestock grazing - are removed. Belsky and Gelbard (2002), cited above, described many such communities in which weeds have been replaced by native species. This conversion may take tens of years-which is the temporal scale that this resource management plan ostensibly considers.

Issue number: PP-WY-KEMMERER-08-0002-37
Organization: Wyoming Western Watersheds Project
Protester: Jonathan B. Ratner

Issue excerpt Text:

Conversion also may require the total removal of livestock, which selectively graze native species, and the removal of OHVs. The BLM did not analyze these options for weed control purposes. As discussed above, both livestock and ORVs disturb the soil and biological soil crusts. Removal of livestock and ORVs occurs so rarely on public lands that few have ever seen weedy communities converted to native grasslands. But if left alone with only natural disturbances and native wildlife, the scientific literature demonstrates many weed-dominated communities will eventually become dominated by native species. This is a low cost, non-toxic alternative that must be assessed. Most weed specialists and land managers admit that prevention is the most effective and least expensive way of managing introduced plant species and preventing new infestations. See, e.g., Bureau of Land Management, "Partners Against Weeds," BLM/MT/ST-9603+1020 (1996). Nevertheless, the RMP fails to analyze these options and the best, available science, which support them. (footnotes) 29 Jones, Allison. 2000. Effects of cattle grazing on North American arid ecosystems: a quantitative review. *Western North American Naturalist* 60(2):155-164.30 Mack, Richard N., and John N. Thompson. 1982. Evolution in steppe with few large, hooved mammals. *American Naturalist* 119(6):757-773.31 Valone T. J., Meyer M., Brown J. H. & Chews R. M. 2002. Timescale of perennial grass recovery in desertified arid grasslands following livestock removal. *Cons. Bio.* (16):995 - 1002. 32 Anderson, Jay E. and Richard S. Inouye. 2001. Landscape-scale changes in plant species abundance

and biodiversity of a sagebrush steppe over 45 years. 71 Eco. Monographs 71:531.

Issue number: PP-WY-KEMMERER-08-0002-40

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM's reliance on 50 year-old adjudications which predate the development of these criteria and which are not based on current scientific data and on-the-ground conditions, do not consider the current forage consumption rates of livestock, soil erosion hazard and other factors. Failure to make determinations of capability and suitability directly violates NEPA, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1784, the Taylor Grazing Act, 43 U.S.C. §§315-315r, and the BLM's Land Use Planning Manual and Handbook.

Issue number: PP-WY-KEMMERER-08-0002-45

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

If the agency cannot provide baseline inventory and analytical information to support its alternatives, which leave the majority of the lands in the planning area open to livestock grazing and OHVs, then the BLM has not adequately supported the decisions proposed in the PRMP. Without a reasoned analysis of the affected environment and the environmental consequences of the alternatives considered, the RMP is inadequate with respect to livestock grazing and OHVs.

Issue number: PP-WY-KEMMERER-08-0002-46

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, the RMP does not analyze the baseline condition of the planning area OHV use. The BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, micro-biotic crusts, fish and wildlife, and native vegetation. There is no analysis of the extent of user created roads and trails,

or the loss in wilderness or ACEC quality resources due to OHVs. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential environmental consequences. See 40 C.F.R. § 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment"). Unless and until the BLM provides this information, the public lands should be closed to OHV use. Likewise, as a recognized surface-disturbing activity, livestock grazing and trampling has similar impacts and until its effects are disclosed and corrected, the BLM should close the lands to livestock grazing.

Issue number: PP-WY-KEMMERER-08-0002-58

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

C) Inventory of Weeds and Vectors for the Spread of Weeds The RMP fails to present any baseline or other inventory data on weeds and invasive, in particular, the most significant vectors spreading weeds: livestock grazing, oil and gas, roads and OHVs. The RMP fails to mention or discuss several very important scientific studies discussing the interaction between livestock grazing, biological crusts, weeds, and native plant species. See Valone et al. (2002); Stohlgren et al. (2001); Anderson & Inouye (2001); Belsky & Gelbard (2000). This lack of analysis coupled with the agency's masking of livestock grazing as a primary cause of the spread of weeds suggests that the agency is in denial with respect to the main causes of this epidemic problem on the public lands, which is related to the current fire issue as well. The problem cannot be controlled if broad-scale documents such as this RMP do not begin by acknowledging the main causes of the problem, discussing the best available science, and presenting baseline inventories that can be used to address the problem. Until the BLM has undertaken the required inventory of weeds and their primary vectors of spread, and at least assessed the planning areas in light of the best available science, it is arbitrary and capricious to authorize grazing at continued levels and on status quo allotted lands with no current inventory data to support these decisions.

Issue number: PP-WY-KEMMERER-08-0002-64

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP maintains the status quo by continuing with the same authorized use level and grazed areas. By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by default. As a result, the RMP does not constitute a reasoned and informed decision in the public interest, with respect to whether the land within the planning area can continue to endure livestock grazing.

Issue number: PP-WY-KEMMERER-08-0002-7

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

1) Inadequate Range of Alternatives: A) Livestock Grazing The RMP considers no range of alternatives with respect to livestock grazing (PRMP Chapter 2). The FEIS/RMP documents the unique nature of the planning area with its natural features, cultural and wildlife resources, and plant communities. A great proportion of the planning area contains sensitive and unique resources including sagebrush steppe critical to sage grouse and migrant birds, vast areas of erodible soils sensitive to wind and water when ground covering vegetation is lost and great overlap between and among these unique and sensitive resources. In spite of these characteristics which combine to make much of the planning area sensitive, there was no analysis of alternatives such as No Grazing, Significantly Reduced Grazing or closing sensitive areas such as wilderness quality lands, riparian areas, ACECs or areas with sensitive soils, cultural or paleontological, or wildlife resources, to livestock or the application of a suite of management standards based on current science to reduce impacts.

Issue number: PP-WY-KEMMERER-08-0002-72

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP does not explain how authorizing grazing at the same levels and same locations as currently allowed complies with this multiple use mandate and considers competing values. Overwhelming scientific

evidence points to livestock grazing as extremely environmentally destructive. Grazing cannot cause significant environmental degradation at the same time that it results in restoration, protection, or enhancement of the environment. This is not a reasoned decision.

Issue number: PP-WY-KEMMERER-08-0002-73

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Further, a reasoned decision regarding grazing can only be made if the decision maker is informed as to the benefits and consequences of grazing. As indicated in this protest, the BLM has not assembled the information to understand the impacts of grazing or revealed that information in the RMP. The BLM fails to disclose the assessment of acres suitable for livestock grazing. There is no disclosure of criteria, no baseline analysis, or a determination of which acres are capable and suitable for livestock grazing. Without this information, the BLM cannot claim that it has made an informed decision in the RMP and the agency ignores the multiple use and unnecessary and undue degradation mandates of FLPMA.

Issue number: PP-WY-KEMMERER-08-0002-80

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

An RMP must present, analyze, and designate specific grazing standards to regulate grazing management throughout the planning area. WWP provided extensive information on grazing systems, utilization rates, the need for rest and other criteria for livestock grazing in its comments on the Draft RMP/EIS. These are fully incorporated into this protest. The BLM ignored this information, and has ignored the role of livestock and range management on the environment.

Issue number: PP-WY-KEMMERER-08-0002-83

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Livestock grazing is a significant source of nonpoint pollution. In its comments on the Draft EIS, WWP commented on the role of livestock in affecting water quality, watersheds and water quantity showing the direct link between livestock and degradation of

streams and water sources. There was no analysis of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality and quantity, loss of wetlands and impacts to wildlife in the RMP.

Issue number: PP-WY-KEMMERER-08-0002-84

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

There is no evidence of any attempt to demonstrate that grazing and areas allotted to grazing, as authorized under the proposed alternative, will ensure adequate water quality. This lack of specific criteria puts off indefinitely any adoption of actual practices or standards, and therefore fails to satisfy the requirements of FLPMA, the Clean Water Act and the Colorado River Salinity Control Act.

Issue number: PP-WY-KEMMERER-08-0002-88

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In the RMP, the BLM ignores impacts to T & E species from livestock grazing which can directly alter habitats for T &E, Wyoming and BLM-sensitive species and Conservation Agreement species. The RMP provides no standards or criteria to provide protection to these species from impacts of OHVs, livestock grazing, oil and gas and their associated habitat alterations. The RMP should be designed with sufficient restrictions, closure, standards and numerical criteria to prevent this situation. Furthermore, the BLM should be acting proactively to protect habitats for these species instead of relying vague prescriptions and BMPs that lack teeth. Because livestock trample and degrade riparian habitats and consume riparian vegetation, including willows, the same surface disturbing activity controls should apply to grazing as to other surface-disturbing activities.

Issue number: PP-WY-KEMMERER-08-0002-9

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In addition to no differentiation in stocking rates,

there is no difference in the amount of acres of public lands the BLM considered leaving open, or available, for grazing. All alternatives continued the status quo of maintaining the entire Field Office open to grazing by livestock. In doing so, the BLM has failed to resolve livestock conflicts with low-impact recreation, fish and wildlife, erodible soils, biological crusts and other resources by including meaningful alternatives to protect these important resources. This is unreasonable. The FEIS states that conflicts will be resolved at the site-specific level, yet fails to analyze the effectiveness of this method from the current RMP. NEPA requires that all alternatives must be reasonable. See 40 C.F.R. §§ 1502.14 (EISs must "[r]igorously explore and objectively evaluate all reasonable alternatives") (emphasis added); 1508.25 (scope of alternatives considered in an EIS must consist of "reasonable courses of actions"). Note also that a 2001 BLM Instruction Memorandum states, "The impacts of all alternatives addressed must be fully analyzed in the NEPA document. They must also reflect the actual situation on the ground. (f.2). The alternatives in the RMP do not satisfy this requirement because they do not reflect the actual situation on the ground. The Proposed RMP, like the Draft, still fails to present and analyze a reasonable range of alternatives that comply with the planning criteria and existing law. Furthermore, the BLM, by leaving the entire Field Office open to livestock grazing, with its documented impacts to sensitive, unique and irreplaceable resources, has failed to meet one of FLPMA's major objectives, to accelerate restoration (43 CFR 4100.0-2).

Issue number: PP-WY-KEMMERER-08-0005-48

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

When excess wildlife is a factor in damage, it is incumbent on the BLM to inform the state wildlife agency that wildlife numbers need to be reduced, notwithstanding any general agreement on the part of the BLM to support WGFD population objectives. The FEIS, therefore, must be revised to clearly state that AUM levels will be sustained on an allotment-by-allotment basis for livestock grazing, providing Wyoming Standards for Healthy Rangelands are met, or the failure to meet or not maintain Wyoming Standards for Healthy Rangelands is due to other causes. SWCCD LRUPP p. 48 (monitor impacts of wildlife use).

Summary

The BLM's analysis of the impacts of livestock grazing on other resources in the PRMP area is inadequate in a number of ways, and violates NEPA and FLPMA.

Response

The BLM Kemmerer Field Office identified potential areas of no livestock grazing in the range of alternatives (Table 2-3, Pg 2-80, 81). These alternatives identified the following areas as potentially closed to livestock grazing: Lost Creek/Ryan Creek CRMP area, isolated BLM tracts, coal mines, sensitive cultural sites, designated camping areas, oil and gas production facilities, and the Mike Mathias Wetlands at Wheat Creek Meadows. In addition, the PRMP/FEIS states that reductions in AUMs (Animal Unit Months of forage allocated for livestock grazing) may occur if rangeland health standards and (or) monitoring indicates a grazing use adjustment is necessary (FEIS Table 2-3, Pg 2-80). In accordance with current policy, such adjustments in grazing use are analyzed on a site-specific permit or allotment basis.

The best available data and information was used in preparation of the PRMP/FEIS. The FEIS includes an adequate description of baseline data associated with OHV use. Chapter 3 includes OHV use descriptions and trends in the planning area as well as discussion of OHV use/resource conflicts (pages 3-130 & 131.) Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively) Baseline data regarding livestock grazing is included in Section 3.6.2 of the PRMP/FEIS including information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions in contained in Section 3.6.4 (p. 3-123 to 3-126). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively).

The PRMP/FEIS addresses the condition of streams in Section 3.4.3 (Pgs. 3-53 to 3-57, see also Table 3-18 in that section). Migratory birds are addressed in Section 3.4.5 (Fish and Wildlife Resources – Wildlife) in two sections “Migratory Game Birds” and “Nongame (Neotropical Migrants).” Special status migratory birds are covered under section 3.4.8 (Special Status Species – Wildlife) under Game Birds (greater sage grouse), Nongame (Raptors), and Nongame (Neotropical Migrants). Baseline data on noxious weeds and invasive plant species is included in Section 3.4.9 of the PRMP/FEIS (p. 3-89 to 3-93). Soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.1.2 of the PRMP/FEIS (p. 3-12 to 3-17). Site-specific impacts to biological soil crusts would be covered in implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

The RMP does not address the more site-specific issues related to soils and biological soil crusts. The goal of the management plan is to allow for and ensure maintenance and improved soil biological crust management. The BLM does not dispute the discussion given or the importance of biological crusts in reducing erosion, retaining soil moisture, and reducing impacts from

invasive weeds (FEIS pg 3-15).. Currently, the BLM does not have a sufficient inventory or identified ecological site characteristic that would allow a detailed discussion of impacts to these resources.

The FEIS fully assesses and discloses the environmental consequences of the PRMP and alternatives in Chapter 4 as required by 40 CFR § 1502.16. The Chapter 4 discussion disclosed the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS presents the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with the alternatives.

The impact of livestock grazing on water quality is analyzed on a site-specific basis, through the Wyoming Standards for Healthy Rangelands (Standard #5, see PRMP/FEIS Pg. 3-125) and is discussed in general on FEIS pages 4-18 through 4-25. The BLM considered the affects of OHV use and livestock grazing on air quality (see Appendix J, Air Quality Technical Support Document.) The comparative discussion of the impacts of the potential livestock grazing management scenarios acknowledges potential adverse and beneficial impacts to vegetation (including INNS), fire regimes, soils, wildlife habitat, air and water within the planning area through the application of the various alternatives for livestock grazing. (See FEIS pgs 4-11 through 25; 4-66, 67, 69, 70, 72; 4-77, 79, 81, 83; 4-118, 120, 122, 123; 4-130; 4-135, 139, 140, 143, 144, 147, 148, 150, 152.)

The allotment categorization process provides the BLM a system to prioritize labor and funding. Rangeland health is not the only factor considered when determining the allotment category. Therefore, a lack of change in allotment categorization does not mean there has been no change in resource conditions on the ground. Standards for healthy rangelands and trend monitoring studies are the primary tools the BLM Kemmerer Field Office uses to ascertain the condition and trend of rangeland resources.

Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. As stated in a letter from Edwin L. Roberson, Assistant Director, Renewable Resources and Planning, Bureau of Land Management, to Jon Marvel, Executive Director, Western Watersheds Project, dated April 30, 2008, in reference to a letter written to all BLM State offices from Western Watersheds Projects and various other organizations, it has been a long standing policy that the BLM will make adjustments to AUMs, season of use, or other terms and conditions based on site-specific monitoring data. The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. After appropriate NEPA analysis, changes to livestock management deemed necessary to meet or progress towards meeting management objectives are implemented through

a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance land health.

The BLM will conduct subsequent NEPA analyses for site-specific project and implementation-level actions, such as for oil and gas field development, realty actions, allotment management plans, and public land use authorizations, or other ground disturbing activities proposed (Section 2.3.18, p. 2-20). These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. The public will be offered the opportunity to participate in the NEPA process for these specific implementation actions.

The BLM anticipates that proactive management actions will benefit vegetation communities and wildlife by appropriately managing activities of other resources programs (e.g., mineral development, livestock grazing). These management actions are identified in FEIS Table 2-3 in the Soils, Water, Biological Resources, and Special Management sections (pgs. 2-36 through 2-109). The management actions include, but are not limited to, the following examples: the PRMP requires subsequent travel management planning above the identified management actions that would protect wildlife, vegetative and soil resources. The PRMP also identifies areas opened and closed to OHV and motor vehicle use and areas of limited use, which will benefit wildlife by reducing habitat fragmentation, erosion, and pollutant runoff coming from roads and trails. Wildland fire would be used to meet desired wildlife management objectives which would benefit certain desirable wildlife habitats. Management would push to keep the connectivity between large contiguous blocks of sagebrush, aspen, and mountain shrub communities. There would be greater restrictions on placing new structures within the 100 year floodplain and managing salinity and water quality issues on public lands (FEIS Table 2-3, pages 2-39; 2-41-44; 2-59 Record 4023 and 4024; 2-63 Record 4037 and 4039).

The Goals and Objectives for Biological Resources identify that BLM will support WGFD objectives by managing habitat (Table 2-3, pages 2-52, 53). The PRMP and other EIS alternatives also identify goals and objectives for Livestock Grazing (Table 2-3, pages 2-80) and for maintaining the economic stability of local communities (page 2-36). The BLM is committed to rangeland health, maintaining habitat for wildlife populations, and to providing livestock grazing opportunities on the public lands.

National Trails

Issue number: PP-WY-KEMMERER-08-0008-26
Organization: Gary-Williams Production Company
Protester: Tim Howard

specific approach to imposing viewshed restrictions and trail buffers that accommodate existing lease rights.

Issue excerpt Text:

The National Director should reject the Field Office's proposed viewshed restrictions and trail buffers around NHT segments (both individually and in the aggregate) because they would violate the BLM Manual; create a management conflict; defy 43 C.F.R. § 3101.1-2; and, in the absence of current, specific guidance, are unsupported and arbitrary. The National Director should adopt a flexible, site-

Issue number: PP-WY-KEMMERER-08-0008-29
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

These restrictions and prohibitions do not accommodate Gary- Williams' valid, existing right to develop its leases. Similar to the VRM restrictions, the viewshed and trail buffers should be a result of,

and conform to, the resource allocation decisions made in the RMPs. See BLM Manual 8400- Visual Resource Management at .06.A.2. The BLM should not overlook its commitment in the BLM Manual to accommodate valid existing lease rights when it revises the existing RMP. See Bush-Quayle '92 Primary Comm., 104 F.3d at 453.

Issue number: PP-WY-KEMMERER-08-0008-31
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The BLM has the discretion to craft far-reaching NHT buffers where it has not issued leases. It does not have that same discretion where it has issued leases that allow oil and gas development. The NHT restrictions go too far.

Issue number: PP-WY-KEMMERER-08-0008-33
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

3. The Viewshed Restrictions and Trail Buffers Are Not Consistent With 43 C.F.R. § 3101.1-2. The viewshed protections around NHT segments and the buffers of up to a 0.5 mile surrounding NHTs are unreasonable and defy 43 C.F.R. § 3101.1-2 because: (1) they effectively create an exclusion zone around NHTs; and (2) the Field Office can protect NHTs with less restrictive measures.

Issue number: PP-WY-KEMMERER-08-0008-35
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The viewshed and trail buffer limits are unreasonable because they are more restrictive than necessary to protect the NHTs. The restrictions also inappropriately prevent the Field Office from exercising flexibility with respect to NHT segments on or near existing leases. Under the Proposed RMP, the BLM must adhere to the objectives of the NHT Classes. But under a flexible, site-specific approach to NHT restrictions, the Field Office could use other techniques to achieve the same level of protection for the NHTs.

Issue number: PP-WY-KEMMERER-08-0008-38
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The Proposed RMP identified NHT classes and objectives that parallel the VRM classes and objectives. EIS at 2-94 to 2-95, 2-100 to 2-101. That analog is far more restrictive than necessary. The level of protection necessary to preserve NHTs varies not only by trail segment, but by the portion of each segment near leased areas. The BLM should have Manual or Handbook provisions that address NHT protection in its own right. Those provisions should recognize that conditions designed to protect portions of NHT segments must vary with respect to each leased parcel. Without current, specific, guidance regarding the protection of NHTs, the Proposed RMP viewshed restrictions and trail buffers are unsupported and overly restrictive. The National Director should issue a Final RMP that adopts a flexible, site-specific approach to imposing viewshed restrictions and trail buffers, particularly where determinations regarding viewsheds and buffers apply to development proposals on existing oil and gas leases.

Summary

The PRMP adopts buffers and viewshed restrictions associated with National Historic Trails that excessively restrict oil and gas development.

Response

The BLM must comply with existing laws. In complying with the law the BLM may constrain actions, including new development. Examples of these non-discretionary laws are the National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and the Clean Water Act (CWA). The BLM utilizes 43 CFR 3101.1-2 to manage oil and gas development restrictions within areas where these non-discretionary statutes apply.

It is important to note that the Wyoming BLM retains the highest quality National Historic Trails (NHTs) and settings in the country based on cultural resource investigations, BLM aerial reconnaissance, and ground-truthing of the aerial data. These findings are supported by trail advocates (Alliance for Historic Wyoming, OCTA, NTHP), which increases the significance of the objectives that are designed to preserve the last remaining NHTs in excellent condition. To ensure compliance with section 106 of NHPA the Kemmerer Field Office identified management actions to minimize the effects of undertakings on historic properties for which settings are defining characteristics of their significance. See FEIS 2-70 thru 2-72; 2-98 thru 2-101. These management objectives were developed in response to more than 20 years of less restrictive management, which demonstrated that less restrictive measures do not protect NHTs and their settings. Management conflicts are created by existing leases in NHT settings and the NHT management objectives presented in the PRMP are designed to attempt to resolve those conflicts. Description of the process to preserve settings is provided in the Kemmerer FEIS on Page 3-94 “When an undertaking is determined to be visible in the setting of a property and the setting retains sufficient historic character to contribute to the property’s NRHP eligibility, the Visual Contrast Rating (VCR) system is used to analyze potential visual impacts on the setting.” KFO’s management objectives for NHT Class 1 and Class 2 Trails will protect setting characteristics by applying the VCR system to proposed actions to assess visual impacts and develop strategies to attain a non-visible or non-dominating characteristic. Existing leases will be managed in accordance with the 43 CFR 3101.2-2 requirements through the use of site-specific conditions of approval, site-specific BMPs and other onsite mitigations to reduce overall impacts. The viewshed and trail buffer limits are minimally restrictive to preserve NHTs and their settings, and allow for a great deal of flexibility in managing developments of existing leases near NHTs.

Objectives for NHT settings can be attained by using guidance from VRM Manual 8400 which states that the BLM must identify key observation points (i.e. highways, major roads, scenic byways, points of interest) and evaluate the effects of a proposed action from these key observation points. (See Table 2-3, page 2-94 Record 6052; Volume 2, Glossary page 6; Map 66.) Where NHT setting qualities would require a Class II VRM objective the management would require retention of the existing character of the landscape. The level of change to the landscape should be low (FEIS Glossary-21, 4-172 thru 4-176.) This management does not prohibit surface disturbance and would require the BLM to work with the project proponent to identify a variety of alternatives to meet site-specific objectives. In addition, specific text in Appendix C of the Wyoming State Protocol (pg. 2) identifies standard measures to reduce visual contrast. This information is also available on the following website:
http://www.blm.gov/wy/st/en/programs/Cultural_Resources/protocol.html.

While NHT management utilizes VRM class objectives, it is important to note that the identified NHT classes do not correlate directly with VRM classes. The FEIS pg. 3-99 thru 3-101 provides the description of management classes for National Historic Trails and VRM Class definitions are provided in the Glossary on page 21.

The PRMP/FEIS identified the extent of the BLM’s ability to require mitigative actions as COAs on existing leases (pg 3-25; pg 4-29). 43 C.F.R. § 3101.1-2 states that a lessee’s rights are subject to “reasonable measures as may be required by the authorized officer to minimize adverse

impacts to other resource values” which “may include...modification to siting or design of facilities....”

The 1986 RMP (current management) identifies a protective corridor for NHTs. Generally, visual intrusion and surface disturbance will be restricted or prohibited within 1,320 feet (i.e. 1/4 mile) from either side of the historic trail (Record 5010 Table 2-3). This restriction is applied to all Trail Classes resulting in a 1/2-mile NSO surrounding trail segments. The FEIS does not continue this presumption that all trail segments are equally important and sensitive. Rather, detailed definitions of the four NHT classes are provided on FEIS pages 3-99 through 3-101, in which variable importance and sensitivity of the different classes are clearly distinguished based on their known characteristics. NHT Class 4 segments are defined as those areas where “the trail’s physical trace no longer exists;” none of the Class 4 segments are managed with VRM Class II standards. The NHT management objectives were crafted in accordance with existing guidance published in Appendix C of the *State Protocol Between the Wyoming Bureau of Land Management and the Wyoming State Historic Preservation Officer* (2006) (Wyoming State Protocol). Currently, developments within areas of Class II VRM restrictions and NHTs have utilized directional drilling technology to reach targets of up to 1 mile. Shallower developments may be able to reach 1/4 to 1/2 mile.

Exclusion zones would be limited to those areas identified as NSO. Outside of these areas the NHT management objectives do not effectively create exclusion zones because they allow development that minimizes adverse impacts to NHTs through modification to siting or design of facilities.

Lease stipulation

Issue number: PP-WY-KEMMERER-08-0008-43
Organization: Gary-Williams Production Company
Protester: Tim Howard

and buffer zones apply only where the BLM has a rational basis to determine that the species of concern actually occupies the specific habitat.

Issue excerpt Text:

The Proposed RMP would impose restrictions in a manner that is contrary to Arizona Cattle Growers' Ass'n and the Wyoming BLM State Director's Decisions on this very issue. The BLM should follow that federal precedent and the State Director Review Decisions. See Bush-Quayle '92 Primary Comm., 104 F.3d at 453. While the Proposed RMP finds that most of the wildlife species at issue covered are present somewhere in the Planning Area, it does not limit the restrictions to occupied habitat. The National Director should state in the Record of Decision for the Final RMP that the wildlife timing restrictions

Issue number: PP-WY-KEMMERER-08-0010 -53
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We find these categories confusing and not self-explanatory. So far as we can determine, nowhere in the RMP is it stated what exactly major and moderate constraints are or what they will mean in terms of management. Absent a careful-and prominent-explanation of what exactly these limits are this plan is flawed and in need of correction.

Summary

The discussion of constraints on oil and gas development is inconsistent with the Wyoming BLM state director’s decision and legal precedent.

Response

The BLM manages special status species and their habitat in accordance with BLM Manual 6840 “with the objectives to: (1) conserve listed species and the ecosystems on which they depend and (2) ensure that actions requiring authorization or approval by the BLM are consistent with the conservation needs of special status species and do not contribute to the need to list special status species either under the provisions of the ESA or BLM Manual 6840.” Therefore, it is appropriate for the BLM to apply stipulations and/or conditions of approval to special species habitat that is determined to be suitable.

Constraints categories were derived from the Energy Policy and Conservation Act (EPCA). Phase I and II inventory analysis are used to describe the level of impediment to oil and gas development. The constraints categories are described in the FEIS on page 4-29. Constraints categories are used in the Kemmerer FEIS as a comparative analysis tool to describe the impacts to conventional oil and gas development on lands administered by the BLM. The constraints categories are a result of the management actions that protect other resources and do not of themselves describe a particular management strategy. In the PRMP FEIS, a constraint would include any management action, or combination of management actions, that could restrict the timing or placement of a development beyond standard lease stipulations. In the EIS analysis, moderate constraints would include 1) timing restrictions that allow more than 6 months of development time and 2) surface use restrictions where directional targets are within ¼ mile. Management action examples include crucial big game winter range (Table 2-3, Record 4012), National Historic Trails (NHT) Class 2 and 3 Management, No Surface Occupancy (FEIS Table 2-3, Record 5010), and VRM Class II (Table 2-3, Record 6052). Major constraints include management actions that by themselves or overlapping would result in a timing restriction greater than 6 months and surface use restrictions that would require the use of special directional drilling techniques to reach targets over ¼ mile away. Examples include crucial big game winter range overlapping with a sage-grouse timing buffer (Table 2-3, Record 4041), and NHT Class 1 Management NSO.

The intent of the BLM Wyoming sensitive species designation is to ensure that actions on BLM administered lands consider the welfare of these species and do not contribute to the need to list any species under the provisions of the Endangered Species Act (ESA). This includes avoiding or minimizing adverse impacts and maximizing potential benefits to the species.

Reasonable Foreseeable Development

Issue number: PP-WY-KEMMERER-08-0004-13

Organization: Anadarko Petroleum Corporation

Issue excerpt Text:

3. Reasonable Foreseeable Development (RFD)
Shortfall: In October 2006 the BLM completed its RFD scenario to project environmental impacts across a 20 year planning scenario and speculated that a combination of 2,680 CBNG and conventional oil and gas wells would be drilled. Since the completion of that report the BLM has issued its

DEIS for the Moxa Arch Infill Gas Development Project which analyzes the alternative proposed by the operators of 1,861 wells (Moxa Arch Infill DEIS Page 2-3). Using the Moxa infill well count alone it is evident that the RFD inadequately anticipates a reasonable development scenario that could occur in a 20 year horizon. This is further evidenced through the RFD’s anticipated development scenario for the Moxa Arch area with a projected well count of 1,740 wells.

Summary

The reasonably foreseeable development (RFD) scenario in the PRMP/FEIS does not accurately reflect a reasonable development scenario for oil and gas that could occur in 20 years.

Response

The BLM requested a 20-year estimate of reasonable foreseeable development from all active operators and leaseholders within the analysis area prior to development of the RFD. The RFD scenario presented is not a worst-case scenario, but a reasonable information-based projection of anticipated oil and gas activity. The baseline scenario was developed through data obtained from industry and uses logical and technically based assumptions to make projections (Page 1 KFO RFD). The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity. The RFD is neither a planning decision nor the “No Action Alternative” in the NEPA document. In addition, the RFD is not expected to cover the entire life span of an area’s development. (BLM WO IM 2004-089) Specific information regarding additional infill development in the Moxa Arch area was received late in the RFD development process. This information was carefully considered and it was determined that the baseline RFD was accurate for the 2001-2020 period (BLM Wyoming Reservoir Management Group, email to Michele Easley from Dean Stilwell, Re: Kemmerer, 08/12/2005.) In addition, the operators, in their submittal, indicate that not all their wells may be drilled. They specifically indicate that the final well total will depend on production success, appropriate engineering technology, economic factors, and commodity prices, availability of commodity markets, and lease stipulations and restrictions.

Lease restrictions

Issue number: PP-WY-KEMMERER-08-0008-20
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

4. The VRM Class II Designation Is Contrary to 43 C.F.R. § 3101.1-2. The Field Office's designation of leased areas as VRM Class II is contrary to 43 C.F.R. § 3101.1-2. That regulation allows for reasonable regulation of oil and gas development on existing leases. It does not allow for the de facto prohibition of surface disturbing activities that may be necessary to meet VRM Class II objectives.

Issue number: PP-WY-KEMMERER-08-0008-24
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The BLM's designation of leased lands as VRM Class II significantly reduces the BLM's ability to

tailor its requirements relating to lease development to the physical, economic, and scenic characteristics of the individual leased parcel. Blanketing a vast and diverse area as VRM Class II may take away the BLM's flexibility to allow greater surface disturbance in areas where it is necessary to develop the leases.

Issue number: PP-WY-KEMMERER-08-0008-26
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The National Director should reject the Field Office's proposed viewshed restrictions and trail buffers around NHT segments (both individually and in the aggregate) because they would violate the BLM Manual; create a management conflict; defy 43 C.F.R. § 3101.1-2; and, in the absence of current, specific guidance, are unsupported and arbitrary. The National Director should adopt a flexible, site-specific approach to imposing viewshed restrictions

and trail buffers that accommodate existing lease rights.

Issue number: PP-WY-KEMMERER-08-0008-29
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

These restrictions and prohibitions do not accommodate Gary-Williams' valid, existing right to develop its leases. Similar to the VRM restrictions, the viewshed and trail buffers should be a result of, and conform to, the resource allocation decisions made in the RMPs. See BLM Manual 8400- Visual Resource Management at .06.A.2. The BLM should not overlook its commitment in the BLM Manual to accommodate valid existing lease rights when it revises the existing RMP. See Bush-Quayle '92 Primary Comm., 104 F.3d at 453.

Issue number: PP-WY-KEMMERER-08-0008-31
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The BLM has the discretion to craft far-reaching NHT buffers where it has not issued leases. It does not have that same discretion where it has issued leases that allow oil and gas development. The NHT restrictions go too far.

Issue number: PP-WY-KEMMERER-08-0008-33
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

3. The Viewshed Restrictions and Trail Buffers Are Not Consistent With 43 C.F.R. § 3101.1-2. The viewshed protections around NHT segments and the buffers of up to a 0.5 mile surrounding NHTs are unreasonable and defy 43 C.F.R. § 3101.1-2 because: (1) they effectively create an exclusion zone around NHTs; and (2) the Field Office can protect NHTs with less restrictive measures.

Issue number: PP-WY-KEMMERER-08-0008-35
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The viewshed and trail buffer limits are unreasonable because they are more restrictive than necessary to protect the NHTs. The restrictions also inappropriately prevent the Field Office from exercising flexibility with respect to NHT segments on or near existing leases. Under the Proposed RMP,

the BLM must adhere to the objectives of the NHT Classes. But under a flexible, site-specific approach to NHT restrictions, the Field Office could use other techniques to achieve the same level of protection for the NHTs.

Issue number: PP-WY-KEMMERER-08-0008-38
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The Proposed RMP identified NHT classes and objectives that parallel the VRM classes and objectives. EIS at 2-94 to 2-95, 2-100 to 2-101. That analog is far more restrictive than necessary. The level of protection necessary to preserve NHTs varies not only by trail segment, but by the portion of each segment near leased areas. The BLM should have Manual or Handbook provisions that address NHT protection in its own right. Those provisions should recognize that conditions designed to protect portions of NHT segments must vary with respect to each leased parcel. Without current, specific, guidance regarding the protection of NHTs, the Proposed RMP viewshed restrictions and trail buffers are unsupported and overly restrictive. The National Director should issue a Final RMP that adopts a flexible, site-specific approach to imposing viewshed restrictions and trail buffers, particularly where determinations regarding viewsheds and buffers apply to development proposals on existing oil and gas leases.

Issue number: PP-WY-KEMMERER-08-0008-41
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

a. The Field Office Should Not Impose Restrictions On Suitable Yet Unoccupied Habitat. The Proposed RMP would impose restrictions without limitation to whether the species actually occupies the area at issue. That is inappropriate. In *Arizona Cattle Growers' Ass'n v. United States Fish and Wildlife*, the Ninth Circuit Court of Appeals found that the U.S. Fish and Wildlife Service ("USFWS") acted beyond its authority when it sought to impose land use conditions without showing that any threatened or endangered species actually existed on and used the land in question. 273 F.3d 1229, 1243-44 (9th Cir. 2001).

Issue number: PP-WY-KEMMERER-08-0008-50
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

b. The Field Office Should Not Impose Sage-Grouse Restrictions Without Finding That Grouse Actually Occupy the Habitat. The Proposed RMP should not impose restrictions designed to protect sage grouse habitat on leased parcels of land, including (Gary-Williams' leased land, without specifically finding that the species of concern occupies the specific habitat. *Arizona Cattle Growers' Ass'n v. United States Fish and Wildlife*, 273 F.3d 1229, 1243-44 (9th Cir. 2001); see also SDR No. WY-2006-13, Decision of the Wyoming State Director at 5 (July 12, 2006); SDR No. WY-2006-13, Decision of the Wyoming State Director at 11, 13 (June 19, 2006). The BLM should follow those decisions. See *Bush-Quayle '92 Primary Comm.*, 104 F.3d at 453. The Proposed RMP and EIS does not make that finding with respect to land leased to Gary-Williams. It does not limit the sage grouse buffers or timing restrictions to areas where sage grouse are present. The sage grouse restrictions are arbitrary to the extent they apply to suitable yet unoccupied habitat. *Arizona Cattle Growers' Ass'n*, 273 F.3d at 1243-44. The National Director should specifically limit their application to the time when, and areas where, the BLM has a rational basis to determine that the sage grouse are present and actually occupy the habitat.

Issue number: PP-WY-KEMMERER-08-0008-51
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

c. The Aggregate Impact of the Sage Grouse Restrictions is Contrary to 43 C.F.R. § 3101.1-2. The aggregate impact of the sage grouse restrictions on Gary-Williams' development of its oil and gas leases is contrary to 43 C.F.R. § 3101.1-2 because the restrictions create an exclusion zone and are more restrictive than necessary to protect the sage grouse.

Issue number: PP-WY-KEMMERER-08-0010-56
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The need to provide for "intensive management" in a clear and specific way raises two related matters. First, the Kemmerer RMP states that an objective for reaching its goals is to "[e]nsure that no greater than 12.5 percent net loss of crucial habitat acres occurs in the planning area over the life of the plan in the absence of voluntary offsite mitigation." Kemmerer RMP at 2-52. This is a significant and important provision that is needed to ensure compliance with the WGA Initiative, Wyoming's Mitigation Policy, and the sage-grouse EO. This provision could go far toward meeting the WGA goal of "preserving" crucial wildlife habitats and the Wyoming Mitigation Policy of not allowing disturbance in vital habitats that causes significant declines in distribution, abundance, or habitat function.

Yet this provision seems to have no certain and positive application in the provisions in the plan. It is said to be provided for in a number of specific management actions (there are many references to "BR 3-5.2" with respect to various management actions), but many of these actions are at least somewhat tangential to the stated objective and they certainly do not positively and affirmatively require that this needed assurance for meeting the overall goals of the plan be specifically abided by. Consequently we ask that this objective be converted into a clear and positive specified management action that will be specifically implemented. One way to do this would be to do as discussed at length above, and designate far more of the planning areas as unavailable for future leasing, as has been done in Pinedale. If 48 percent of the Kemmerer Field Office were designated as unavailable for future leasing it is almost certain that it could be assured there will be no more than 12.5 percent net loss of crucial habitat, while if only 13 percent of the planning area is unavailable for future leasing, there is little assurance that disturbance can be limited to this degree. Providing direct and positive commitments to not exceed 12.5 percent crucial habitat loss could compliment and support a requirement to provide for "intensive management," and be a component of that provision.

Summary

The PRMP decisions on lease stipulations, including VRM, unnecessarily and inappropriately restrict oil and gas development.

Response

While the terms and conditions (e.g., stipulations) on existing leases will not be modified by the PRMP, future offerings of leases must comply with the revised Kemmerer ROD. Lease stipulations are subject to an exception, waiver, and modification process (FEIS Appendix F.) Should conditions change in the future, the BLM has the flexibility to allow additional development in areas where conditions originally analyzed have changed sufficiently so that protections are no longer warranted.

The PRMP/FEIS identified the BLM's authority regarding application of conditions of approval on existing fluid mineral leases (FEIS pg 3-25; pg 4-29). The regulations at 43 C.F.R. § 3101.1-2 identifies that a lessee's rights are subject to "reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values" which "may include...modification to siting or design of facilities..." Where site-specific conditions require mitigation actions to protect surface resources, conditions of approval within the regulatory authority at 43 C.F.R. § 3101.1-2 will be applied.

NHT management objectives identified in the proposed plan were crafted in accordance with existing guidance published in *Appendix C of the State Protocol Between the Wyoming Bureau of Land Management and the Wyoming State Historic Preservation Officer* (2006). The NHT Classes were developed to define the zones in which the protocol guidance would apply. To ensure compliance with section 106 of NHPA the Kemmerer Field Office identified management actions to minimize the effects of undertakings on historic properties for which settings are defining characteristics of their significance. These management actions for the RMP were developed in response to more than twenty years of less restrictive management, which demonstrated that less restrictive measures do not protect NHTs and their settings. The PRMP provides management for NHTs that is specific to the condition of the NHT physical trace and setting. The FEIS pg. 3-99 thru 3-101 provides the description of management classes for National Historic Trails.

While NHT management utilizes VRM class objectives, it is important to note that the identified NHT classes do not correlate directly with VRM classes. VRM Class definitions are provided in the Glossary on page 21. The Kemmerer Field Office used BLM Manual 8400 and H-1601-1 while developing management actions for the RMP revision. A visual resource inventory was conducted and considerations for other land uses including existing uses and development potential were applied. Management conflicts were identified, including the conflict created by existing leases in NHT settings. VRM Class II objectives can be effectively managed by using guidance from VRM Manual 8400, which states that the BLM must identify key observation points (i.e. highways, major roads, scenic byways, points of interest, etc.) and evaluate the effects of a proposed action from these key observation points. FEIS Map 66 provides the identified key observation points for sensitive viewsheds. Where site-specific conditions would require a Class II VRM Objective the level of change to the characteristic landscape should be low. This management does not prohibit surface disturbance and allows for a variety of flexible alternatives to be developed to meet the objectives. Some methods that are currently used for maintaining Class II VRM are using non-reflective materials, coloring developments in harmony

with existing colors in the landscape, and modifying size and/or form of facilities so that they blend with surrounding topography.

The BLM manages special status species and their habitat in accordance with BLM Manual 6840 “with the objectives to: (1) conserve listed species and the ecosystems on which they depend and (2) ensure that actions requiring authorization or approval by the BLM are consistent with the conservation needs of special status species and do not contribute to the need to list special status species either under the provisions of the ESA or BLM Manual 6840.” Therefore, it is appropriate for the BLM to apply stipulations and/or conditions of approval to sage grouse habitat when it is determined to be suitable.

The Rawlins definition and application of “intensive management” is standard business practice in the Kemmerer Field Office for all project development activities including, but not limited to, oil and gas drilling/development, rights-of-way activities, livestock grazing projects and activities and forest projects. The Kemmerer PRMP/FEIS describes this management as “site-specific” and “project-specific” conditions of approval and best management practices (FEIS pg. 3-25, Appendix N).

The identified 12.5 percent cumulative limitation on loss of habitat is dependent upon species specific habitats, their quality and availability in the KPA. The 12.5 percent value was provided by the WGFD as a threshold for disturbance, above which the habitat function of the lands involved is substantially impaired and cannot generally be recovered through management or habitat treatments (FEIS page 4-56.) Therefore, this objective will be tracked on a project-specific basis.

Cumulative impacts of restrictions

Issue number: PP-WY-KEMMERER-08-0007-12
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

IPAMS believes this revision was arbitrary and capricious, as these expanded buffer zones were never discussed in any of the alternatives in the draft document. Because the preferred alternative in the DRMP called for 1/4 mile NSO and 2 mile CSU buffer zones, the DRMP never analyzed how the expanded 0.6 mile NSO and 3 mile CSU buffer zones would impact management of the planning area. The 0.6 mile NSO buffer zones would make 140,765 acres of BLM administered mineral estate off limits to resource development. That is up from 30,442 acres analyzed in the Preferred Alternative of the DRMP - a 362% increase. IPAMS requests that the NSO buffer for sage-grouse leks be revised to 1/4 mile and the CSU buffer to two miles consistent with the DRMP.

Issue number: PP-WY-KEMMERER-08-0007-13
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

4. Travel Restrictions: The PRMP proposes that travel management planning in big game winter ranges will minimize open road density to meet an objective of an average of 2 miles of open road per square mile" (Table 2-3, p. 2-91). This stipulation is overly restrictive and the BLM did not consider the cumulative impact of this stipulation on oil and gas development in the planning area. IPAMS requests that the language be modified in the ROD in order to retain the BLM's ability to actively manage road density based on topography, operational necessity, and levels of activity rather than a blanket 2 miles per section.

Issue number: PP-WY-KEMMERER-08-0007-3
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

The analysis in the DRMP does not take into consideration the cumulative impact of all these restrictions. Several of the restrictions are already more than moderate constraints, but when combined with several other layers of restrictions should certainly be categorized as major restrictions. It is not clear that the analysis looks at all the restrictions in the aggregate. IPAMS protests the various provisions which together combine to overly restrict oil and gas activities (table 2-3, page 2-46):. Reduced acreage available under standard lease terms to just 62,036 acres, less than 4% of the federal mineral estate... Reduced acreage available under moderate constraints, 797,504 acres, down from 1,042,502 acres in the Preferred Alternative of the DRMP.. Increased acreage available under major constraints to 537,341 acres, or 34% of the mineral estate, and up from 290,973 acres in the Preferred Alternative of the DRMP. Increased acreage unavailable to leasing, 182,481 acres or 12% of the federal mineral estate. The excessive restrictions imposed by the BLM result in a small amount of acreage available under standard

lease terms and a significant percentage of the mineral estate unavailable. At a time when the nation needs more energy resources, the BLM is administratively putting excessive restrictions on oil and gas development.

Issue number: PP-WY-KEMMERER-08-0008-58
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The EIS identifies the effect of proposed management prescriptions and procedures upon development of future leases. See. e.g., EIS at 3-23 to 3-28, 4-28 to 4-31, 4-35, 4-273 to 4.274. And it attempts to discuss the reasonably foreseeable direct, indirect, and cumulative effects of the Proposed RMP on the development on future leases. See id. But it does not identify or analyze the effect of individual management prescriptions and procedures, or the Proposed RMP in general, on existing leases. See id. Nor is there any effort to disclose the cumulative or aggregate effect of the various restrictions on the ability to develop existing oil and gas leases. That omission is another reason why the National Director of the BLM should issue a final RMP that adopts the modifications identified in this protest.

Summary

The PRMP FEIS does not analyze the cumulative effect of restrictions on oil and gas activities in the planning area.

Response

The FEIS analysis considers the overlap of the restrictions to oil and gas leasing and development in aggregate. This consideration is provided as constraints in Chapter 4 (FEIS page 4-29, see also Maps 8-11). The substantial reduction from standard lease terms in the PRMP occurred due to new considerations for development on steep slopes and sensitive soils. The increased acreage available under major constraints was due to the overlap of wildlife timing stipulations (big game crucial winter range/raptor/sage grouse). The acreage unavailable increased by approximately 77,000 acres over the 1986 RMP to protect areas of overlapping sensitive resources. This increase is approximately 5% of the mineral estate in the planning area. Approximately 56% of the federal oil and gas mineral estate in the Kemmerer planning area is currently leased. The PRMP does not modify existing leases and would therefore have to comply with the 43 CFR 3101.1-2 requirements for lease rights. However, based upon site-specific conditions during development the BLM may condition approvals to offset identified adverse impacts so long as they comply with lease rights. In addition, the FEIS sets forth the BLM's authority regarding application of conditions of approval to existing fluid mineral leases (FEIS

pgs 3-25, 4-29). The FEIS also identifies procedures and criteria for exception, modification and waiver of lease restrictions (Appendix F).

The BLM manages special status species and their habitat in accordance with BLM Manual 6840 “with the objectives to: (1) conserve listed species and the ecosystems on which they depend and (2) ensure that actions requiring authorization or approval by the BLM are consistent with the conservation needs of special status species and do not contribute to the need to list special status species either under the provisions of the ESA or BLM Manual 6840.” Therefore, it is appropriate for the BLM to apply stipulations and/or conditions of approval to sage grouse habitat when it is determined to be suitable.

Based on the definition of an objective (Volume 2, Glossary- p 10), the travel management goal in big game winter range of an average of 2-miles of open road per square mile of land surface is a “description of a desired condition for a resource.” The actual result is a timing limitation on the miles of road opened during severe winter timeframes. The use of remote monitoring, and BMPs would be methods to mitigate the impacts of development in areas managed with this limitation. These methods would potentially result in lower operational costs for snow removal. The objective would be that during Jan. 1 thru April 30, open road miles would be limited. However, overall road miles may be higher during non-sensitive times. Many operators within crucial winter ranges of highly developed oil and gas fields currently do not have two miles of open road per section.

Western Governors Association initiative and other BLM Field Office Resource Management Plans

Issue number: PP-WY-KEMMERER-08-0010 -30
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We feel this differential approach is especially contrary to and will make hard to implement and fulfill two overarching actions the BLM is taking. The first of these is that the BLM has moved to consolidate the Pinedale, Kemmerer, Rock Springs, and Rawlins Field Offices. It is creating the Wyoming High Desert District that is composed of these four Field Offices. This reorganization will be effective on October 1, 2008. It seems to us that it will be very difficult for this new structure for BLM management to meet its promise of ensuring consistent and effective management in widespread areas with similar conditions when the underlying RMPs the new District will have to abide by make fundamentally different provisions with no apparent underlying basis for this differential treatment

Issue number: PP-WY-KEMMERER-08-0010 -31
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

The second widespread effort the BLM is engaging in is the Wyoming Landscape Conservation Initiative, an effort to ensure or provide for maintenance of effective wildlife habitat across all of southwestern Wyoming in the face of widespread oil and gas development. It will be virtually impossible to meet the promise of this effort if in one Field Office large areas are protected pursuant to the RMP while in an adjacent field office that is ecologically similar and even equivalent large areas are made subject to the potential for additional oil and gas development. This inconsistency will either defeat or at least make more difficult achieving the goals of the Wyoming Landscape Conservation Initiative, and the BLM should not approve an RMP that builds this problem into future decision-making for probably the next 20 years. The provision to not make large areas of the Kemmerer Field Office unavailable to future leasing, like is being done in the Pinedale Field Office, will defeat broader management objectives the BLM has established.

Issue number: PP-WY-KEMMERER-08-0010 -32
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

This differential also raises concerns with BLM compliance with the Western Governors' Association's (WGA) recently adopted Wildlife Corridors Initiative. This official policy of the Western Governors, including the Governor of Wyoming who was a principal proponent of this initiative during his tenure as Chairman of the WGA, is available at <http://www.westgov.org/wga/publicat/wildlife08.pdf>. In adopting the Initiative, the Governors called for identifying and preserving for future generations wildlife corridors and crucial wildlife habitats. According to the Governors, "[t]he West would not be the West" without the wide array of wildlife that characterizes the West "interacting in vast intact landscapes." The Initiative focuses on ensuring migration corridors and crucial habitats are protected in the face of pressures from energy development, transportation, land use, climate change, and oil and gas development.

Issue number: PP-WY-KEMMERER-08-0010 -38
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Thus it is apparent to us that opening many of the areas made available for leasing in the Kemmerer RMP is not consistent with the Governors' policy and that many of these areas should be made unavailable to leasing in order to comply with this state policy.

Issue number: PP-WY-KEMMERER-08-0010 -40
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

Thus, in addition to not being in line with the WGA Wildlife Migration Corridors Initiative, the decision to make far more of the Kemmerer Field Office open to leasing than would be done in the Pinedale Field Office is also not consistent with the State of Wyoming's wildlife Mitigation Policy. Furthermore, as discussed in section one above, making these expansive areas, many of which are in sage-grouse core areas, available for leasing is also inconsistent with Wyoming's sage-grouse EO.

Issue number: PP-WY-KEMMERER-08-0010 -44
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

As just discussed, it will be impossible to meet the

WGA policy regarding crucial wildlife habitats and the Wyoming sage-grouse EO if these areas are open to leasing before much more rigorous analysis has been completed and effort made to "preserve these crucial habitats as recognized in the Governors' policy. In essence these "contiguous vegetation blocks" are another way of saying "crucial wildlife habitat," and a comparison of Maps 22 and 26 'with Map 21 confirms that this is largely true. The BLM recognizes the significance of these habitats in preventing habitat fragmentation. See Kemmerer RMP at 3-45 to -46. Given this, these large contiguous habitat blocks should be unavailable for leasing so as protect the crucial wildlife habitats they contain. This would ensure compliance with State wildlife policy.

Issue number: PP-WY-KEMMERER-08-0010 -46
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We would note that the Pinedale RMP too presents oil and gas leasing categories that are similar to what is provided in the Kemmerer RMP, but in addition to providing for leasing categories it also establishes oil and gas management areas-that is, it establishes a vision. Compare Pinedale RMP Map 2-4 with Map 2-9. This should be replicated in the Kemmerer RMP before it is approved, and we feel that if such a vision were developed a considerably greater portion of the Field Office would be made unavailable for future leasing, as occurred in the Pinedale Field Office. (f.4)

Issue number: PP-WY-KEMMERER-08-0010 -55
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

A second need for improvement in the oil and gas provisions applicable to the Kemmerer RMP before it is adopted is a need to adopt a provision like is made in the Rawlins RMP for the application of "intensive management" to certain oil and gas leasing and development activities. To ensure consistency between nearby Field Offices, the provision for intensive management should be provided for in all plans under revision. To have this provision applicable in one nearly-adjacent Field Office but not in another is not rational. As discussed in our protest of the Rawlins RMP, which is pending before the BLM, the application of intensive management should be made to all oil and gas development activities, not just those in "special places," and the definition of intensive management should be modified as specified in the Rawlins RMP protest.

Issue number: PP-WY-KEMMERER-08-0010 -65
Organization: Wyoming Outdoor Council
Protester: Bruce Pendery

Issue excerpt Text:

We must note that this situation stands in inexplicable contrast to what is going on just across the border in Colorado. In the Little Snake Field Office the BLM is conducting a quantitative air quality impacts analysis as part of that RMP revision. It is utterly arbitrary to have one Field Office

engaging in a quantitative analysis while a nearly-adjacent Field Office engages in a qualitative analysis. The two analyses are entirely incomparable and therefore of greatly reduced utility. This is totally contrary to rational land use planning and management, as well as NEPA. This raises many of the consistency and coordination issues discussed above. The BLM should not approve the proposed Kemmerer RMP until a far more useful and informative quantitative air quality impacts analysis is completed so as to allow for fully informed land management.

Summary

The PRMP is inconsistent with decisions proposed in the Pinedale RMP and with the Western Governors' Association wildlife corridors initiative.

Response

Incorporation of field offices into a district format is an organizational structure change and does not affect resource management policy. The field offices within the High Desert District contain specific and unique resource conditions; therefore, geographic-specific management as identified in respective management plans is necessary. However, where similar resources and uses can be managed in like conditions the RMPs contain similar management actions.

The Kemmerer PRMP provides a vision for protection of surface resources while providing for development of sub-surface resources and other surface uses. This vision is set forth as the management goals and objectives in FEIS Table 2-3 (pages 2-37 thru 2-111). The Kemmerer PRMP process specifically considered the overlap of sensitive resources along with the reasonable foreseeable future actions and development potential in the area. These considerations for management stand out with regard to the management of the Rock Creek/Tunp and Bear River Divide areas. The importance of wildlife migration corridors is recognized and addressed by the BLM in the PRMP (Table 2-3, Records 4026, 4027, 4028, and 4047). In addition, the Rock Creek/Tunp and Bear River Divide management areas are so identified partially due to the important wildlife migration corridors found in the area. These corridors have been identified by WGF and the Audubon Society as important to wildlife including, but not limited to, mule deer, elk, and avian species.

The Rawlins definition and application of “intensive management” is standard business practice in the Kemmerer Field Office for all project development activities including but not limited to oil and gas drilling/development, rights-of-way activities, livestock grazing projects and activities and forest projects. The Kemmerer PRMP/FEIS describes this management as “site-specific” and “project-specific” conditions of approval and best management practices (pg. 3-25, Appendix N).

The Wyoming Landscape Conservation Initiative (WLCI) is a long-term science based effort to assess and enhance aquatic and terrestrial habitats at a landscape scale in Southwest Wyoming, while facilitating responsible development through local collaboration and partnerships. The effort seeks to allow for development and use of natural resources while enhancing and conserving important wildlife habitats. The Kemmerer PRMP identifies similar goals and objectives (Table 2-3, pgs. 2-52 and 2-53). Projects identified as part of the WLCI initiative will comply with the Kemmerer RMP.

The Wyoming Governor's EO was not state policy until August 2008. Because Governor Freudenthal's Executive Order 2008-2 was issued on August 1, 2008 during final production and printing of the Final EIS, the BLM was not able to reference it in the document. The Kemmerer PRMP/FEIS identifies that recommended management actions for sage grouse can change based on new information (Table 2-3, Record 4041). In addition, the KFO provided management actions that conform to the objectives of the EO in Record 4015 and 4040 for contiguous blocks of sage brush, mountain shrub and aspen habitat. Specific management actions for big game (Records 4012, 4013, 4028, 6041) and sage brush obligate species (Records 4041, 4042, 4043, 4045) are identified. Although the specifics of the EO are not contained within the PRMP/FEIS, the objectives can be fulfilled through actions that would comply with the identified RMP ROD. The specifics of implementing the EO will be further clarified in the ROD for the Kemmerer RMP. See also previous response regarding air quality impacts.

Railroad checkerboard and leasing/development

Issue number: PP-WY-KEMMERER-08-0010 -50

Organization: Wyoming Outdoor Council

Protester: Bruce Pendery

Issue excerpt Text:

For example, it would likely be far more appropriate to have large areas made unavailable for leasing in the contiguous BLM lands where the BLM can more

fully direct outcomes and provide for resource conditions and make areas in the checkerboard more fully available to oil and gas leasing and development because the course of development will be far harder to guide in any event. Yet in the current RMP the largest area unavailable for oil and gas leasing is in the checkerboard, near the trona mines. Map 11.

Summary

The PRMP should more logically make areas unavailable for leasing in contiguous BLM lands rather than in the checkerboard, since BLM has less control over the checkerboard. .

Response

The area identified as administratively unavailable for fluid mineral leasing in the checkerboard land pattern is the Mechanically Mineable Trona Area (MMTA). By definition the MMTA generally defines an area underlain by trona (sodium) deposits of the proper depth, thickness, and quality to support extraction by mining techniques that require an underground workforce, Federal Register: July 14, 2004 (Volume 69, Number 134). The large area unavailable for leasing in the MMTA is for the protection of underground trona miners rather than a result of surface resource conflicts with oil and gas development.

Off Highway Vehicles

Issue number: PP-WY-KEMMERER-08-0002-12

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM's regulations require that areas designated as open to OHV use "shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability." 43 C.F.R. § 8342.1(a) (emphasis added). If the agency cannot provide baseline inventory and analytical information to support leaving the majority of the lands in the Planning Area open to OHV use, then the BLM has not adequately supported its alternatives or the decisions made in the RMP. Similarly, areas open to OHV use must minimize harassment of wildlife and disruption of wildlife habitats and minimize conflicts with other recreational users of the public lands. Id. § 8342.1(b), (c). Without a reasoned analysis of the affected environment and the environmental consequences of the alternatives considered, the RMP is inadequate with respect to ORV use.

Issue number: PP-WY-KEMMERER-08-0002-15

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP also fails to analyze impacts that surface disturbing activities such as ORV use and livestock grazing have on air quality. These activities reduce soil cover and increase soil erosion and increase the ability of wind and water to erode soil erosion and increase the ability of wind and water to erode soils (f.8, 9). (Papers enclosed). The BLM did no dispersion modeling to account for the effects of reduced soil cover from decades of livestock grazing. EPA publishes manuals, factors and formulas for calculating these effects for air quality from area sources, mobile sources, stationary sources and roads (f.10). This information has been available for many years and is updated on an ongoing basis. Recent research has shown human activities, including livestock grazing, have increased dust deposition rates by 500% post-settlement (f.11).

Issue number: PP-WY-KEMMERER-08-0002-46

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, the RMP does not analyze the baseline condition of the planning area OHV use. The BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, micro-biotic crusts, fish and wildlife, and native vegetation. There is no analysis of the extent of user created roads and trails, or the loss in wilderness or ACEC quality resources due to OHVs. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential environmental consequences. See 40 C.F.R. § 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment"). Unless and until the BLM provides this information, the public lands should be closed to OHV use. Likewise, as a recognized surface-disturbing activity, livestock grazing and trampling has similar impacts and until its effects are disclosed and corrected, the BLM should close the lands to livestock grazing.

Issue number: PP-WY-KEMMERER-08-0002-59

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

D) Inventory of Effects from OHV Use. The RMP also fails to present any baseline or other inventory data on the effects of OHV use within the planning area. There is no evidence that the BLM has "prepare[d] and maintain[ed] on a continuing basis an inventory" of this particular resource use and its effects on other resource values such as road and trail density, habitat fragmentation, degradation of wilderness quality lands, wildlife displacement, soil erosion, invasive and loss of biological crusts. As noted, FLPMA requires this inventory to be kept current, reflecting changes in condition and identifying new and emerging resources and values. In the OHV context, the BLM has already observed a sharp rise in OHV use on public lands in recent years and expects this trend to continue. Bureau of Land Mgmt., "National Management Strategy for Motorized Off-Highway Vehicle Use on Public

Lands," 1-3 (January 19, 2001). In the RMP planning area, the BLM has indicated there is significant

potential for serious environmental impacts on a variety of resources from OHV use.

Summary

The PRMP FEIS inadequately addresses OHV with regard to FLPMA requirements (inventory and baseline data), NEPA (affected environment, range of alternatives), and impacts on grazing and air quality.

Response

The PRMP identifies only one area as open for OHV use encompassing about 60 acres of public land. The majority of the planning area is identified as limited to motor vehicle and OHV use. Additional limited designations were identified over the majority of the planning area. These limited designation areas are further described in FEIS Table 2-3, Records 6044-6050. In addition, definitions of the limited designation categories are provided in FEIS Appendix I.

The best available data and information was used in preparation of the FEIS. The FEIS includes a description of baseline data associated with OHV use. FEIS Chapter 3 includes OHV use descriptions and trends in the planning area as well as discussion of OHV use/resource conflicts (pages 3-130 & 131). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively). The KFO also continually inventories and monitors the planning area with respect to wilderness values, soils, vegetation, riparian condition, invasive non-native species, and OHV and livestock use. Areas in the planning area that experience high levels of OHV use are identified. The expansion of trails by OHVs is also discussed. As described in Chapter 3, increased OHV use during the past 10 years in the planning area has created some identifiable concerns such as degradation of water quality, loss of vegetation, impacts on wildlife in crucial winter habitat (page 3-131).

In addition, the BLM identified a range of potential management actions to resolve resource conflicts, including closing areas to OHV use, in the alternatives in Chapter 2 (Table 2-3, pages 2-91 thru 2-94).

The BLM considered the affects of OHV use on air quality (see Appendix J, Air Quality Technical Support Document) and analyzed these and other consequences of the range of alternatives for OHV use in the planning area in Chapter 4 (Air Quality – page 4-9; Soils – pages 4-16 & 17; Water – pages 4-20 & 21.) In addition, the FEIS identifies OHV use as a specific impact to biological resources including vegetation, INNS spread, wildlife habitats including special status species, migratory game birds and neotropical migrants in an extensive discussion from page 4-58 through page 4-161. The discussion also identifies impacts of OHV use as a surface disturbing and wildlife disruptive activity.

Recreation and Public Purposes Act

Issue number: PP-WY-KEMMERER-08-0005-14

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

2. Pine Creek Special Recreation Management Area Derails Lincoln County's Planned Expansion of the Pine Creek Ski Area. The proposed Pine Creek SRMA and its VRM Class II designation threatens to put an abrupt end to Lincoln County's planned expansion of the Pine Creek ski area. Proposed RMP at 2-84, Appendix 1-2. The SRMA's preclusive effect on the proposed ski area expansion is not disputed by the BLM. DEIS at Appendix C-189 (the lands surrounding the Pine Creek Ski Area do not meet the criteria for disposal which would be isolated parcel, difficult to manage). The BLM is using the land sale criteria in Section 205 of FLPMA, 43 U.S.C. § 1715, not the RPPA. Lincoln County had been working with the BLM to expand the ski area, through patent and lease of additional public land pursuant to the RPPA. The BLM's deliberate and arbitrary effort to suddenly stifle recreation use in Lincoln County contravenes the RPPA's congressional policy to facilitate the transfer of public land to counties for recreation and other public purposes, 43 U.S.C. § 869-1(a). Lincoln County p.3-28. Lincoln County has also leased BLM land for the ski area for several decades, and under BLM policy, Lincoln County qualifies for

a patent for the existing ski area and qualifies for the additional land needed to improve the recreation resource. BLM Manual 2740.06.

While the BLM has discretion to grant or deny the application, the rejection of a properly qualified application must be supported by the record developed during consideration of the application. Mary Coles, 132 IBLA 398,400 (1995) (finding that application complied with BLM guidelines). The BLM may not exploit the RMP to subvert an on-going RPPA process. Instead, RMPs must make every effort to be consistent with the plans, programs, and policies of local governments. 43 U.S.C. § 1712(c)(9); R-1601-1, III-7, r4. In this case, the proposed RMP is in direct conflict with the County's land use plan and RPPA application. LC Comprehensive Plan at 13 (supporting the creation and development of recreational opportunities). The BLM's consideration of Lincoln County's RPPA application, therefore, should be allowed to proceed independent of the RMP, as provided by RPPA policy. To remedy this defect, the RMP should exclude the proposed ski area expansion from the Pine Creek SRMA boundary, and provide that in the event of the BLM's denial of the RPPA application, the SRMA boundary may be readjusted by maintenance action, 43 C.F.R. § 1610.5-4.

Summary

The PRMP contravenes the Recreation and Public Purposes Act (RPPA)

Response

The BLM grants this protest in part, limited to the issue that the land area of the Lincoln County RPPA Ski Area lease WYW45359 should have been left out of the Pine Creek Special Recreation Management Area (SRMA) in the PRMP. The BLM should have excluded the Lincoln County RPPA Ski Area lease from the boundary of the Pine Creek SRMA. A mapping error was made in the PRMP/FEIS resulting in an error in the placement of the Pine Creek SRMA boundary. The maps in the approved RMP will be changed to show the correct boundary of the Pine Creek SRMA and identified as a minor correction in the ROD.

RS 2477

Issue number: PP-WY-KEMMERER-08-0005-7

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

(A) The BLM Ignores County RS. 2477 Right-of-Way Easements Despite the CLG's objections, the RMP improperly assumes control over, restricts travel on, and even unlawfully proposes the closure of county roads over which the BLM lacks administrative jurisdiction. FEIS at 2-84 (restricting travel on county roads within the Pine Creek SRMA which access state school sections), 2-93 (closure of county roads and trails within the Raymond Mountain WSA, including to snowmobile use), 2-92 (designating travel on a segment of Pine Creek road that is part of the LC road system and which the BLM may not regulate), 2-109 (proposed designation

of backcountry byway on a road owned by LC without county approval or support). Uinta County Compo Plan pp. 35,44-46; Lincoln County pp. 3-26, 3-47 - 3-48; SWCCD LRUPP p. 21.

Issue number: PP-WY-KEMMERER-08-0005-9

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

In carrying these obligations, the BLM must meaningfully communicate with and consult with the CLG counties in resolving the R.S. 2477 claims before initiating road closures and OHV limits on roads and trails. Secretarial Direction at 4. SWCCD LRUPP p. 23; Lincoln County p.3-26; and SWC Compo Plan p.29.

Summary

The BLM does not adequately address RS 2477 claims in the PRMP

Response

The particular laws of each State in which a claimed right-of-way is situated have jurisdiction in validating these claims. We concur that the BLM does not have the authority to make binding determinations on the validity of R.S. 2477 right-of-way claims; therefore, it is inappropriate for the RMP to address them in the travel management planning section of the RMP. The BLM does, however, have the opportunity to make informal, non-binding determinations for land use planning and management purposes.

The road designation within the Pine Creek SRMA (Pine Creek road) begins at the federal surface jurisdictional boundary (Table 2-3, Record 6045 – Alternative D). The two-track trails to be closed within the WSA are dead-end, undeveloped segments that are located on federal surface. The back country byway was dropped in the PRMP.

Travel Management

Issue number: PP-WY-KEMMERER-08-0005-12

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

Not only is the BLM's response inconsistent with its Land Use Planning Handbook, which requires the completion of a travel management plan within the RMP and a travel network management plan within

five years, H-1601-1, App. C p. 17-19, the RMP does not provide the required elements that would qualify the BLM for a deferral of travel network management decision-making: 1) Produce a map of a preliminary road and trail network; 2) define short-term management guidance for road and trail access and activities in areas or sub-areas not completed; 3) outline additional data needs, and a strategy to collect needed information; 4) provide a clear planning

sequence, including public collaboration, criteria and constraints for subsequent road and trail selection and identification; 5) provide a schedule to complete the area or sub-area road and trail selection process; and 6) identify any easements and rights-of-ways (to be issued to the BLM or others) needed to maintain the preliminary or existing road and trail network. Land Use Planning Handbook H-1601-1, App. C, p.19.

Issue number: PP-WY-KEMMERER-08-0005-13
Organization: Coalition of Local Governments
Protester: Constance Brooks

Issue excerpt Text:

The RMP, therefore, does not meet land use planning criteria, and the proposed travel management decisions fail to conform to agency guidance. The RMP should be revised accordingly, including a meaningful analysis of the potential impacts on recreation access and the demand for recreation access, an inventory and map of roads and trails, and an assessment of the role they play in meeting recreational and access needs. BLM IM 2008-014, Attachment 1 (land use plan to include a baseline inventory and map of roads and trails "necessary to assess and evaluate the need for individual routes as part of the travel and transportation network," and

management prescriptions should provide "appropriate levels of access and associated benefits to both recreation travelers and resource users"). Finally, the BLM must resolve the jurisdiction questions before it can adopt motorized vehicle closures or off-highway vehicle (ORV) closures.

Issue number: PP-WY-KEMMERER-08-0007-13
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

4. Travel Restrictions: The PRMP proposes that travel management planning in big game winter ranges will minimize open road density to meet an objective of an average of 2 miles of open road per square mile" (Table 2-3, p. 2-91). This stipulation is overly restrictive and the BLM did not consider the cumulative impact of this stipulation on oil and gas development in the planning area. IPAMS requests that the language be modified in the ROD in order to retain the BLM's ability to actively manage road density based on topography, operational necessity, and levels of activity rather than a blanket 2 miles per section.

Summary

The PRMP travel management decisions conflict with BLM policy.

Response

The BLM Land Use Planning Handbook, H 1601-1, Appendix C identifies situations that would allowably foreclose the completion of a comprehensive travel management plan in an RMP revision. These situations include size and/or complexity of the area, controversy, and incomplete data. Because the KFO has all of these situations, the goals, objectives and management actions for Travel Management were broad and provided further guidance for developing the requisite plans over the majority of the planning area within 5 years of the Kemmerer ROD. These goals, objectives and management actions are further identified in Table 2-3 (Records 6039-6042, pgs. 2-90, 2-91).

The land use planning guidance in H-1601-1, App. C p. 17-19, was used in developing the travel management alternatives. The tasks for delineating travel management networks are deferred in the land use plan to the implementation phase of the RMP. KFO included in the FEIS broad identification of the initial travel network (Table 2-3, Record number 6045 and Maps 46 through 53), short-term guidance for motor vehicle access/use throughout the planning area (Table 2-3, Records 6043-6050), and a sequence and schedule for completion of travel management plans

including public involvement, travel management constraints and easements needed in support of resource programs (Table 2-3, Records 6036 – 6042, and Record 6014; pg. 4-214).

Based on the definition of an objective (Volume 2, Glossary- page 10), the outcome of 2-miles per square mile is a “description of a desired condition for a resource.” While the overall implication may seem to have significant impacts on development, the actual result is a timing limitation on the miles of road opened during severe winter timeframes.

Impacts to recreation due to access issues are described as part of the impacts to recreation use and management on FEIS pages 4-208 through 4-214.

Renewable or Alternative Energy

Issue number: PP-WY-KEMMERER-08-0001-10
Organization: AES Alternative Energy
Protester: Michael Azeka

Issue excerpt Text:

Based on these factors we urge you to consider changing the designation of Bear River Divide from "Unsuitable for wind energy development" to "Suitable for wind energy development."

Issue number: PP-WY-KEMMERER-08-0001-13
Organization: AES Alternative Energy
Protester: Michael Azeka

Issue excerpt Text:

The most significant reason we maintain that the Decision is incorrect is that the areas designated for wind energy are not windy because they mainly consist of creeks, lowlands, flats, valleys, highways, and similar areas which are unsuitable for wind energy. To adopt Alternative D as proposed would be like designating known oil fields as "Unsuitable for oil exploration" and designating areas that contain no oil as "available for oil exploration."

Issue number: PP-WY-KEMMERER-08-0001-4
Organization: AES Alternative Energy
Protester: Michael Azeka

Issue excerpt Text:

The Bear River Divide area designated Unavailable for Wind Energy are substantially more suitable from a wind speed, wind flow, and topographic standpoint than the areas designated Preferred for Wind Energy Development. In addition, the existing transmission line provides an interconnection opportunity that results in less total disturbance than developing wind

energy in the other areas designated as Available for Wind Energy.

Issue number: PP-WY-KEMMERER-08-0001-6
Organization: AES Alternative Energy
Protester: Michael Azeka

Issue excerpt Text:

Class II designation is not appropriate for land that contains many miles of existing transmission lines, 3 existing natural gas plants, and associated transmission pipelines and roads. Class IV designation is appropriate for land that has such existing visual impacts.

Issue number: PP-WY-KEMMERER-08-0009-10
Organization: Rocky Mountain Power/PacifiCorp
Protester: R. Jeff Richards

Issue excerpt Text:

The BLM had, and continues to have, a responsibility to respond to this comment and consider an alternative that includes additional energy corridors across the Kemmerer Planning Area, and in particular a corridor which includes the proposed Gateway West project. The BLM did not consider a reasonable range of alternatives with regards to high-voltage transmission lines and did not provide the public with the kind of information needed to understand the alternatives considered. None of the maps provided in the PRMP/EIS shows the existing linear rights of way, although they form a prominent part of the existing environment. The creation of a high-voltage transmission line corridor which allows for the placement of new transmission lines parallel to and a safe and reliable distance from existing transmission line(s) should be considered as a reasonable alternative.

Summary

The PRMP unduly restricts the development of wind energy and fails to delineate adequate energy corridors in the planning area.

Response

The PRMP identifies the Kemmerer planning area as available for consideration of wind energy development with exceptions for listed areas (see FEIS Table 2-3, Record 6013, page 2-78 and 2-79.) One of the areas listed as unavailable for wind energy development is the Bear River Divide area. In addition, the KFO identified areas recommended for wind energy development due to reduced surface resource conflicts.

The KFO considered wind power classes throughout the planning area during development of the Kemmerer RMP EIS alternatives. Less than four percent of the planning area is classed as moderate and above (power classes 4-7). The majority of the planning area (71%) is identified as fair and poor (power class 1 and 2). The balance is rated good (25%) according to NREL data (Assessing The Potential For Renewable Energy On Public Lands, February 2003). There are no areas of wind power class 5 and above identified in the Bear River Divide area according to NREL. Approximately 1% of the total Bear River Divide area is identified as wind power class 4 and 82% of the surface acreage of the Bear River Divide is power class 1 and 2, according to NREL.

The BLM also considered existing power line availability during development of the RMP alternatives. Power transmission companies have indicated that existing transmission lines within the planning area are near or at capacity and additional power transmission lines are necessary. When considering wind energy alternatives, the BLM recognized that additional transmission lines would be required as part of the proposal. Therefore, areas considered suitable for wind energy have also been considered to be compatible for the associated transmission lines (Table 2-3, Record 6009, FEIS page 2-76).

Title I of FLPMA, Section 102 (8) calls for the public lands to be managed in a manner that will protect the quality of scientific, scenic, historic, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use. The Bear River Divide and Rock Creek/Tunp areas contain unique combinations of cultural values and crucial wildlife habitats not found in other parts of the Kemmerer Field Office. These surface resource values include variants of the Oregon-Mormon-California National Historic Trails consisting of pristine trail ruts that exhibit integrity of setting and place; special status plant communities, sage grouse habitats, overlapping crucial big game winter ranges for elk, mule deer, antelope, and moose; big game migration routes; raptor nests and a major raptor migration route; the areas also contain large, undeveloped blocks of contiguous sagebrush, mountain shrub and aspen habitats. Special management prescriptions are identified in the proposed plan (Table 2-3, page 2- 104 thru 2-107) to safeguard the combination of surface resources.

The KFO concluded that wind energy could be developed in other locations in the field office jurisdictional boundary where wind velocities have been classified by NREL as being fair or marginal, similar to the Bear River Divide, but that lack the concentration of surface resource values in the Bear River Divide and Rock Creek/Tunp.

Much of the Bear River Divide is designated as Class III or IV VRM. The existing Whitney Canyon and Carter Creek natural gas plants were developed in viewshed Class II (1986 Kemmerer RMP), as are the gas plants in Opal. However, these locations are far removed from the Bear River Divide area and are now identified as VRM Class IV. The existing facilities within the newly identified VRM Class II areas do not dominate the viewshed. In addition, the VRM Class II objectives can be, and have been in the past, effectively managed by using guidance from VRM Manual 8400 which states that the BLM must identify key observation points (i.e. highways, major roads, scenic byways, points of interest, etc.) and evaluate the effects of a proposed action from these key observation points. A Class II VRM Objective would retain the existing character of the landscape and the level of change to the characteristic landscape should be low. This management does not prohibit surface disturbance and allows for a variety of flexible alternatives to be developed to meet the VRM objectives. The visual impacts of new developments will be managed through the use of site-specific conditions of approval to reduce overall impacts to key observation points. FEIS Map 66 provides the identified key observation points for sensitive viewsheds.

Rights-of-Way

Issue number: PP-WY-KEMMERER-08-0009-10
Organization: Rocky Mountain Power/PacifiCorp
Protester: R. Jeff Richards

Issue excerpt Text:

The BLM had, and continues to have, a responsibility to respond to this comment and consider an alternative that includes additional energy corridors across the Kemmerer Planning Area, and in particular a corridor which includes the proposed Gateway West project. The BLM did not consider a reasonable range of alternatives with regards to high-voltage transmission lines and did not provide the public with the kind of information needed to understand the alternatives considered. None of the maps provided in the PRMP/EIS shows the existing linear rights of way, although they form a prominent part of the existing environment. The creation of a high-voltage transmission line corridor which allows for the placement of new transmission lines parallel to and a safe and reliable distance from existing transmission line(s) should be considered as a reasonable alternative.

Issue number: PP-WY-KEMMERER-08-0009-13
Organization: Rocky Mountain Power/PacifiCorp
Protester: R. Jeff Richards

Issue excerpt Text:

Instead, the brief discussion of existing rights of way (Section 3.6.3 in the PRMP/FEIS) and the equally brief discussion of consequences (Section 4.6.3 in the PRMP/FEIS) entirely omit any consideration of need for future transmission or the safety and reliability issues we raised. Alternative descriptions leave transmission lines with one "preferred" corridor through the planning area without any mention of safety and reliability issues in terms of siting transmission lines (see Table 2-3, page 2-76, for example). The discussion of transmission lines centers on the assertions or assumptions of damage they may cause to biological and visual or heritage resources, and management for transmission lines consists primarily of restrictions and prohibitions.

Summary

The PRMP does not adequately consider rights-of-way (ROW) corridors for future energy transmission.

Response

During the RMP revision, the Kemmerer Field Office (KFO) began the corridor identification process by considering potential routes that: 1) met the definition of a corridor; 2) followed existing energy transmission lines with room for additional expansion. Energy transmission corridors are “A designation applied to identified federal lands where the construction, operation, or upgrade of one or more energy transport projects is preferred. As guided by the Federal Land Policy and Management Act of 1976, corridors assist in minimizing adverse impacts and the proliferation of separate ROWs.” West-wide Energy Corridor Programmatic EIS Text Box 1-3 pg 1-3. In following the definition, the KFO looked at potential land areas that would accommodate multiple transmission lines and would avoid significant resource impacts that would bog down the ROW approval process.

During the West Wide Corridor Study process for identifying potential corridors KFO looked at the major pipeline/power line routes existing in the planning area and determined the potential for expansion, including the area proposed as the Gateway West project. The proposed Gateway West project is in an area that has a high volume of National Historic Trails. The Jim Bridger power line currently located in the area was authorized prior to the implementation of NEPA. Laws protecting the viewshed of National Historic Trails now have to be addressed, which forecloses the consideration of this line as a corridor. See FEIS page 2-69 and 2-100,101 for NHT alternatives and Chapter 3.5, pages 3-94 – 3-100 for the discussion on historic trails.

When identifying corridors for the West Wide Corridor Study, the BLM found no clear location for which a corridor could be designated that would enable the co-location of multiple projects through the northwest portion of the field office due to proximity to National Historic Trails, steep slopes, sage grouse nesting/brood rearing and winter range habitats, elk calving areas, and location of Fossil Butte National Monument and the wilderness study area (FEIS 3-120.) As the issues through the Rock Creek/Tunp and Bear River Divide areas contain so many overlapping resource concerns, it was determined the only way to handle right-of-way requests through these areas was on by a case-by-case basis.

The KFO next looked at current major disturbance areas (state/federal highways) to determine if potential existed in those areas for energy transmission and communication corridors. From this exercise the Kemmerer Field Office identified one high-voltage corridor route in the PRMP FEIS (along I-80) (FEIS pg 2-76). In addition, the PRMP does allow for rights-of-way for transmission projects on a case-by-case basis where conflicts with other resources are minimal or can be mitigated through resource specific stipulations.

The electric power transmission companies have provided the BLM with information regarding the need to follow existing transmission lines, and the need to not co-locate facilities due to safety and reliability concerns. A corridor, by definition, would co-locate facilities in close proximity in order to reduce impacts to other surface resources. The BLM understands the need

to reduce the risk to utility transmission facilities due to natural disasters, fire, and potential sabotage which can take down an entire power grid. These requests will be addressed on a case-by-case basis when specific information is available. KFO provided additional language in the FEIS due to safety and reliability concerns identified in comments to the DEIS (FEIS 3-121). Comment responses were provided in the comment response document that can be accessed on the following website: <http://www.blm.gov/rmp/kemmerer/docs.htm>.

Riparian and wetlands

Issue number: PP-WY-KEMMERER-08-0002-26

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP does not address the conditions of streams accessible to and grazed by livestock relative to those that are not accessible. The extent (total miles and acres) of perennial; ephemeral and intermittent

streams within the planning area is not disclosed, nor is the condition of seep; springs and ephemeral and intermittent stream channels. The BLM did not reveal what percent of the riparian/wetland resource has actually been monitored to ascertain its reported conditions, nor did it analyze the loss in productivity occurring under continued livestock grazing compared to cessation of grazing (f.26). (Paper enclosed).

Summary

The EIS does not adequately disclose the extent of streams, riparian zones, and wetlands and impacts of the PRMP on these values due to livestock grazing.

Response

In 1994 the BLM began inventorying all lentic and lotic riparian areas using the Proper Functioning Condition methodology as described in BLM Technical References (TR-1737-9 & 11). Those technical references were updated in 1998 and 1999 to expand upon the science behind the methodology (1737-15 and 1737-16). The riparian inventory incorporated all riparian areas within the KFO and was primarily completed by 2004. Several streams have been monitored and subsequently re-assessed for condition (FEIS, page 3-56). This methodology can apply to all streams and wetlands that exhibit riparian attributes. Ephemeral drainages generally do not exhibit riparian characteristics and are considered as part of the upland watershed landscape. Though streams less than ¼ mile in length and springs/seeps are not generally ‘rated’ in the same manner as larger areas and longer lengths, the science behind the process can still apply within the context of Wyoming Standards for Healthy Rangelands (commonly called Standards and Guides). Many isolated springs/seeps are checked for condition during this process. Riparian assessments using ‘PFC’ methodology or other riparian monitoring techniques are a continual part of the field office monitoring effort. With over 400 miles of stream on public lands not all reaches are re-evaluated or monitored every year. Priority areas are established as needed within the field office and schedules developed. The data from these surveys and S&G’s are part of the GIS data layers or field office files and were used as part of the management situation analysis for the RMP. A complete discussion of riparian and wetland areas and their management is contained in the FEIS, pages 3-53 through 3-57.

Soil

Issue number: PP-WY-KEMMERER-08-0002-14

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

For example, the PRMP does not discuss the best available science on the interaction between grazing, micro-biotic crusts and weed invasions. This research demonstrates that grazing causes severe destruction of crusts, which are critical in reducing soil erosion, restoring vegetative communities, reducing the risk of future fires, and preventing the spread of invasive and noxious weeds (f.6). (Paper enclosed) This research found exotic species richness strongly negatively correlated with crust cover, and that crusts often present a "physical barrier to invasive species establishment and growth." Crusts are the primary Nitrogen fixers in desert grassland, shrub land and woodland systems, increasing surrounding soil N by as much as 200%. Id. at 47-48 (f.7). As barriers to the spread of exotic species such as cheat grass, crusts prevent these species from reaching the necessary density to carry catastrophic fires. With livestock grazing over 90% of the planning area for decades, trampling of sensitive soils and crusts has inevitably and predictably diminished crusts and accelerated erosion. (footnotes)5 Alt A (Table 2.1, page 2-50) shows 6199 miles of motorized routes currently exist.6 Thomas J. Stohlgren et al. (2001) Patterns of Plant Invasions: A Case Example in Native Species Hotspots and Rare Habitats, 3 Biol. Invasions 37-50.7 See also Jayne Belnap et al. (2001) Biological Soil Crusts: Ecology and Management, U.S. Dept. of the Interior (...illegible, check original).

Issue number: PP-WY-KEMMERER-08-0002-16

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The BLM further ignores the impact that livestock grazing has had, and will continue to have under the Proposed RMP, on native vegetation and fire regimes. The RMP did not disclose or analyze the current condition of vegetation communities in the planning area and how that condition compares to historical or potential condition other than generic descriptions of the general community types. The RMP fails to discuss the 50% reduction in soil productivity that has occurred due to BLM permitted activities over the last century. The RMP fails to tie

this current condition to wildlife, particularly sage grouse and migrant birds. Deer, elk and pronghorn are impacted by these conditions. There is no analysis of the forage competition and habitat loss due to livestock grazing, oil and gas and OHVs, habitat fragmentation effects due to roads, range improvements (fences, water developments, vegetation treatments). Migratory birds are not addressed.

Issue number: PP-WY-KEMMERER-08-0002-55

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

B) Inventory of Biological Crusts. The RMP provides no inventory or baseline information on biological crusts within the planning area, and barely acknowledges that crusts are present. Despite this lack of information, the BLM has elected to make planning decisions for land uses and environmental factors that have been clearly linked to the health and stability of biological crusts—namely, livestock grazing and the spread of noxious weeds—without erring on the conservative side. For example, the BLM does not set aside reference areas, exclosures or study plots within the planning area or immediately initiate detailed monitoring programs as outlined in the Belnap et al. (2001) Technical Reference. Although the BLM cannot immediately rectify years of not collecting required inventory data on this public resource, the agency must, at the resource management planning stage, use the available information to immediately implement a plan of action and, importantly, to conservatively and honestly assess other multiple uses of the land with respect to their potential effects on crusts. The scientific literature is clear that livestock grazing and vehicle use are two actions that can quickly and permanently degrade or even eliminate biological crusts from a site.

Issue number: PP-WY-KEMMERER-08-0002-56

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

In order to engage in a meaningful RMP process, and one that complies with the BLM's management statutes, regulations, and internal guidance, the BLM must inventory for soils and crusts, and the effects of

grazing (and OHV use) on soils and crusts. See 43 C.F.R. § 1610.4-3 (requiring data and information collection with an eye to subsequent monitoring); Handbook at 111-3. The BLM must assess the existing and collected information. See Manual at 1601.02B (evaluate resource information considering biological resources); Handbook at 111-1 (discussing the differences among inventory, assessment and monitoring). The BLM must establish soil and biological crust condition goals and objectives to be attained. 43 C.F.R. § 1601.0-5(k) (3); 43 C.F.R. § 4100.0-8; Manual at 1601.06.A.2 (desired outcomes); Handbook at II-I. Further, the BLM must establish program constraints and general management

practices, including standards needed to achieve soil and biological crust condition goals and objectives. 43 C.F.R. § 1601.0-5(k) (4); 43 C.F.R. § 4100.0-8; Handbook at 11-2 to 11-3; 111-5 (defining standards to include "land health standards" and requiring the BLM to "identify how land health standards are to be considered in relationship to the management prescription for, and uses and activities occurring on, public lands" and discussing "allowable uses and actions to achieve desired outcomes"). Finally, the BLM must provide for continued monitoring of biological crusts. 43 C.F.R. § 1610.4-3. The RMP falls far short of these requirements.

Summary

The PRMP/FEIS does not adequately address impacts to soils, especially biological crusts.

Response

The best available data and information was used in preparation of the FEIS. Baseline data regarding livestock grazing is included in Section 3.6.2 of the PRMP/FEIS including information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-123 to 3-126). Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.1.2, 3.4.4 & 3.4.5, and 3.4.1, 3.4.2 & 3.4.3 respectively).

The BLM provided a goal for soils to "Maintain or improve soil health (chemical, physical and biotic properties) and prevent or minimize soil erosion and compaction." A broad range of alternatives was analyzed in the FEIS to meet this goal. The KFO selected the following decision for the PRMP to meet the goal for soils and biological soil crusts: "Avoid disturbances on soils with fragile, steep slopes, chemical and biological crusts, and soils with low reclamation potential and highly erodible characteristics. " Maintaining and improving soils requires that the BLM begin monitoring these resources to identify a baseline condition, as well as developing management strategies to improve the characteristics of soils health within the Field Office (FEIS 2-40).

Soil surveys and ecologic site descriptions are provided by the Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.1.2 of the PRMP/FEIS (p. 3-12 to 3-17). Site-specific impacts to soils, biological soil crusts, and physical crusts would be completed during the site review and covered through an implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments, and Applications for permit to drill).

Weeds and Invasive Plants: Baseline data on noxious weeds and invasive plant species are included in FEIS Section 3.4.9 (p. 3-89 to 3-93). Presence of weeds is documented by the Lincoln & Uinta County Weed and Pest District. As the BLM staff identifies weeds, they share the information with the local weed and pest districts and coordinate on treatment.

The BLM recognizes the validity and value of many scientific documents and incorporates modern science into its everyday decision making processes. All of the information received by the BLM during the Kemmerer planning effort was considered in preparation of the PRMP.

Visual Resource Management

Issue number: PP-WY-KEMMERER-08-0003-24

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

The establishment of a 6 mile wide viewshed has the immediate effect of adding a new stipulation to our existing oil and gas rights which were granted subject to the provisions of the Kemmerer RMPIEIS approved in 1986, which were subject only to a 0.5 mile wide viewshed, being 14 miles on either side of an NHT. This increased viewshed area will have a severe impact on the development of oil and gas resources within the Black Bear Canyon Unit Area and in proximity to the NHT. Fortuna objects to the inclusion of all or portions of certain NHT within the Class I designation as it is clearly evidenced from a site-visit that such portions do not meet the defined criteria. This includes but is not limited to the following pages, tables and maps: Table 2-3, record #6055, page 2-100. Chapter 2.4.4.2, page 2-31, 2nd paragraph. Chapter 3.5-1.2, pages 3-99 to 3-101. Map 60.

Issue number: PP-WY-KEMMERER-08-0003-26

Organization: Fortuna U.S. L.P.

Protester: Scott Sobie

Issue excerpt Text:

Imposition of these restrictions would make it virtually impossible for Fortuna to reach full field development of its existing oil and gas leases. Fortuna can mitigate many if not most of the visual concerns but not all. This would be the equivalent of adding additional stipulations to already issued leases. Failure to allow Fortuna to develop its oil and gas resource under the lease rights granted would be a clear taking of those rights.

Issue number: PP-WY-KEMMERER-08-0005-39

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

These classifications contradict BLM visual resource and cultural management policies, Manuals 8400, H-8410-I, 8130, and the holding of the Interior Board of Land Appeals (IBLA) in Southern Utah Wilderness Association, 144 IBLA 72 (1998). As previously documented to the BLM and as shown in the attached Table, Exhibit 6, the RMP's proposed VRM Class II designations overlap existing leases that are unburdened by underlying VRM stipulations. Compare also Map 19 (existing oil and gas leases) with Map 60 (NHT segments/cultural sites view sheds). Similarly, a comparison of Map 42 illustrates the VRM Class II overlap with active livestock grazing allotments.

Issue number: PP-WY-KEMMERER-08-0005-42

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

(f.10) Alternatively, the BLM needs to revise the FEIS to provide that classification will limit range management tools and these limits will impede maintaining or meeting rangeland health standards. There will be increased resource degradation, lost grazing Animal Unit Months (AUMs), and greater impacts on riparian resources due to inability to develop water. The FEIS also needs to disclose that water pipelines and stockwater tanks may be prohibited, thus interfering with the exercise of water rights.

Issue number: PP-WY-KEMMERER-08-0005-45

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

Contrary to the foregoing direction, the RMP establishes an irrebuttable presumption that all trail segments are equally sensitive and important. FEIS at 2-86, 2-94-97. The RMP provides no individual consideration of relative importance and sensitivity.

BLM policy requires documentation of the cultural properties' relative importance and then an assessment of sensitivity. As previously objected to by CLG, many NHT segments cannot be seen and there is no evidence of their existence. A blanket VRM Class II cannot be imposed absent documentation of significance and sensitivity, both of which are absent. The RMP needs to be revised to conform to BLM Manual 8130.14.

Issue number: PP-WY-KEMMERER-08-0005-47
Organization: Coalition of Local Governments
Protester: Constance Brooks

Issue excerpt Text:

Finally, the RMP fails to conform to the 2000 amendments to the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §6217, because it fails to classify VRM Class II as major constraint to oil and gas development. Proposed RMP at 4-29-30. Under the President's implementing National Energy Policy and BLM direction, consideration must be given to the least restrictive constraint necessary to meet the resource protection objective, and impediments not necessary to accomplish desired protection should be modified or dropped through the planning process. BLM IM 2003-233. The FEIS and RMP must be revised to document VRM Class II as a major constraint and whether the classification is the least restrictive necessary in conformance with EPCA's mandate. SUWA, 144 at 84 (1998) (holding that VRM Class II cannot be enforced for a lease that authorizes surface use).

Issue number: PP-WY-KEMMERER-08-0007-21
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen Sgamma

Issue excerpt Text:

6. Increased Visual Resource Management (VRM) Class II Acreage: The PRMP designates 392,719 acres as VRM Class II. The Class II VRM restrictions in the PRMP are overly restrictive and exceed what is necessary to adequately protect the visual resources. In response to IPAMS comments about the excessive VRM Class II designations, the BLM stated that "VRM Class II standards do not preclude new developments in areas designated with this visual management classification. However, new developments would need to be non-dominant on the landscape" (p. C-65). This statement is not consistent with the definition of Class II found in the Glossary, page 21. IPAMS appreciates the BLM's response to our original comments, but we are concerned that

Class II designation would preclude full field development.

Issue number: PP-WY-KEMMERER-08-0008-13
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

Designating already-leased areas as VRM Class II does not "result from" or "conform to" the decisions made under the current RMP to allow surface occupancy for oil and gas development in leased areas. The BLM should follow the Manual and keep existing leases in VRM Class III. See *Qwest Commc'ns Int'l*, 229 F.3d at 1181-84. Surface development for oil and gas is permissible under a VRM Class III designation. But it is difficult to reconcile with the more restrictive VRM Class II requirements. Under a VRM Class II designation, the BLM may be required by the RMP itself to limit surface-disturbing activities on Gary-Williams' leases. In doing so, the BLM overlooks Gary-Williams' valid, existing right to develop those leases, and overlooks the BLM's prior decision under the current RMP to allow surface disturbance on the leased land. (f.2) The Proposed RMP and EIS recognizes these principles, but does not apply them. See EIS at ES-2, 2-4.

Issue number: PP-WY-KEMMERER-08-0008-19
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The VRM Class II designation is in unintentional conflict with the prior resource allocation decisions to issue leases. In accord with Southern Utah Wilderness Alliance (and the BLM Manual Handbook 8410-1- Visual Resource Management at I.A), the National Director of the BLM should adjust the VRM classification in the leased areas based on resource allocation decisions made under the current RMP. The National Director of the BLM should consider the Southern Utah Wilderness Alliance decision and follow the BLM Manual by designating lands leased to Gary-Williams as VRM Class III.

Issue number: PP-WY-KEMMERER-08-0008-24
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The BLM's designation of leased lands as VRM Class II significantly reduces the BLM's ability to tailor its requirements relating to lease development to the physical, economic, and scenic characteristics

of the individual leased parcel. Blanketing a vast and diverse area as VRM Class II may take away the BLM's flexibility to allow greater surface disturbance in areas where it is necessary to develop the leases.

Issue number: PP-WY-KEMMERER-08-0008-38
Organization: Gary-Williams Production Company
Protester: Tim Howard

Issue excerpt Text:

The Proposed RMP identified NHT classes and objectives that parallel the VRM classes and objectives. EIS at 2-94 to 2-95, 2-100 to 2-101. That analog is far more restrictive than necessary. The level of protection necessary to preserve NHTs varies not only by trail segment, but by the portion of each

segment near leased areas. The BLM should have Manual or Handbook provisions that address NHT protection in its own right. Those provisions should recognize that conditions designed to protect portions of NHT segments must vary with respect to each leased parcel. Without current, specific, guidance regarding the protection of NHTs, the Proposed RMP viewshed restrictions and trail buffers are unsupported and overly restrictive. The National Director should issue a Final RMP that adopts a flexible, site-specific approach to imposing viewshed restrictions and trail buffers, particularly where determinations regarding viewsheds and buffers apply to development proposals on existing oil and gas leases.

Summary

The VRM decisions conform neither to Federal law nor to BLM policy.

Response

The BLM considered current and potential land uses as well as visual resource protection for recreational uses and National Historic Trails during formulation of alternatives for VRM. The VRM Class II designation in the Tump/Dempsey area was derived partially to ensure compliance with Section 106 of the National Historic Preservation Act (NHPA). The FEIS does not establish any presumption that all trail segments are equally important and sensitive. Rather, detailed definitions of the four National Historic Trail classes are provided on FEIS pages 3-99 through 3-101, in which variable importance and sensitivity of the different classes are clearly distinguished based on their known characteristics. NHT Class 4 segments are defined as those areas where “the trail’s physical trace no longer exists,” and none of the Class 4 segments caused designation of VRM Class II. The BLM currently manages setting on all segments of NHTs in accordance with its agreements with the State Historic Preservation Officer (SHPO) utilizing VRM techniques to attain settings of VRM Class II. Current management to preserve the setting is provided in the FEIS on Page 3-94 “When an undertaking is determined to be visible in the setting of a property and the setting retains sufficient historic character to contribute to the property’s NRHP eligibility, the Visual Contrast Rating system is used to analyze potential visual impacts on the setting.” Under current management the distances used for potential visual impacts is undefined. Therefore, impacts associated with Alternative A are greatest since integrity of setting is applied to all NHTs, regardless of current physical or setting condition. The 1986 RMP (FEIS Alternative A) contains a ¼ mile NSO designation to protect the actual NHT physical trace, and allows for additional management to preserve trail setting. Alternatives B, C, and Alternative D (the PRMP) restrict the management of setting based on the overall condition of the NHT.

The VRM Class II objectives are managed consistent with guidance in VRM Manual 8400, which states that the BLM must identify key observation points (i.e. highways, major roads,

scenic byways, points of interest, etc.) and evaluate the effects of a proposed action from these key observation points. NHTs within the planning area would be a key observation point. Where those NHT qualities would require a Class II VRM Objective, the management objective is “. . . to design proposed alterations so as to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer” (Volume 2, Glossary page 21.) This management does not prohibit surface disturbance and allows for a variety of flexible alternatives to be developed to meet the objectives. See FEIS Volume 2, Appendix O and the BLM BMP website at

http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices.html. In addition, a VRM Class II is not a major constraint because: 1) there are no NSO restrictions greater than 40 acres in size or more than 0.25 mile in width; 2) it does not restrict the time development may occur beyond 6 months. Constraints categories were derived from the results of the EPCA inventory analysis (Phase I and II). The constraints categories are described in the FEIS on page 4-29. Also, the selection of this proposed management decision is consistent with the President’s National Energy Policy because less restrictive measures were considered, but were ineffective in meeting the management objective for the NHT, which encompasses being consistent with law, good environmental practice, and balanced use of other resources.

Existing leases will be managed in accordance with the 43 CFR 3101.2-2 requirements through the use of site-specific conditions of approval to reduce overall impacts on key observation points. FEIS Map 66 provides the identified key observation points for sensitive viewsheds. Development that does not meet the identified management objectives may require additional mitigative measures and further NEPA analysis to assure that mitigation applied will result in compliance with the approved Kemmerer RMP. All of the existing oil and gas and range improvement development in proximity to the NHTs has been completed within the lease rights granted to the oil and gas operator and privileges allowed livestock grazing permittees and within the constraints of the existing management of the NHTs.

VRM classification does not take away the BLM’s flexibility and it ensures that disturbance levels are minimized to achieve the broadest multiple-use objectives of a specific project. Existing development within VRM Class II locations are found throughout the planning area. Successful oil and gas development even occurs within VRM Class II in the highly developed Moxa Arch gas field. Facilities have been successfully developed by applying color and height specifications that visually blend the development into the surrounding landscape, and in some cases, slightly adjusting the location of the facility to allow topography to mask the development. While NHT management utilizes VRM class objectives, it is important to note that the identified NHT classes do not correlate directly with VRM classes. The FEIS pages 3-99 through 3-101 provide the management classes for National Historic Trails Management that are different from VRM Classes. The NHT management objectives were crafted in accordance with existing guidance published in *Appendix C of the State Protocol Between the Wyoming Bureau of Land Management and the Wyoming State Historic Preservation Officer* (2006) The Protocol can be found at the following web address:

http://www.blm.gov/wy/st/en/programs/Cultural_Resources/protocol.html. The only identified VRM Class I area is the current Raymond Mountain WSA.

The KFO followed the BLM visual resource and cultural management policies, Manuals 8400, H-8410-1, 8130 in developing the VRM Classes. The BLM recognizes that the Class II designations overlap active livestock grazing allotments. The FEIS disclosed the impacts of managing for other resource values on livestock grazing (p 4-199 to 4-208). Because of their relatively small size, range management facilities such as pasture fences, water pipelines, and stock water tanks may easily be designed to meet VRM Class II objectives, as long as these types of developments are planned with those objectives in mind. Therefore, VRM Class II objectives do not interfere with water rights, impede rangeland health standards, or result in resource degradation, loss of AUMs, or increased impacts on riparian resources. Existing, approved range management structures can continue to be maintained.

The BLM also recognizes that the Class II designations overlap existing oil and gas leases. The PRMP does not modify existing leases. The FEIS identified the extent of the BLM's ability to require mitigation actions as COAs on existing leases (FEIS 3-25 and 4-29); the regulations at 43 C.F.R. § 3101.1-2 identify lease rights provided to an existing lease as subject to "reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values" which "may include...modification to siting or design of facilities...." The BLM's management of these areas will attempt to attain a non-visible or non-dominating VRM Class characteristics through site-specific conditions of approval in accordance with 43 CFR 3101.1-2 guidance. The use of BMPs and other onsite mitigation will allow the BLM to effectively work within this area of sensitive visual resources. Management objectives for NHT Class 1 and Class 2 Trails conform to these requirements and, therefore, comply with 43 C.F.R. § 3101.1-2 (see FEIS 2-72, 2-100, 2-10).

Water

Issue number: PP-WY-KEMMERER-08-0002-82

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP does not reveal how many of its water bodies have been monitored for compliance with water quality criteria, anti degradation and narrative standards, nor the management actions affecting these listed water bodies and the corrective actions to be taken. The outcome of existing AMPs, grazing systems, range improvements and stocking rates is not analyzed in regards to soil condition and water quality.

Issue number: PP-WY-KEMMERER-08-0002-83

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

Livestock grazing is a significant source of nonpoint pollution. In its comments on the Draft EIS, WWP

commented on the role of livestock in affecting water quality, watersheds and water quantity showing the direct link between livestock and degradation of streams and water sources. There was no analysis of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality and quantity, loss of wetlands and impacts to wildlife in the RMP.

Issue number: PP-WY-KEMMERER-08-0002-84

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

There is no evidence of any attempt to demonstrate that grazing and areas allotted to grazing, as authorized under the proposed alternative, will ensure adequate water quality. This lack of specific criteria puts off indefinitely any adoption of actual practices or standards, and therefore fails to satisfy the requirements of FLPMA, the Clean Water Act and the Colorado River Salinity Control Act.

Summary

The FEIS discussion of water quality impacts from the PRMP does not cover effects on water quality from livestock grazing, nor adequately analyze these effects on enforcement of the Clean Water Act and Colorado River Salinity Control Act.

Response

The State of Wyoming has primacy with regard to implementation of the Clean Water Act ("CWA"). In accordance with FLPMA, any activities authorized by the BLM are required to comply with substantive environmental laws, including the CWA. Because the PRMP does not actually authorize any specific project that impacts water quality, any proposed project would be subject to additional analysis of possible water effects before approval. When a project is proposed for development, a site-specific analysis must be done as part of the environmental analysis process to determine the specific impacts. The impact of livestock grazing on water quality would be assessed and analyzed on a site-specific basis, through assessment and compliance with the Wyoming Standards for Healthy Rangelands (Standard #5, see FEIS Pg. 3-125), allotment specific monitoring and project analysis. Additionally, Appendix O of the FEIS discusses Best Management Practices, which would be utilized on a site-specific basis.

Water rights

Issue number: PP-WY-KEMMERER-08-0005-26

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

(2) Valid Existing Rights In determining suitability, consideration of any valid existing rights must be afforded under applicable laws. Manual 8351.33A11. Neither the WSRA study nor the FEIS address the presence of valid existing water rights that may conflict with management of a WSRA segment. Lincoln County pp.3-24, 3-30; SWCCD LRUPP at 31, 78. The owners of these water rights are entitled to divert or impound the water for beneficial uses, to change the point of diversion and the uses, and to enlarge upon those rights if contemplated at the time of the original appropriation. (f.5) The BLM did not even identify WSRA suitability recommendations as a scoping issue in the Notice of Intent. 68 Fed. Reg. 35690 (2003).

Issue number: PP-WY-KEMMERER-08-0005-27

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

See Van Tassle Real Estate & Livestock Co. v. City of Cheyenne, 54 P.2d 906, 910, 913-14 (Wyo. 1936); Groo v. Sights, 134 P. 269, 272 (Wyo. 1913.).The WSRA study considers only current flows and ignores vested water rights, the exercise of which may change the flows by diverting water upstream of the WSA segment. The WSRA study, therefore, is fatally flawed because the ability of a valid existing water right owner to make changes in water flows and structures may preclude a finding of suitability. Manual 8351.33A11, 8351.24, 8351.32.C.I.

Issue number: PP-WY-KEMMERER-08-0005-29

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The 2002 WSRA study also fails to address the existence of impoundments that may make both Raymond and Huff Creeks ineligible. 16 U.S.C. § 1286(b) (river segments are "free-flowing," if "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway...")(f.8).

Issue number: PP-WY-KEMMERER-08-0005-37

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The WSRA study, however, does not address these potential management constraints, including those on existing water diversion structures or limits on future structures and facilities. This is a critical omission because pursuant to the Manual, the BLM's management of classified rivers will have significant impacts on the exercise of water and land rights (f.9). WSRA classification, therefore, may directly effect a taking of water rights and the BLM must consider those impacts as part of the planning process. See *Bass Enterprises Prod. Co. v. US.*, 381 F.3d 1360, 1365 (Fed. Cir. 2004). At a minimum, the Kemmerer RMP and FEIS must also include a takings implication assessment pursuant to Executive Order No. 12630. 53 Fed. Reg. 8859 (1988).

Issue number: PP-WY-KEMMERER-08-0005-42

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

(f.10) Alternatively, the BLM needs to revise the FEIS to provide that classification will limit range management tools and these limits will impede maintaining or meeting rangeland health standards. There will be increased resource degradation, lost grazing Animal Unit Months (AUMs), and greater impacts on riparian resources due to inability to develop water. The FEIS also needs to disclose that water pipelines and stockwater tanks may be prohibited, thus interfering with the exercise of water rights.

Summary

The RMP relies on a Wild and Scenic Rivers Act (WSRA) study to support its WSRA determination. The study did not follow the requirements that the BLM identify existing water rights and diversion structures, and consider them in the eligibility review. As a result, the PRMP does not adequately address or consider valid existing water rights and the impacts of water restrictions on other resources.

Response

To be eligible under the WSRA, a river segment must be “free flowing” and must possess at least one river-related value considered to be “outstandingly remarkable.” Free-flowing is defined by Section 16(b) of the WSRA as “existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.” The existence of small dams, diversion works, or other minor structures will not automatically disqualify a waterway for possible addition to the National Wild and Scenic Rivers System (NWSRS).

The segments of the two streams being considered for WSR designation are entirely within the Raymond Mountain WSA. The WSA management policy and management for WSRA suitability of surrounding BLM lands would enhance and protect the water quality and stream flows within these segments. There are no impoundments on the stream segments considered suitable for WSR designation. The BLM investigated this issue between draft and final EIS based on comments to the draft. The WY State Engineer’s data base was checked and the WSA stream segments were field-checked to verify any presence of structures. The headwaters of Raymond and Huff creeks are within the WSA. Therefore, any new water diversion structures on BLM surface would be prohibited at this time to comply with the Interim Management Policy for Lands Under Wilderness Review (H-8550-1, pages 5, 9).

The FEIS fully disclosed the impacts of managing for other resource values on livestock grazing (p 4-199 to 4-208).

Wild and Scenic Rivers

Issue number: PP-WY-KEMMERER-08-0005-23

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The BLM, therefore, violated its guidance regarding the obligation for public comment on both eligibility and suitability decisions. Coordination should also have included consultation with the state engineer's office, local water conservation and irrigation districts, and other related agencies and entities. SWCCD LRUPP p. 75; and Lincoln County pp.3-22, 3-29.

Issue number: PP-WY-KEMMERER-08-0005-25

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

Communication with state agencies in 1991 and 1993 is not a substitute for putting the WSRA study out for public comment in 2001. The answer concedes the point that the BLM did not provide for public or local government consultation on its WSRA study (f. 5). The BLM also wrongfully assumes that the starting point for public and local government WSRA coordination may begin with the suitability determination. See *id.* Since the eligibility determination, the BLM admits that it has been using its "discretionary authority" to protect the free-flowing, outstandingly remarkable values of the 13 identified eligible waterways. FEIS at 3-145. Because these interim protective management constraints may adversely affect existing and future water projects and diversions, and interfere with the exercise of valid existing water rights, it was arbitrary for BLM to exclude the affected public and local governments from the WSRA eligibility and suitability studies.

Issue number: PP-WY-KEMMERER-08-0005-31

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The CLG local governments repeatedly expressed opposition in their comments, and the State has not expressed any congressional support for WSRA designation, yet these key facts are not incorporated or considered into the WSRA study or FEIS. SWCCD LRUPP p. 75-76; Uinta County Compo

Plan at 17; and Lincoln County p. 3-22. The WSRA study, does not even mention the positions of State and local governments. 2002 WSRA Report at C-4.

Issue number: PP-WY-KEMMERER-08-0005-33

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The WSRA suitability recommendations also conflict with the plans, programs, and policies of the protesting local governments. SWCCD LRUPP pp. 31-32; and Lincoln County p. 3-24. The Wyoming local governments' land use plans do not support actions, such as wild and scenic river designations, which would impede, limit or restrict the lawful development and utilization of water rights. See e.g., LC Comprehensive Plan, p.8 (2005) (promotes "adequate water quality and quantities"); SWC Comprehensive Plan, p.2.14 (2002) (coordinate with agencies to "plan and implement water development"); SWCCD Land and Resource Use Plan and Policy, p.31-34 (2005) (strongly supports the protection of water rights and water development structures on federal lands as being integral to municipal, industrial, agricultural and recreational uses). The WSRA study and FEIS, therefore, must be revised to weigh the consistency with local Wyoming land use plans, and the Wyoming local governments' opposition to WSRA management in making its suitability determination

Issue number: PP-WY-KEMMERER-08-0005-34

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The BLM, therefore, already has the appropriate mechanisms in place to protect and manage the identified river values, and the WSRA study and FEIS fails to address and demonstrate the need for a suitability recommendation as required by the Manual.

Issue number: PP-WY-KEMMERER-08-0005-37

Organization: Coalition of Local Governments

Protester: Constance Brooks

Issue excerpt Text:

The WSRA study, however, does not address these

potential management constraints, including those on existing water diversion structures or limits on future structures and facilities. This is a critical omission because pursuant to the Manual, the BLM's management of classified rivers will have significant impacts on the exercise of water and land rights (f.9). WSRA classification, therefore, may directly effect a

taking of water rights and the BLM must consider those impacts as part of the planning process. See *Bass Enterprises Prod. Co. v. US.*, 381 F.3d 1360, 1365 (Fed. Cir. 2004). At a minimum, the Kemmerer RMP and FEIS must also include a takings implication assessment pursuant to Executive Order No. 12630. 53 Fed. Reg. 8859 (1988).

Summary

The Wild and Scenic Rivers decisions are flawed because the BLM did not adequately consult with local governments and did not fully disclose the level of support of the local and state governments.

Response

As part of the planning effort for developing this RMP, the BLM initiated a Wild and Scenic Rivers review of all BLM-administered land along waterways within the Kemmerer RMP planning area. The review is required pursuant to The Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271 *et seq.*, and the BLM Land Use Planning Handbook Appendix H, III.B.2. which states, "Assess all eligible river segments and determine which are suitable or non-suitable per Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968, as amended (see BLM Manual 8351)." The required report was finalized in December of 2002.

The BLM gave the public several opportunities to comment on these WSR review results throughout the RMP planning effort. The scoping report, placed on the BLM RMP revision website in January 2004, identified WSR considerations as an issue. The WSR report was made available on the website in November 2004. In addition, the proposed WSRs were specifically identified in the NOI for the DEIS. Initial discussions with local government cooperating agencies concerning the potential eligibility of these river segments for WSR consideration began prior to June 2004 as part of RMP Revision Cooperating Agency Alternative Development Workshop #2. In addition, the KFO provided copies of the report to the state and local governments and offered multiple opportunities for further discussion of this issue. The KFO has thoroughly considered the input of all commenters during the RMP process. Appendix C, pg C-7 has a list of the Kemmerer RMP Cooperating Agencies.

The BLM solely identifies suitability and reports the results of suitability determinations to the Secretary of the Interior. Support by the State of Wyoming would be instrumental for congressional designation of the identified segments. The local land use plans were considered during the RMP revision process (See FEIS pg 1-15.)

Water developments along the potential WSR segments identified as suitable would not conform to management decisions within the current Raymond Mountain WSA. In addition, the management of surrounding BLM lands would enhance and protect the water quality and stream flows within these segments. Although the suitable segments are located within the current WSA, the BLM is required to identify, evaluate and manage WSR segments (H-8351.01).

Wilderness Characteristics

Issue number: PP-WY-KEMMERER-08-0002-51

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

While the BLM may argue that recommended WSAs submitted by the President to Congress in 1992 need not be re-inventoried (because they remain "on the table" for Congress to act upon), this assumption certainly is erroneous with respect to WSAs not so recommended, or lands that have potential for

wilderness. By virtue of the BLM's failure to continue to inventory these lands with respect to their wilderness suitability, the RMP fails to disclose any changes in the characteristics and wilderness suitability of those lands with wilderness potential that were not recommended and that may have occurred in the past twenty-six years. The BLM's own Planning Handbook states: New information, updated analysis, or new resource use or protection proposals may require amending or revising land use plans and updating implementation decisions.

Summary

The PRMP/FEIS fails to address lands with wilderness characteristics, in violation of BLM policy.

Response

The BLM conducted a recreation and scenic values inventory during the Kemmerer RMP planning effort (FEIS Appendix I, pgs I-2 to I-10). The BLM KFO also continually inventories and monitors the planning area with respect to wilderness values. The KFO conducts monthly monitoring in the Raymond Mountain WSA. This effort also provides information on adjoining lands in the area. There have been no substantial changes to wilderness values within the current WSA since the 1986 RMP. Areas outside of the Raymond Mountain WSA have been monitored and assessed and the KFO has determined that no other areas within the planning area retain wilderness characteristics (FEIS Chapter 2, pg 2-6, 7).

Wilderness Study Areas

Issue number: PP-WY-KEMMERER-08-0002-50

Organization: Wyoming Western Watersheds Project

Protester: Jonathan B. Ratner

Issue excerpt Text:

The RMP does not conduct a re-inventory of existing WSAs. This directly contradicts with FLPMA's mandate that the BLM conduct an inventory of the public lands and their resources, and use that inventory in its wilderness study efforts, "on a continuing basis." 43 U.S.C. Id. § 1711(a).

Summary

The BLM failed to conduct a WSA re-inventory

Response

The BLM conducted a recreation and scenic values inventory during our current RMP revision effort. Appendix I pg I-2 to I-10. The KFO conducts monthly monitoring in the Raymond Mountain WSA in accordance with the Interim Management Policy. There have been no substantial changes to wilderness values within the current WSA since the 1986 RMP.