

*BLM Director's Protest Resolution
Report*

**Buffalo (Wyoming) Greater
Sage-Grouse Resource
Management Plan / Final
Environmental Impact
Statement**

September 15, 2015



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-WY-BUFFALO-GRSG-15-10-XX

Protest Issue

Organization: The Forest Initiative

Protesting

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.

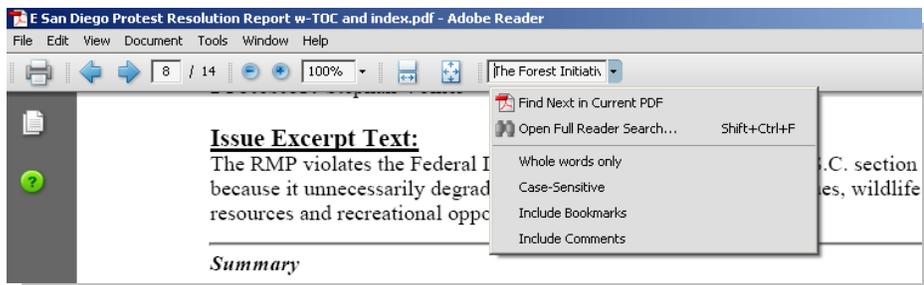
Response

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 decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

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	KOP	Key Observation Points
BA	Biological Assessment	LMP	Land Management Plan
BLM	Bureau of Land Management	MIC	Management Indicator Communities
BMP	Best Management Practice	MIS	Management Indicator Species
BE	Biological Evaluation	MOU	Memorandum of Understanding
BO	Biological Opinion	MUSY	Multiple Sustained Yield Act
CAA	Clean Air Act	NEPA	National Environmental Policy Act of 1969
CEQ	Council on Environmental Quality	NHPA	National Historic Preservation Act of 1966, as amended
CFR	Code of Federal Regulations	NOA	Notice of Availability
COA	Condition of Approval	NOI	Notice of Intent
CSP	Concentrated Solar Power	NRHP	National Register of Historic Places
CSU	Controlled Surface Use	NSO	No Surface Occupancy
CWA	Clean Water Act	OHV	Off-Highway Vehicle (also referred to as ORV, Off Road Vehicles)
DEIS/DRMPA	Draft Environmental Impact Statement /Draft Resource Management Plan Amendment	PA	Preliminary Assessment
DM	Departmental Manual (Department of the Interior)	PAC	Priority Areas for Conservation
DOI	Department of the Interior	PHMA	Priority Habitat Management Area
EA	Environmental Assessment	PPA	Power Purchase Agreement
EIR	Environmental Impact Report	RDF	Required Design Features
EIS	Environmental Impact Statement	RFDS	Reasonably Foreseeable Development Scenario
EO	Executive Order	RMP	Resource Management Plan
EPA	Environmental Protection Agency	ROD	Record of Decision
ESA	Endangered Species Act	ROW	Right-of-Way
FEIS	Final Environmental Impact Statement	RPA	Forest and Rangeland Renewable Resources Planning Act
FEIS/PRMPA	Final Environmental Impact Statement /Proposed Resource Management Plan Amendment	SFA	Sagebrush Focal Area
FLPMA	Federal Land Policy and Management Act of 1976	SO	State Office (BLM)
FO	Field Office (BLM)	SUA	Special Use Authorization
FWS	U.S. Fish and Wildlife Service	SUP	Special Use Permit
GHMA	General Habitat Management Area	T&E	Threatened and Endangered
GIS	Geographic Information Systems	USC	United States Code
IB	Information Bulletin (BLM)	USDA	U.S. Department of Agriculture
IM	Instruction Memorandum	USGS	U.S. Geological Survey
IRA	Inventoried Roadless Area	VRM	Visual Resource Management
		WA	Wilderness Area
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission(s) Number	Determination
Kyle Wilson	Wyoming Wilderness Association	PP-WY-BUFFALO-GRSG-15-01	Denied—Issues and Comments
R. Jeff Richards	Rocky Mountain Power (PacifiCorp)	PP-WY-BUFFALO-GRSG-15-02	Denied—Issues and Comments
Dru Bower-Moore	Devon Energy Production Company	PP-WY-BUFFALO-GRSG-15-03	Denied—Issues and Comments
Michael James	Denbury Onshore	PP-WY-BUFFALO-GRSG-15-04	Denied—Issues and Comments
Josh Leftwich	Cameco Resources	PP-WY-BUFFALO-GRSG-15-05	Denied—Issues and Comments
Erik Molvar	Wild Earth Guardians et al	PP-WY-BUFFALO-GRSG-15-06	Denied—Issues and Comments
Bret Sumner	Beatty & Wozniak obo Exxon/XTO Energy	PP-WY-BUFFALO-GRSG-15-07	Denied—Issues and Comments
Esther Wagner	Petroleum Association of Wyoming	PP-WY-BUFFALO-GRSG-15-08	Denied—Issues and Comments
Shannon Anderson	Powder River Basin Resource Council	PP-WY-BUFFALO-GRSG-15-09	Denied—Issues and Comments
Travis Bruner	Western Watersheds Project	PP-WY-BUFFALO-GRSG-15-10	Denied—Issues and Comments
Mike Thomas	Uranex Energy Corporation	PP-WY-BUFFALO-GRSG-15-11	Denied—Issues and Comments
Bruce Jones	Cloud Peak Energy Resources	PP-WY-BUFFALO-GRSG-15-12	Denied—Issues and Comments
Mark Salvo	Defenders of Wildlife	PP-WY-BUFFALO-GRSG-15-13	Denied—Issues and Comments
Governor Matthew Mead	State of Wyoming	PP-WY-BUFFALO-GRSG-15-14	Denied—Issues and Comments
Mike Best	Avian Power Line Interaction Committee	PP-WY-BUFFALO-GRSG-15-15	Denied—Issues and Comments
Kyle Tisdell	Western Environmental Law Center	PP-WY-BUFFALO-GRSG-15-16	Denied—Issues and Comments
Craig Kauffman	Safari Club International	PP-WY-BUFFALO-GRSG-15-17	Dismissed—Comments Only
Marjorie West	Private Individual	PP-WY-BUFFALO-GRSG-15-18	Dismissed—Comments Only

Issue Topics and Responses

FLPMA-General

Issue Number: PP-WY-BUFFALO-GRSG-15-06-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The ability to adopt post-leasing mitigation measures (see 43 CFR § 3101.1-2) is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by BLM. This is particularly true given that BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation (43 USC § 1732(b)). Put simply, the failure of BLM to study and adopt these types of mitigation measures, especially when feasible and economic, means that the agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

Issue Number: PP-WY-BUFFALO-GRSG-15-06-9

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM does not propose to seek withdrawal of important GRSG habitats from locatable mineral entry; some 3% of PHMA and 2% of GHMA are proposed for withdrawal for other reasons, principally Special Recreation Management Areas (FEIS at 52). Given that the Wyoming BLM’s position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of

the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, the BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-5

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the RMP’s imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the Endangered Species Act (ESA).

Issue Number: PP-WY-BUFFALO-GRSG-15-07-6

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The FWS has not developed a recovery plan pursuant to the ESA, and BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery plan in violation of FLPMA.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-18

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Proposed RMP

confirms that a “net conservation gain” is beyond BLM’s authority under FLPMA. BLM does not assert that a “net

conservation gain” is needed to avoid unnecessary or undue degradation.

Summary:

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that:

- Uses a non-legislated standard of “net conservation gain”, creating a de facto recovery plan that exceeds the “unnecessary or undue degradation standard”;
- abrogates the BLM’s authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species; and
- asserts ESA-like authority for the BLM by mandating measures to ensure species recovery.

The BLM has failed to uphold its authority and legislated mandate under FLPMA to avoid unnecessary and undue degradation of GRSG habitat by failing to withdraw more hard rock minerals from development and failing to impose post-leasing oil and gas development stipulations to prevent undue and unnecessary degradation of public lands.

Response:

The FLPMA details the BLM’s broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Buffalo PRMP/FEIS specifically addresses the goals, objectives, and conservation measures needed to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need, pages 4-7). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM developed the Buffalo RMP/EIS with involvement from cooperating agencies, as detailed on pages 1847-1849, including Federal agencies (USFS, OSM, EPA, USFWS, others), state agencies (Office of the Governor, State Lands and Investments, Department of Agriculture, many others), local government and conservations districts, and tribal governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

The introduction to the Range of Alternatives for the GRSG Management in the Buffalo PRMP/FEIS, Section 2.5.2, states that all alternatives (except the no-action alternative) seek to “[m]aintain and/or increase GRSG abundance and populations depend in collaboration with other conservation partners.”

The net conservation gain standard mitigation standard is fully consistent with the BLM's authority under FLPMA. The proposed plan provides that, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. This is consistent with BLM's authority as described in FLPMA (which is not, as the Protestor claims, limited to preventing unnecessary or undue degradation), and is also consistent with BLM Manual 6840, mentioned above, by reducing or eliminating threats to the GRSG and its habitat.

The proposed plan does not allow unnecessary or undue degradation of the public lands. Section 302(b) of FLPMA requires that "in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." The Buffalo PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the Buffalo PRMP/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Buffalo RMP/EIS identifies appropriate allowable uses, management actions, and other mitigation measures that, among other things, prevent the unnecessary or undue degradation of public lands.

In Section 2.3, the Buffalo PRMP/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 614,000 acres from mineral entry. The BLM's decision to tailor the recommended withdrawal to just over 115,000 acres, detailed on page 136, is based on the value of the habitat to the GRSG and other resource factors. Also, the objective detailed on page 136, provide additional information on how the BLM would manage mineral resources in PHMA and GHMA to avoid unnecessary and undue degradation.

For the development of fluid minerals under existing leases, page 199 of the Buffalo PRMP/FEIS details how in "cases where federal oil and gas leases are or have been issued without stipulated restrictions or requirements that are later found to be necessary, or with stipulated restrictions or requirements later found to be insufficient, [the BLM will] consider their inclusion before approving subsequent exploration and development activities. [The BLM will] include these restrictions or requirements only as reasonable measures or as conditions of approval in authorizing APDs or Master Development Plans." Any conditions of approval for permits to drill on existing leases – including measures necessary to prevent unnecessary or undue degradation -- will be evaluated at the project level.

The Buffalo PRMP/FEIS will not result in "unnecessary or undue degradation of public lands.

Valid Existing Rights

Issue Number: PP-WY-BUFFALO-GRSG-15-02-3

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: Appendix D of the Wyoming Buffalo LUPA identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Rocky Mountain Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights.

Issue Number: PP-WY-BUFFALO-GRSG-15-03-1

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: Devon protests the BLM's decision to impose new restrictions on existing federal oil and gas leases as Condition of Approval (COAs).

Issue Number: PP-WY-BUFFALO-GRSG-15-03-2

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: Devon protests the BLM's imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, as described in more detail below, the BLM does not have the authority to impose new restrictions on Devon's valid existing leases under the Federal Land Policy and Management Act of 1976 (FLMPA). Such leases were issued pursuant to the terms of the existing RMP, or prior to said RMP and the enactment of FLPMA, and the BLM cannot modify the terms of those leases through a RMP revision. Second, Devon's leases constitute

valid existing contracts that cannot be unilaterally modified by the BLM.

Issue Number: PP-WY-BUFFALO-GRSG-15-03-3

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: The proposed addition of new restrictions, such as raptor buffers, sharp-tailed grouse buffers, GRSG noise restrictions, cultural site buffers, and required design features, to existing leases is impermissible because it exceeds the BLM's legal authority under FLPMA. By attempting to impose these restrictions on existing leases, the BLM is proposing to modify Devon's existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are "subject to valid existing rights." 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, the BLM cannot terminate, modify, or alter any valid or existing property rights. 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b). Devon commented on the BLM's inability to modify existing lease rights through the land use planning process.

Issue Number: PP-WY-BUFFALO-GRSG-15-03-4

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: First, the BLM's Land Use Planning Manual mandates the protection of existing lease rights. "All

decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases...” (See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00)). The BLM must comply with the provisions of its planning manual and recognize existing rights.

Issue Number: PP-WY-BUFFALO-GRSG-15-03-5

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: BLM Instruction Memorandum 92-67 similarly states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” As noted in the BLM’s Instruction Memorandum, the lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the BLM.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-1

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Here, the Buffalo RMP proposes to impose new lease stipulations through permit COAs on valid existing leases, an action that vastly exceeds XTO’s original lease contract terms. For example, the RMP proposes requiring compensatory mitigation to a net

conservation gain standard. Such management prescriptions would unduly and unreasonably restrict XTO’s right and ability to develop its leases.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-2

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Buffalo RMP’s mandate for compensatory mitigation for any disturbance within GrSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO’s ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM’s authority under FLPMA.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-3

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: With the Buffalo RMP, however, the BLM is, in effect, disregarding economic impacts and instead planning to revise and restrict XTO’s valid existing lease rights through the imposition of a net conservation gain standard, development and disturbance caps, and additional restrictive measures added to the proposed RMP since release of the draft document.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-2

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest

BLM's decisions to impose new restrictions on existing federal oil and gas leases.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-3

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest BLM's imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, BLM does not have the authority to impose new restrictions on valid existing leases under the FLPMA. Second, BLM cannot unilaterally modify federal leases, which are valid existing contracts. Finally, BLM cannot impose new restrictions on existing leases that render development uneconomic or impossible.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-4

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The proposed addition of new restrictions to existing leases exceeds BLM's legal authority under FLPMA. The BLM may not modify existing lease rights through its land use planning process because FLPMA expressly states that all BLM actions, including authorization of RMPs, are "subject to valid existing rights." 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, BLM cannot terminate, modify, or alter any valid or existing rights.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-5

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM's Land Use Planning Manual reinforces that RMPs must respect existing lease rights. "All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases..." (See BLM Manual 1601, Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00)). The BLM must comply with the provisions of its planning manual and recognize existing rights. Any attempts to modify a federal lessee's existing rights would violate the terms of its leases with BLM and BLM's own policies.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-6

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance." Thus, judicial and administrative authorities recognize that a federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-7

Organization: Petroleum Association of

Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Section 3101.1-2, 43 CFR states that BLM may impose “reasonable mitigation measures...to minimize adverse impacts...to the extent consistent with lease rights granted.” The BLM, however, has expressly recognized that this regulation does not allow the BLM to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 CFR § 3101.1-2, BLM unequivocally stated that this regulation “will not be used to

increase the level of protection of resource values that are addressed in lease stipulations” (53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988)). The BLM further explained that “the intent of the proposed rulemaking” was not to impose measures that, for example, “might result in an unstipulated additional buffer around an area already stipulated to have a buffer” (Id. (emphasis added)). Any attempt by the BLM to impose measures that expand express stipulations attached to leases are inconsistent with the leases’ contractual terms.

Summary:

The PRMP/FEIS violates valid, existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

Response:

The Buffalo PRMP/FEIS is subject to valid existing rights (FLPMA, Section 701(h)), (Buffalo PRMP/FEIS p.13). For example, p. 33 includes the following language: “Management actions developed under all alternatives are subject to valid existing rights,” and on p. 138, Objective 3.4 for Mineral Resources states that: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of GRSG habitat. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in priority habitat (core population areas and core population connectivity corridors) and general habitat, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights”.

With respect to oil and gas leasing specifically, the BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, BLM has the authority to impose reasonable measures [e.g. COA] to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Buffalo PRMP/FEIS provides management direction for conditions of approval on valid existing leases (See p. 199) it does so only consistent with lessees’ valid existing rights.

Multiple Use Mandate

Issue Number: PP-WY-BUFFALO-GRSG-15-07-9

Organization: Beatty & Wozniak obo:
Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: In contrast, here, the Buffalo RMP could be interpreted as imposing a “no significant impact” standard for oil and gas operations. This de facto insignificance standard violates BLM’s statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a “major use” of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

Summary:

The PRMP/FEIS violates the multiple use provisions of FLPMA by imposing a “no significant impact” standard for oil and gas operations and by elevating the protection of cultural resources above other uses.

Response:

Section 302 of FLPMA provides that the Secretary shall manage the public lands under principles of multiple use and sustained yield. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people and a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

FLPMA’s multiple use mandate does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, including conservation values, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation.

All alternatives considered in the Buffalo PRMP/FEIS, as described in Chapter 2 (Vol.1, p. 25-280), provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

Issue Number: PP-WY-BUFFALO-GRSG-15-05-4

Organization: Cameco

Protestor: Josh Leftwich

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed prescriptions associated with the Pumpkin Buttes ACEC designation are not consistent with FLPMA's multiple use mandate and raise cultural resources conservation and aesthetics above all other resources in the planning area, and without providing rationale for placing protection of cultural resources above all other uses.

The Buffalo PRMP/FEIS complies with FLPMA's multiple use mandate.

Consistency with State and Local Plans

Issue Number: PP-WY-BUFFALO-GRSG-15-03-10

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: The Proposed Wyoming LUPA is Inconsistent with the State of Wyoming GRSG Core Area Strategy in Violation of FLPMA. Devon protests several inconsistencies between the Proposed Wyoming LUPA and the Wyoming GRSG Core Area Strategy. These inconsistencies appear to be the result of the BLM's choice to impose certain GRSG conservation measures in violation of FLPMA's requirement for the BLM to coordinate land use planning with state and local governments. The Proposed Buffalo RMP diverges from the Wyoming GRSG Core Area Strategy in many important respects:

- Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5 (Proposed Buffalo RMP, Appd. H, pg. 1993).
- Noise limitations that are not consistent with those contained in the Wyoming Executive Order 2011-5. Proposed Buffalo RMP, Management Action 4024, pg. 188.

The BLM's failure to identify and reconcile these inconsistencies violates FLPMA's requirement for the BLM to ensure that federal land use plans are, "to the maximum extent" consistent with federal law, consistent with state and local land use programs. 43 USC § 1712(c)(9).

Issue Number: PP-WY-BUFFALO-GRSG-15-04-2

Organization: Denbury Onshore, LLC

Protestor: Michael James

Issue Excerpt Text: Denbury urges the BLM, however, to eliminate certain areas of the RMP that diverge from the Wyoming GRSG Core area strategy. For example, BLM proposes certain timing restrictions and noise limitations that are not consistent with those contained in the Wyoming Plan. Proposed RMP/EIS at 188 (Management Action 4024) and Appendix Hat 1993. The BLM should correct these inconsistencies to ensure that the state and BLM approaches to GRSG management are consistent. This is especially true given that state and private lands are interspersed throughout the planning area, and consistent management is necessary to ensure uniform standards across the landscape.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-1

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest several inconsistencies between the Proposed RMP and the Wyoming GRSG Core Area Strategy. These inconsistencies appear to be the result of BLM's choice to impose certain GRSG conservation measures in violation of FLPMA's requirement for BLM to coordinate land use planning with state and local governments. The Proposed RMP diverges from the Wyoming GRSG Core Area Strategy in many important respects:

- Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5 (Proposed RMP, Appd. H, pg. 1993).
- Noise limitations that are not consistent

with those contained in Wyoming Executive Order 2011-5 (Proposed RMP, Management Action 4024, pg. 188).

- BLM requirement for compensatory mitigation when development occurs in priority habitat management areas (PHMA) and possibly even General Habitat Management Areas (GHMA) (Proposed RMP, Appd. B, pg. 179 – 1793).

Issue Number: PP-WY-BUFFALO-GRSG-15-08-36

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM has not adequately explained or justified the proposal to designate all PHMA avoidance areas. PAW commented on the excessive ROW exclusion and avoidance area in its comments. PAW Comments, pg. 25. Lessee’s ability to develop their leases could be significantly impacted if BLM inappropriately limits access to these leases. BLM must be willing to work with oil and gas lessees and operators to design access

Summary:

The BLM is inconsistent with the Wyoming GRSG Core Area Strategy and has failed to consider consistency with local land use plans in the PRMP/FEIS, in violation of Section 202(c)(9) of FLPMA.

Response:

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Buffalo PRMP/FEIS, including the Wyoming GRSG Core Area Strategy, the Wyoming Executive Order 2011-5 and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Buffalo PRMP/FEIS. Chapter 1, Section 1.5 describes the coordination that has occurred

routes to proposed oil and gas development projects. If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of the oil and gas leases does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 CFR § 3101.1-2 (2006).

Issue Number: PP-WY-BUFFALO-GRSG-15-12-1

Organization: Cloud Peak Energy Resources, LLC.

Protestor: Bruce Jones

Issue Excerpt Text: The State Director's decision is believed to be in error since it finalizes a land use plan that fails to consider consistency with local land use plans (such as the TBGPEA CCAA-CCA-CA) for greater sage-grouse conservation, contrary to the requirements of Section 202(c)(9) of the Federal Land Policy and Management Act.

throughout the development of the Buffalo PRMP/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Sections 1.2.2 and 1.5.1. The BLM conducted an internal review process to review the plan compared to local, state, and Tribal plans to identify potential inconsistencies. The agency will discuss why any remaining inconsistencies between the Buffalo PRMP/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Range of Alternatives

Issue Number: PP-WY-BUFFALO-GRSG-15-06-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Guardians also submitted our GRSG Recovery Alternative (DEIS Attachment 11) earlier in this NEPA process; the issues raised in this alternative are also part of our expectations for the final plan amendments and revisions. We requested that agencies should designate as Priority Habitat and General Habitat all lands identified as PPMAs and PGMAs, and in addition should expand Priority Habitat to include all 75% population areas, but this alternative does not appear to have been considered in detail in violation of NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-15

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed RMP. First, the Final EIS does not analyze an alternative to the Proposed RMP's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed RMP's

monitoring framework, including alternatives that BLM has the resources to implement.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-1

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In its EIS, BLM violated NEPA by failing to consider a range of reasonable alternatives by (1) improperly rejecting from detailed analysis an alternative proposed by Organizations to implement phased development of mineral resources; and (2) by failing to consider reasonable alternatives and mitigation measures to address and reduce the number of un-reclaimed oil and gas wells and coal mines.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-2

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In comments, the Organizations asked the BLM to consider alternatives and mitigation measures that would encourage and require timely reclamation of oil and gas wells and coal mines. These ideas included: (1) limiting

new coal leasing for a coal mine until the mine released a certain percentage of land at existing mining operations from reclamation bonds (Powder River Basin Resource Council comments at 14); (2) increasing reclamation bonds for idle oil and gas wells (Powder River Basin Resource Council comments at 4); and (3) requiring reclamation of brush density and other vegetation necessary to reclaim GRSG habitats (Powder River Basin Resource Council comments at 17). As discussed above, if these proffered alternatives are reasonable and found to meet the purpose and need of the RMP, the BLM had a duty to consider them within the scope of its EIS. The BLM violated NEPA by failing to do so. None of these proposed alternatives were discussed – or even mentioned – in Chapter 2, meaning the BLM did not even consider them. Instead, the BLM merely briefly responded to the suggested alternatives in its response to comments appendix. This only underscores the extent of BLM’s NEPA violation in failing to consider these proposed alternatives.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-3

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: [A Coal Reclamation Alternative] While it is true that the Wyoming Department of Environmental Quality (DEQ) has delegated permitting authority over coal mines from the Office of Surface Mining (OSM), BLM is the Federal agency that starts the process of leasing federal coal reserves, and without a lease, mining and subsequent impacts will not occur. The BLM has an independent duty under NEPA to analyze all of the environmental impacts of its proposed action—i.e. the direct, indirect and

cumulative impacts of authorizing leasing of additional coal reserves and the associated impacts related therewith... An alleged lack of “jurisdiction” over one component of coal development (i.e. reclamation) does not substantiate the BLM’s failure to consider alternatives in its NEPA document. See e.g., 40 CFR § 1502.14(c)(Federal agencies have a duty to “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency”); *Pennaco v. DOI*, 377 F.3d 1147, 1150 (10th Cir. 2004)(“NEPA ‘prescribes the necessary process’ by which federal agencies must ‘take a ‘hard look’ at the environmental consequences’ of the proposed courses of action.”)

Issue Number: PP-WY-BUFFALO-GRSG-15-09-5

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In regard to the sagebrush reclamation alternative, the Organizations asked the BLM to consider an alternative that would require reclamation of sagebrush ecosystems prior to new development. This alternative was suggested for both coal and oil and gas given the difficulty these industries have had in restoring sagebrush in the PRB and the need for increased brush density to support GRSG and other brush dependent species. The BLM responded with the following: “BLM believes that the overall trend of grassland and shrub land communities will stay fairly static from this point forward. In the past, there has been a reduction in the sagebrush community, but now reclamation is underway on much of the CBNG development and future authorized surface-disturbing activities will include plans for reclamation; site-specific reclamation actions should reflect the complexity of the project, environmental concerns, and the

reclamation potential of the site” (EIS at 2710). The BLM’s responses amount to conclusory statements without basis. NEPA requires more. NEPA requires information provided to the public to be accurate and sufficient to permit analysis of the data provided and the methods used to analyze it (See, e.g., 40 CFR § 1500.1(b); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). The agencies must “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR § 1502.24). The BLM’s conclusion that “reclamation is underway on much of the CBNG development” does not have any basis. How much? Is reclamation adequately restoring sagebrush to the density of sagebrush pre-development? What is happening at the coal mines? As discussed in Section IV(E) *infra*, out of the 173,914 acres disturbed by coal mining in Wyoming (the vast majority of those acres being related to federal coal development in the planning area), only 10,607 acres have been released from final bond obligations, meaning that the companies’ have demonstrated final re-vegetation, including species composition and diversity and brush density, requirements. In short, the BLM’s response does not meet NEPA’s requirements to adequately analyze potential impacts of a project and reasonable alternatives to reduce those impacts (See *Seattle Audubon Soc’y v. Mosely*, 798 F.Supp. 1473, 1482 (W.D. Wash. 1992) (citing *Friends of the Earth v. Hall*, 693 F.Supp. 904, 934, 937 (W.D.Wash. 1988) (holding that “The agency may not rely on conclusory statements unsupported by data, authorities, or explanatory information.”))).

Issue Number: PP-WY-BUFFALO-GRSG-15-10-5

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The need for seasonal restrictions has been affirmed by leading sage-grouse scientists and the courts. Dr. Clait Braun identified the need for the seasonal restrictions in 2006: “Grazing should not be allowed until after 20 June and all livestock should be removed by 1 August with a goal of leaving at least 70% of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1).” (*WWP v. Salazar*, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012)). The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve, protect, and enhance GRSG habitats. The absence of these seasonal and utilization criteria conflicts with the PRMP/FEIS’ claim that the habitat objectives in Table 2-4 summarize the characteristics that research has found to represent the seasonal habitat needs for GRSG (PRMP/FEIS at 81).

Issue Number: PP-WY-BUFFALO-GRSG-15-16-1

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The Buffalo RMP continues to ignore any alternative that would meaningfully reduce climate impacts and protect the environment, such as an

alternative with less coal production, an alternative with stipulations to limit oil and gas development, or an alternative that permanently protects critical areas.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-5

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to consider a reasonable range of alternatives. As explained above, perhaps the biggest flaw in the BLM’s Buffalo RMP revision process has been the agency’s unbending refusal to consider any alternative that would reduce climate impacts and greenhouse gas emissions by limiting fossil fuel development within the planning area.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-6

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM’s refusal to even consider the reasonable alternatives put forward by the Conservation Groups prevents BLM from engaging in the reasoned consideration of alternatives that is the very core of NEPA’s procedural mandate and renders BLM’s FEIS invalid.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-7

Summary:

The Buffalo PRMP/FEIS failed to analyze an adequate range of alternatives by not considering alternatives:

- to BLM’s goal of achieving a “net conservation gain” of GRSG habitat;
- to the monitoring framework;
- for phased development of mineral resources;
- within the jurisdiction of the lead agency;
- regarding reclamation/bonding associated with oil and gas, coal;

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to consider an alternative with less coal production. In its FEIS, the BLM violated NEPA by failing to consider any alternative that would reduce development or otherwise alleviate impacts to water, air, and land resources, including alternatives raised by the Conservation Groups nearly two years ago. Every alternative considered in the FEIS proposes to authorize extensive energy development, and all of them, including the No Action Alternative, call for 10.2 billion tons of coal production and widespread oil and gas development within the planning area.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-8

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Despite Conservation Groups’ clear and reasonable proposal that BLM consider at least one alternative that entails less coal mining and combustion, in the FEIS, the BLM again analyzed only full-production scenarios. In the FEIS – as it did in the DEIS – the BLM considered four alternatives, labelled A-D, that are nearly identical by any reasonable measure with respect to coal.

- to reduce climate impacts and greenhouse gas emissions by limiting fossil fuel development;
- regarding livestock seasonal restrictions; and
- for recommended/suggested alternatives

Response:

General

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate reasonable alternatives, and, for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Buffalo PRMP/FEIS, 2.6. Alternatives Considered, but not Carried Forward for Detailed Analysis).

When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a range of reasonable alternatives that meet the purpose and need (Buffalo PRMP/FEIS, Section 1.2 Purpose and Need for the Resource Management Plan Revision) and that address resource issues identified during the scoping period. The Buffalo PRMP/FEIS analyzed four distinct alternatives in detail, which are described in Section 2.9 Detailed Alternative Description by Resource. The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Net Conservation Gain - Monitoring Framework

Net Conservation Gain is described in the Buffalo PRMP/FEIS glossary (p. 26) as “The actual benefit or gain above baseline conditions.” and is addressed in Sections 2.3 Key Components of the Alternatives and Section 2.6 Alternatives Considered in Detail. The Net Conservation Gain strategy responds to the landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The action alternatives provide management direction to meet this landscape-scale goal (Detailed Table of Alternatives, p. 2-99 through 2-238). In addition, net conservation gain is derived from the purpose and need which calls for measures to conserve, enhance and or restore GRSG habitat and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework (P. 2-4) described in Appendix AA, Section B of the Buffalo PRMP/FEIS for GRSG Habitat Management describes a methodology to ensure consistent assessments are made regarding GRSG habitats across the species range. This framework describes the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of actions to conserve the species and its habitat. Being a methodology for monitoring implementation of the PLUPA does not require it to be varied between the action alternatives.

Phased Development

Section 2.6 Alternatives Considered, but not Carried Forward for Detailed Analysis (p. 94) in the Buffalo PRMP/FEIS identified alternatives not carried forward for detailed analysis because: 1)

they would not fulfill requirements of the Federal Land Policy and Management Act (FLPMA) or other existing laws or regulations, 2) they did not meet the purpose and need, 3) they were already part of an existing plan, policy, or administrative function, or 4) they did not fall within the limits of the planning criteria.

Phased development described as regulating the rate at which oil and gas development occurs (p. 95) was identified under Section 2.6. The narrative succinctly explains, given the extent of non-federal mineral ownership within the planning area, a phased development alternative would not allow compliance with the following requirements: surface land and mineral estate is owned by the State of Wyoming and private parties; the BLM is required to ensure leased federal minerals are fully developed; and the production of non-federal leases does not drain federal minerals. Thus, phased development was eliminated from further detailed analysis.

Lead Agency Jurisdiction

An alternative that is outside the legal jurisdiction of the lead agency must be analyzed in the EIS if it is reasonable (Question 2b. CEQ 40 Questions, March 1981). Reasonable alternatives include those that are practical, or feasible rather than desirable from the applicant. An alternative can only be defined as “reasonable” in reference to the purpose and need. Considering an alternative outside the legal jurisdiction of the lead agency would be exceptional and limited to the most programmatic EISs involving multiple agencies.

Reclamation/Bonding - Oil and Gas, Coal

Appendix C Land Use Planning Handbook (H1601-1) identifies the types of land use plan decisions to be made during a land use plan revision effort. Coal reclamation and fluid mineral bonds/liability are not identified as land use plan decisions to be made. Coal reclamation is the responsibility of the Office of Surface Mining and State of Wyoming. These issues are outside the scope the Buffalo Field Office land use planning effort.

Climate Impacts, Green House Gas Emissions, Limiting Fossil Fuel Development

Alternatives developed to be analyzed in the Buffalo PRMP/FEIS resulted from issues identified through the public scoping process and are described in Section 1.4.1 Planning Issues (p. 10-12). Reducing climate impacts and greenhouse gas emissions by limiting fossil fuel development was not identified as an issue through the scoping process and in the development of the range of alternatives. Table 2.7 - 1000 Physical Resources (PR) – Air Quality (AQ) provides direction to address greenhouse gases associated with BLM actions. The objective is to reduce GHG emissions and implement mitigation measures.

Livestock Seasonal Restrictions

As identified in 2.8 Summaries of the Alternatives (p. 103), each alternative describes a different management approach for GRSG habitat which will conserve, protect, and enhance GRSG habitat to varying degrees. Approaches as to how this is accomplished depends upon the nature of each alternative. Alternative B emphasizes conservation of physical, biological, and heritage resources with constraints on resource uses. It conserves the most land area for physical, biological, and heritage resources. It manages physical resources (air, water, soil, and cave and karst resources) with an emphasis on conserving these resources and is less focused on supporting resource uses than the other alternatives.

Alternative C emphasizes resource uses by limiting conservation measures afforded to physical, biological, and heritage resources. It conserves the least land area for physical, biological, and heritage resources and is the least restrictive to motorized vehicle use and mineral development.

Alternative D allows resource use if the activity can be conducted in a manner that conserves physical, biological, and heritage resources. It emphasizes moderate constraints on resource uses to reduce impacts to resource values.

Table 2-4 describes GRSG seasonal habitat desired conditions. Resources and resource uses such as grazing management would be adjusted to move towards desired habitat conditions consistent with the ecological site capability. Moving towards desired habitat conditions would conserve, protect and enhance GRSG habitat.

Recommended/Suggested Alternatives

Section 2.6 Alternatives Considered but not Carried Forward for Detailed Analysis (p. 94) identifies alternatives and management options that were considered as possible methods of resolving resource management issues and conflicts. After further review these were not carried forward because 1) they would not fulfill requirements of the Federal Land Policy and Management Act (FLPMA) or other existing laws or regulations; 2) they did not meet the purpose and need; 3) they were already part of an existing plan, policy, or administrative function; or 4) they did not fall within the limits of the planning criteria.

Section 2.8.2 Alternative B (p. 114), identified Alternative B as the resource conservation alternative and provides protections to physical, mineral, biological, and land resources through prohibitions, protections, restrictions, and withdrawals. Alternative B was developed using key components of management recommendations (e.g., PHMA/PACs/core areas closed or prohibited to most uses, (4 mile closure around all occupied or undetermined GRSG leks) received during the scoping process (FINAL Scoping Report Buffalo Resource Management Plan Revision, March 2009). In addition, protections in Alternative B are based on a four mile distance from leks and not on the BLM's priority habitat, FWS's Priority Areas for Conservation (PACs), or Wyoming's Core Population Areas. This area is considerably larger than the combined BLM's priority habitat, FWS's Priority Areas for Conservation (PACs), and Wyoming's Core Population Areas.

The BLM considered a reasonable range of alternatives in the Buffalo PRMP/FEIS in full compliance with NEPA.

Purpose and Need

Issue Number: PP-WY-BUFFALO-GRSG-15-06-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of the BLM's own experts regarding necessary measures to protect GRSG habitats and prevent population

declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and/or restore GRSG Habitat.”

Issue Number: PP-WY-BUFFALO-GRSG-15-06-5

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In order to remedy the inadequacy of regulatory mechanisms identified by USFWS, the BLM must address the two-pronged test under the Policy on the Effectiveness of Conservation Efforts (“PECE Policy”), which requires that conservation measures be effective according to the best available science and have certainty of implementation (68 Fed. Reg. 15115). The BLM observes, “Regulatory certainty will be an important factor in the USFWS’s decision on whether to list the GRSG under the ESA; however, regulatory certainty alone would not be enough for USFWS to not list the species” (Oregon GRSG RMP Amendment DEIS at 2-15). The BLM’s National Greater Sage-grouse Planning Strategy further underscores the need to provide adequate regulatory mechanisms in these plan amendments, which the agencies have not done in this case. One of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are likely to undermine the intent of the protective measure in question.

Summary:

The Purpose and Need for the PRMP/FEIS has not been met because:

- the best available science has not been used;
- one of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are likely to undermine the intent of the protective measure in question;
- the plan authorizes coal leasing to companies with plans to export the coal; and

Issue Number: PP-WY-BUFFALO-GRSG-15-09-7

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: Based on this information, the BLM’s selected alternative – authorizing leasing coal to companies with export plans (and the agency itself stating that it is authorizing leasing to meet export needs) - does not meet its stated purpose and need of meeting the nation’s energy needs and reducing dependence on foreign sources of energy. Therefore, the BLM’s selected alternative violates NEPA

Issue Number: PP-WY-BUFFALO-GRSG-15-09-8

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: Here, the BLM includes no discussion about coal exports within the text of its document in spite of its alternative that is specifically identified to meet export needs. This lack of discussion and analysis renders the BLM’s EIS legally inadequate. At the very least, BLM’s EIS should be remanded to the field office to fully analyze the supply and demand of coal from the projected leasing activity during the planning period as called for by the Organizations in their comments.

- there is no discussion of coal exports.

Response:

CEQ regulations direct that an EIS "...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR 1502.13). Also, under the CEQ regulations, the BLM and the Forest Service are required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act [NEPA]" (40 CFR 1501.2(c)). The range of alternatives developed are intended to meet the purpose and need and address the issue; thereby, providing a basis for eventual selection of an alternative in a decision (BLM NEPA Handbook and Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook Chapter 10 – Environmental Analysis).

Section 1.4.2 (Planning Criteria) states "The BLM will utilize the WAFWA Conservation Assessment of GRSG and Sagebrush Habitats (Connelly et al. 2004), and any other appropriate resources, to identify GRSG habitat requirements and best management practices." The management action developed and analyzed in the alternatives for this Proposed RMP Revision included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

For detailed discussion related to the need to use the Best Available Science and use of the COT and NTT reports, please refer to the response to those specific protests (Category or Section 3.7). The management actions developed and analyzed in the alternatives for this Proposed RMP Amendment included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

Exceptions, modifications and waivers are described for various uses. However, certain conditions must be met in order for an exception, modifications or waiver. Should an exception be granted enforceable institutional controls and buffers, sufficient to allow the BLM to conclude that such benefits will endure for the duration of the proposed action's impacts? The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action satisfies identified conditions. The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action would not have direct, indirect, or cumulative effects on GRSG or its habitat; or is a similar action occurring on a nearby parcel.

Regarding the discussion of coal leasing, on page 29 of the RMP revision (Volume 1) it states,

"The BLM edited the Proposed RMP and Final EIS to clarify that no coal leasing allocation decisions are being made through the RMP revision. The coal leasing decisions made in the 2001 RMP update are being carried forward as no substantial new information regarding coal leasing was received during the call for coal information during RMP scoping or through comments on the Draft RMP and EIS. Federal coal lands identified in 2001 as acceptable for further coal leasing consideration are available for

Lease by Application, lease modifications, emergency leases, and exchanges. Prior to offering a coal tract for sale, the unsuitability criteria will be reviewed, a tract specific National Environmental Policy Act (NEPA) analysis will be completed, and there will be opportunity for public comment... Management action Coal-2001 was revised to clarify that the leasing decisions from 2001 are being carried forward and management action Coal-2003 was deleted from the Proposed RMP and Final EIS. Management action Coal-2002 was revised to clarify coal and fluids management within the areas identified acceptable for further coal leasing consideration.”

Therefore, the Proposed RMP Revision has discussed coal leasing inasmuch as there are no coal leasing allocations being made in this land use plan revision. Additionally, there is no preference given to companies that may or may not export the materials leased.

The BLM applied the best information available when it developed the proposed RMP Revision and alternatives as they include recommendations from the NTT and COT reports. Therefore these management actions do meet the purpose and need and are within the range of alternatives that addresses such.

Cumulative Effects

Issue Number: PP-WY-BUFFALO-GRSG-15-09-10

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: Then, presumably as a way to avoid conducting impacts analysis in this EIS, the agency refers to the EIS for the Hay Creek II Coal Lease Application and the EIS for the 2003 Powder River Basin oil and gas program (Id). By tiering to the previous project-level EISs, the BLM is turning NEPA on its head. A proper use of tiering under NEPA occurs when an agency has completed a “broad environmental impact statement” for a program or policy, and subsequently prepares a subsequent, narrower NEPA analysis for “an action included within the entire program or policy”, such as a site-specific project implementing a land management plan (40 CFR §§ 1502.20, 1508.28). Here, the BLM is trying to use a smaller project level EIS to replace the broader EIS analysis needed for a RMP decision. NEPA only permits tiering

when the project being analyzed is actually part of the agency action addressed by the other NEPA document. In other words, the project of the new EIS must be “included within” the scope of the first EIS on which it relies (40 CFR §§ 1502.20, 1508.28). Conversely, tiering is inappropriate where the new action falls outside the scope of the EIS on which it relies (See, e.g., Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv., No. 2:05-CV-0299-MCE-PAN, 2006 WL 1991414, at 9 (E.D. Cal. July 14, 2006) (agency improperly attempted to tier its NEPA analysis to prior analyses for projects in entirely different locations)). In this case, neither the Hay Creek II EIS nor the 2003 Powder River Basin EIS can substitute for analysis of this RMP because the alternatives, mitigation measures, and reasonably foreseeable development scenarios are all quite different than those considered in the previous documents. Therefore, the BLM must conduct a new cumulative impacts analysis for water resources in this EIS; and until it does so, its EIS will be legally deficient.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-9

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: However, unlike most EISs, this EIS is devoid of a cumulative impacts chapter. Although the BLM includes a section called “cumulative impacts” after each type of impact area (e.g. fluid minerals and solid minerals), nowhere does the BLM consider the combined or cumulative impacts of the various types of development taken together.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-11

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: Despite the fact that air quality is considerably impacted by coal, oil and gas extraction and development, the BLM fails to conduct a hard look analysis at the cumulative impacts of developing these resources, representing a fatal shortcoming of the RMP and FEIS.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-12

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: As noted above, the failure to assess cumulative impacts, particularly, as here, the amassed air quality impacts of coal, oil and gas development in a highly extracted area, “impermissibly subject[s] the decision-making process contemplated by NEPA to ‘the tyranny of small decisions’” (Kern, 284 F.3d at 1078 (citation omitted)). Here, the agency has failed to conduct any cumulative analysis of

these impacts. The RMP provides that “[b]ecause no air quality modeling was conducted as part of this analysis, cumulative impacts to air quality over the life of the plan were analyzed for each alternative by comparing cumulative emissions with statewide emissions totals” (FEIS at 680). Yet, the agency’s air quality discussion under Alternative D includes no such cumulative analysis. While emissions data and projections are provided for fluid minerals (natural gas, coal bed natural gas, and oil development) as well as for coal, no actual analysis of this data is offered.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-21

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM also appears to have underestimated, or completely failed to estimate, emissions from a number of activities in the Buffalo Field Office, indicating the agency did not adequately analyze and assess cumulative impacts.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-23

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: Although the planning area emissions inventories disclosed in the FEIS are fatally flawed, the BLM further did not analyze or assess emissions outside the planning area that may affect air quality in the Buffalo Field Office. We are concerned that BLM has not adequately analyzed or assessed cumulative air quality impacts given this oversight. As stated in comments on the DEIS, part of the problem is that the BLM seems to have arbitrarily defined the cumulative effects area as the boundary of

the Buffalo Field Office. This is wholly unsupported as it fails to account for emissions outside of the planning area that could reasonably affect air quality within.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-24

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM defined an arbitrary cumulative effects boundary that prevented the agency from adequately analyzing and assessing the cumulative impacts of the RMP. This violates NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-28

Summary:

The BLM did not adequately address cumulative impact issues in the following ways:

- It did not take a hard look at climate impacts;
- It did not analyze cumulative and incremental effects of coal, oil, and gas development on climate change (and GHG);
- The cumulative impacts boundary for analysis is arbitrary;
- A separate cumulative impacts chapter was not included;
- It did not adequately analyze cumulative impacts to air quality;
- It did not adequately analyze cumulative impacts to water resources;
- It did not analyze the cumulative effect of various types of development together; and
- It improperly tiered to the Hay Creek II Coal Lease Application and the EIS for the 2003 Powder River Basin oil and gas program.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as "...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions" (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts. There is no requirement for having a separate and distinct cumulative effects chapter as long as cumulative effects are discussed.

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to take a hard look at the climate impacts of its proposed RMP, perpetuating a disconnect between the agency's recognition of the effects of climate change and the agency's decision-making that allows for the continued leasing and development of massive quantities of coal, oil and gas. The BLM failed to analyze cumulative and incremental effects of coal, oil, and gas development on climate change, and failed to consider the Conservation Groups detailed Comments and Supplemental Comments on the Draft EIS addressing climate change and GHG emissions,

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. Spatial boundaries vary and are larger for resources that are mobile or migrate (e.g., migratory birds) compared with stationary resources.

Occasionally, spatial boundaries could be contained within the planning area boundaries or an area within the planning area. Spatial boundaries were developed to facilitate the analysis and are included under the appropriate resource section heading. The cumulative effects analysis for all topics included an analysis of cumulative effects at the planning area level. For example, the WAFWA delineated seven GRSG Management Zones based on populations within floristic provinces. Therefore, the cumulative effects analysis study area for GRSG extends beyond the Buffalo planning area boundary and consists of WAFWA MZ I.

The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Throughout Chapter 4, the PRMP\FEIS provides analysis of impact to GRSG climate change, oil and gas, coal, air quality, water resources, and various types of development, as well as how the other resource will be impacted from implementing GRSG conservation measures. The cumulative impacts section (Chapter 4) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Buffalo PRMP/FEIS enables the decision-maker to make a reasoned choice among alternatives. Information from other documents, such as the Hay Creek II Final EIS, was incorporated by reference. Per CEQ regulations, “Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action...”

The BLM adequately analyzed cumulative effects in the Buffalo PRMP/FEIS.

Response to Public Comments

Issue Number: PP-WY-BUFFALO-GRSG-15-02-1

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: Rocky Mountain Power submits the following protest on the Wyoming Buffalo LUPA FEIS as it adversely affects our ability to serve our customers and did not adequately address

comments that were submitted previously on the DEIS/LUPA on September 26 2013.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-16

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: With respect to the Proposed RMP, the Trades submitted extensive and detailed comments on the RDFs listed in Appendix D (See PAW

Comments, pgs. 38 – 45). The BLM, however, did not make any substantive changes to the RDFs between draft and final (Compare Proposed RMP, Appd. D with Draft RMP, Appd. D). Additionally, the BLM did not acknowledge the Trades’ comments on the RDFs in Appendix D and did not “[e]xplain[ing] why the comments do not warrant further response.” See 40 CFR § 1503.4(a). Therefore, the BLM has not provided the response to comments as required by the CEQ regulation.

Issue Number: PP-WY-BUFFALO-GRSG-15-05-1

Organization: Cameco

Protestor: Josh Leftwich

Issue Excerpt Text: Appendix Y, Section As its approach to responding to comments, BLM grouped comments together and responded to each. While this in of itself is not a violation of NEPA, the BLM is still required to provide an adequate response to the specific comments made (See 40 CFR § 150; see also CEQ NEPA's 40 Most Asked Questions at 29a (stating that agencies must respond to comments “which are specific in their criticism of agency methodology” and responses must be “substantive and meaningful”). The BLM failed to do this, and instead generally summarized the comments and provided generic responses to each.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-35

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest the RDFs listed in Appendix D of the Proposed RMP. Although the Trades extensively commented on the RDFs in the Draft RMP, BLM did not adjust any of the RDFs in

response to the Trades’ comments. PAW Comments, pgs. 38 – 46. Furthermore, as explained in section above, the BLM did not respond to the Trades’ comments as required by 40 CFR § 1503.4(a).

Issue Number: PP-WY-BUFFALO-GRSG-15-09-4

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: Regardless, the alternative is arguably within the bounds of BLM authority. An alternative that would condition approval of new coal leases on reclamation of existing leases is consistent with the mandates of the Federal Land Policy and Management Act (“FLPMA”), 43 USC §§ 1701-1787, the statute that governs management of BLM lands. FLPMA includes a multiple use mandate, which “requires management of the public lands and their numerous natural resources so that they can be used for economic, recreational, and scientific purposes without the infliction of permanent damage” (New Mexico, 565 F.3d at 710 (citations omitted)). Authorizing new coal leasing, while taking “into account the long-term needs of future generations for renewable and nonrenewable resources, including... recreation, range...[and] wildlife and fish” would be fully consistent with the BLM’s authority (43 USC § 1702(c)). In this case, the BLM could analyze the amount of land acres that are currently occupied by coal mines and consider the land use trade-offs that result from a lack of bond release at the mines. This is especially true for mines that occupy large pieces of federal surface lands, including the Thunder Basin National Grassland. Comments from the Thunder Basin Grazing Association, individual ranchers in the area, and our Organizations all asked the BLM to consider alternatives to

encourage more timely reclamation of lands occupied by BLM coal leases and therefore enable more land to be returned for livestock grazing and other multiple uses...BLM did not respond to those comments in its RMP, and more importantly, nor did it take the advice of its sister agencies and consider reasonable alternatives to address coal reclamation, bond release, and the loss of acreage available for other land uses. In doing so, BLM violated NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-6

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text:

Further, as discussed below, BLM violated NEPA by relegating its analysis to the response to comments section in the appendix. BLM must include its analysis of

this alternative – and others suggested by the Organizations – in the text of the EIS.

Issue Number: PP-WY-BUFFALO-GRSG-15-11-1

Organization: Uranerz Energy Corporation

Protestor: Mike Thomas

Issue Excerpt Text: Appendix Y, Section Y.4 states that in accordance with the BLM handbook (H-1790-1) the BLM is to analyze and respond to substantive comments. The BLM Handbook states, “all substantive comments received before reaching a decision must be considered...must respond to all substantive written comments submitted during the formal scoping period and public comment period.” Uranerz submitted substantive comments (a copy is attached) and believes that the BLM has failed to respond in accordance with regulation because the documentation is not available.

Summary:

The BLM did not adequately address comments that were received on the Buffalo PRMP/FEIS. The BLM introduced SFAs that were not included in the DEIS and did not allow the public the opportunity to comment on SFAs. The BLM ignored comments regarding the need to consider livestock grazing as a permitted surface disturbing activity and did not respond to comments or make substantive changes to the Required Design Features between the Draft and Final stages of the EIS. The BLM received comments encouraging more timely reclamation of lands occupied by coal leases to allow more land to be returned for multiple use but did not respond to these comments.

Response:

The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments, including:

40 CFR 1503.4: Response to Comments

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources,

authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

The BLM considered all substantive comments received and revised the plan based on certain issues raised in the comments, as presented in this Proposed RMP and Final EIS. The BLM prepared a Comment Analysis Report that summarizes all substantive comments received during the 90-day public comment period and the BLM's responses to those comments, including how the agency revised the RMP and EIS based on comments. The Comment Analysis Report is presented in Appendix Y (p. 2671).

In accordance with the BLM's NEPA Handbook (H-1790-1), comments received on the Buffalo PRMP/FEIS were analyzed and responded to if they: "are substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used; identify new impacts or recommend reasonable new alternatives or mitigation measures; or involve substantive disagreements on interpretations of significance" (See 40 Code of Federal Regulations [CFR] 1502.19, 1503.3, 1503.4, 1506.6, and 516 DM 4.17). BLM's NEPA Handbook (H-1790-1) identifies the following comment category examples and appropriate responses.

To provide a user-friendly method of understanding the broad themes and topics of concern expressed in the substantive comments, the BLM grouped individual comments with similar topics and concerns and developed 111 summary comments and responses. Table Y.6, "Comment and Response Summaries" (p. 2683) lists the 111 summary comments and responses generally organized by BLM resource program and other appropriate issue categories (e.g., extension and hard copy requests), as described in Table Y.1, "Issue Categories" (p. 2673). The issue categories in Table Y.6, "Comment and Response Summaries" (p. 2683) can be used to track the summary comment and response to the individual comments presented in Attachment B (page 2682).

It is important for the public to understand that BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Buffalo PRMP/FEIS.

There are no SFAs proposed to be designated in the Buffalo RMP/EIS planning area.

The BLM has provided adequate opportunity for comments, has considered all comments and responded adequately comments received for the Buffalo PRMP/FEIS.

Supplemental EIS

Issue Number: PP-WY-BUFFALO-GRSG-15-08-12

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan. BLM first presented the public with these components when it released the Proposed RMP.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-13

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, mitigation plan, and monitoring plan were not incorporated into the Proposed RMP and Final EIS in response to public comment on the Draft RMP/Draft EIS or in response to environmental impacts disclosed in the Draft EIS (See Forty Questions, 46 Fed. Reg. at 18,035 explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, the BLM appears to have incorporated the net conservation gain requirement, mitigation plan, and monitoring plan to respond to national policies by BLM and FWS that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment (See U.S. Fish & Wildlife Serv., GRSG Mitigation Framework (2014); BLM, The GRSG Monitoring Framework (2014)). The public

never had the opportunity to review and comment on these new components

Issue Number: PP-WY-BUFFALO-GRSG-15-05-2

Organization: Cameco

Protestor: Josh Leftwich

Issue Excerpt Text: The BLM also failed to explain significant changes between the draft RMP and DEIS and the proposed RMP and FEIS...neither of these provisions was included in the draft RMP and, as a consequence, the impacts associated with each of these restrictions was not analyzed in the FEIS. Furthermore, these new restrictions are substantial changes to the RMP relevant to environmental concerns that the public did not have proper notice of or the opportunity to comment on. Consequently, the Proposed RMP and FEIS is “inadequate as to preclude meaningful analysis” (40 CFR§1502.9(a)); therefore, the proposed RMP violates NEPA, and is thus, a fatal flaw that can only be cured by publishing a revised RMP and a SEIS.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-14

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The net conservation gain requirement was not presented in the Draft RMP. Although the Draft RMP acknowledged that the Proposed RMP/Final EIS would include more details about the monitoring and mitigation plans, see Draft Buffalo RMP Appd. B, these “placeholders” did not allow the public a meaningful opportunity to comment on the substance of the monitoring and mitigation plans. The inclusion of the net conservation gain

requirement, mitigation plan, and monitoring plan constitutes “substantial changes from the previously proposed actions that are relevant to environmental concerns” and should have been presented in a supplemental draft EIS for public comment.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-17

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM’s own planning handbook unequivocally directs the agency to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information/circumstances collected during the comment period” are presented (BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05)). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan unquestionably are a “substantial change” when compared to the alternatives included in the Draft RMP, the BLM should have prepared and released for comment a supplement to the Draft RMP.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-16

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In the final EIS, the BLM made substantial changes to the draft EIS. This put new information and new environmental analysis in a NEPA document that was not released for public notice and comment, which violated NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-17

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In the final EIS, the BLM changed or added a large section of analysis and several smaller sections of text under the analysis of Special Status Species regarding GRSG (See EIS at §4.4.9, table 4.44, and §4.4.9.9). This information contained substantial new information disclosing that mineral exploration and extraction will detrimentally affect the habitat of the GRSG (EIS at 1230). Along with a multitude of other examples, this information is relevant to the environmental concerns of this area.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-18

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: The BLM also changed major portions, and in one case all of the information, regarding the cumulative impact discussion of Water Resources and Biological Riparian/Wetland Resources (See EIS §4.1.4.7 pg. 769 (Water), and §4.4.3.7 pg. 1048-1049). Consisting of information explaining that the most likely impact “to be observed will be aquifer drawdown where CBNG production is dewatering coal zone aquifers and shallower” (EIS at 770). Because it is a discussion of cumulative impacts, this analysis by definition has an effect on the human environment and is relevant to environmental concerns.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-14

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: NEPA imposes on federal agencies a continuing duty to supplement draft or final environmental impact statements in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action (*Idaho Sporting Cong., Inc. v. Alexander*, 222 F.3d 562, 566 n.2 (9th Cir. 2000); 40 CFR § 1502.9(c)(1)(i)). Here, EPA’s proposal to revise ozone standards, as well as the science supporting the revision, constitutes new circumstances and information, which the BLM must take account of in its final EIS. The FEIS’s conclusions regarding ozone are based on

comparison to the existing NAAQS for ozone. EPA’s proposed revision of the ozone NAAQS and the abundant science supporting the proposal plainly demonstrate that the current NAAQS are not sufficient to protect public health. Accordingly, the ozone analysis must be revised. The need for the BLM to revise its ozone analysis in light of EPA’s proposed new standard is especially acute given the BLM’s acknowledgement that its preferred alternative may contribute to violations of the existing standard (See FEIS at 676). Further, the FEIS’s analysis of ozone neglects to address and consider that the impacts of climate change will worsen ozone pollution.

Summary:

The BLM must provide a supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations. New information was added between the Draft and Final that BLM did not fully analyze in the following ways:

- None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain;
- The BLM changed or added analysis of Special Status Species regarding GRSG (See EIS at §4.4.9, table 4.44, and §4.4.9.9). This information contained substantial new information disclosing that mineral exploration and extraction;
- The BLM also changed the information, regarding the cumulative impact discussion of Water Resources and Biological Riparian/Wetland Resources; and
- The FEIS does not consider EPA’s new ozone standards and neglects to consider impacts from climate change.

Response:

Considering new components of the Proposed Action were not specifically described in the Draft EIS, the agencies must provide a supplemental analysis to the public. NEPA Handbook 1790-1, 5.3, page 29:

“Supplementation” has a particular meaning in the NEPA context. Per The Supreme Court, supplementation of an EIS is necessary only if there remains major Federal action to occur (See *Norton v. Southern Utah Wilderness Alliance*, 542 USC 55 (2004)). In the case of a land use plan, implementation of the Federal action is the signing of a Record of Decision.

A supplement to a draft or final EIS must be prepared, if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- (1) you make substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- (2) you add a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March

23, 1981); or

(3) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

5.3.1 When Supplementation is Appropriate, page 30

“New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate.

5.3.2 When Supplementation is Not Appropriate, page 30

Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the draft or final EIS).

If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS.

When new circumstances or information arise prior to the implementation of the Federal action, but your evaluation concludes that they would not result in significant effects outside the range of effects already analyzed, document your conclusion and the basis for it. If the new circumstances or information arise after publication of a draft EIS, document your conclusion in the final EIS. If the new circumstances or information arise after publication of the final EIS, document your conclusion in the ROD.

40 CFR 1502.9: Draft, Final, and Supplemental Statements

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Land Use Planning Handbook, H1601-1, page 24.

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR 1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

The Proposed RMP includes components of the alternatives analyzed in the Draft RMP/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternative analyzed. As such, the BLM has determined that the Proposed RMP is a minor variation and that the impacts of the Proposed RMP would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed RMP and Final EIS are similar or identical to those described in the Draft RMP/EIS such that supplementation of the Buffalo RMP Final Draft EIS is not required (FEIS, section 2.2, page 27; CFR 1502.9(c)(1)).

The intent of the Proposed Plan is to provide a net conservation gain to the species. To do so, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation within priority habitat (core population areas and core population connectivity corridors), the BLM will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840 – Special Status Species Management, Section .02B, which states “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA.” The Purpose and Need states that the agencies intend to elect a management strategy that best achieves multiple elements, including the identification and incorporation of appropriate conservation measures to conserve, enhance, and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat (Chapter 1, page 29).

Since publication of the Buffalo Draft EIS in June 2013, additional reports regarding GRSG conservation have been published by United States Geological Survey (USGS) and U.S. Fish and Wildlife Service (USFWS); the BLM National Greater-Sage Grouse Land Use Planning Strategy has continued to make progress in the development of cumulative effects analysis based upon Western Association of Fish and Wildlife Agencies (WAFWA) management zones; and the Wyoming 9-Plan Draft RMP Amendment/Draft EIS (December 2013) and the Bighorn Basin Supplemental Draft RMP Revision/Draft EIS (July 2013) have been published. Upon review of each of these subsequent publications which have come out, none constitute a “significant new information relevant to environmental concerns and bearing on the proposed action or its impacts” such that supplementation of the Buffalo RMP Final Draft EIS is required (See 40 CFR 1502.9(c)(1)).

An implementation framework for GRSG management (Appendix B (p. 1779)) has been added which includes adaptive management and monitoring strategies developed in cooperation with the USFWS and State of Wyoming. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in Priority Habitat Management Area, and Priority Habitat Management Area would be managed as open to saleable minerals in the Proposed Plan, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternatives B in the Draft EIS (a 4 mile closure around all occupied or undetermined GRSG leks). The monitoring framework was further

refined in the Final EIS, and further clarification as to how disturbance cap calculations would be measured were developed for the Final EIS.

A quantitative cumulative effects analysis for GRSG was included in the Final EIS. This analysis was completed to analyze the effects of management actions on GRSG at a biologically significant scale which was determined to be at the WAFWA Management Zone. The Draft EIS, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the Final EIS at the WAFWA Management Zone.

A water management plan appendix (Appendix W (p. 2623)) was added at the request of the EPA, to disclose the process for analyzing water effects and mitigation during the implementation of project level activities (Page 29).

The coal leasing decisions made in the 2001 RMP update are being carried forward as no substantial new information regarding coal leasing was received during the call for coal information during RMP scoping or through comments on the Draft RMP and EIS. Federal coal lands identified in 2001 as acceptable for further coal leasing consideration are available for Lease by Application, lease modifications, emergency leases, and exchanges. Prior to offering a coal tract for sale, the unsuitability criteria will be reviewed, a tract specific National Environmental Policy Act (NEPA) analysis will be completed and there will be opportunity for public comment. Management action Coal-2001 was revised to clarify that the leasing decisions from 2001 are being carried forward and management action Coal-2003 was deleted from the Proposed RMP and Final EIS. Management action Coal-2002 was revised to clarify coal and fluids management within the areas identified acceptable for further coal leasing consideration.

Management action O&G-2008 was revised to clarify coal and fluids management within the areas identified acceptable for further coal leasing consideration. An oil and gas operations appendix (Appendix V (p. 2599)) was added to summarize the fluid mineral procedures from lease nomination through permitting and development to final abandonment and lease closure for the EPA and other reviewers. There were many comments related to private property rights and split estate. An appendix (Appendix X (p. 2661)) has been added to the Proposed RMP and Final EIS summarizing the BLM's split estate authority and policy.

The ozone analysis section is found in Chapter 4, Air Quality section 4.1.1.1, page 650. Analysis of greenhouse gases begins in section 4.1.1.8, page 682. The Buffalo RMP presents a qualitative description of potential impacts, and includes emission inventories of BLM actions in the Buffalo planning area. Appendix M (p. 2239) provides a detailed description of the assumptions, activity data, emission factors, and general approach followed in estimating emissions for the various resource sectors and pollutants.

Best Available Science

Issue Number: PP-WY-BUFFALO-GRSG-15-06-14

Organization: Wild Earth Guardians

Protestor: Eric Molvar

Issue Excerpt Text: The record establishes that met towers can result in GRSG population declines (see Cotterel Mountain data reviewed in 'Wind Power in Wyoming,' attached to Guardians' DEIS

comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-8

Organization: Beatty & Wozniak

Protestor: Bret Sumner

Issue Excerpt Text: XTO also protests the BLM's failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Buffalo RMP. The Buffalo RMP does not meet BLM's science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA (BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 CFR § 1500.1(b); 40 CFR § 1502.8). In developing a land use plan amendment, the BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-25

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed RMP are largely based on the U.S. Fish and Wildlife Service's GRSG (Centrocercus urophasianus) Conservation Objections: Final Report (Feb. 2013) (COT Report) and BLM's Report on National

GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (Dec. 2011) (NTT Report). Reliance on these reports is arbitrary and capricious under the APA (5 USC § 706(2)(A)). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act (DQA), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-26

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the "Literature Cited" section. Megan Maxwell, BLM's NTT Report: "Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?", p. 13-14 (May 20, 2013) (NWMA Review), Attachment 4. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34% of the citations had no corresponding source available to review (Id. at 14). Additionally, there are articles listed in the "Literature Cited" section that are not directly referenced and do not appear to have been used within the NTT Report itself.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-27

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases (NWMA Review at 14). For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15% (NTT Report at 26). However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion (NWMA Review at 14). Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas (Connelly et al. 2000 at 977). Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10% - 30% depending on habitat function and quality (NWMA Review at 14) (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15% canopy cover standard

Issue Number: PP-WY-BUFFALO-GRSG-15-08-28

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the 3% disturbance cap discussed in that report. Rather, the disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion,

not fact (See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”), Attachment 5). Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a viable population of any species, much less GRSG. Curtis H. Flather, et. al, Minimum Viable Populations: “Is There a “Magic Number” for Conservation Practitioners?”, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 6. Moreover, the Proposed RMP’s noise restrictions, also recommended by the NTT report, are based upon flawed studies that relied on unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions (NTT DQA Challenge at 42-46). Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the BLM should not have relied upon these studies or the NTT Report in the Proposed RMP.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-29

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created (See NTT DQA Challenge, Exhibit C). For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by

the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Rob R. Ramey, Laura M. Brown, & Fernando Blackgoat, Oil & Gas Development & GRSG (Centrocercus urophasianus): A Review of Threats & Mitigation Measures, 35 J. of Energy & Development 49 (2011) (“Ramey, Brown, & Blackgoat”), Attachment 7. As explained by Ramey, Brown, and Blackgoat, studies released prior to the NTT Report’s publication were based upon older, more invasive forms of development:

“Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to GRSG” (Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions)). The NTT authors’ refusal to consider this paper and to rely instead on papers that address outdated forms of oil and

gas development renders most of the NTT Report’s recommendations for oil and gas development inapplicable to current practices.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-30

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed (Applegate & Owens at 287 – 89). In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone (Id. at 289). All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. The BLM should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed RMP, because the NTT Report does not represent the best available science.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-31

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The COT Report also fails to utilize the best available science, and BLM inappropriately relied upon it in the Proposed RMP. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites (See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 9). The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions (COT DQA Challenge, Exhibit A at 1). For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and therefore underestimates the significance of predation as a threat. COT DQA Challenge at 56 – 63. The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence. COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., “Greater Sage-Grouse Population Dynamics & Probability of Persistence, in Greater Sage-Grouse: Ecology & Conservation of a Landscape Species & Its Habitats” 293 (Steven T. Knick & John W. Connelly eds., 2011) (“Garton et al. 2011”). This paper contains serious methodological biases and mathematical errors (COT DQA Challenge, Exhibit A at 2). Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible (Id). Finally, the COT Report provides a table assigning various rankings to GRSG threats, but gives no

indication that any quantitative, verifiable methodology was used in assigning these ranks (See COT Report at 16 – 29, tbl. 2). Absent a quantifiable methodology, these rankings are subjective and the BLM should not rely upon any conservation measures derived from them.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-32

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality (See generally COT Report; Kerry P. Reese & John W. Connelly, “Harvest Mgmt. for Greater Sage-Grouse: A Changing Paradigm for Game Bird Mgmt.”, in “Greater Sage-Grouse: Ecology & Conservation of a Landscape Species & Its Habitats”, 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20% of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases since that time. The BLM and the Department of the Interior have failed to discuss or reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30% in 1981 to 20% to 25% in 1987 to five to 10 percent in 2000 (Reese & Connelly at 110 –

11). High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone:

Issue Number: PP-WY-BUFFALO-GRSG-15-08-33

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA Review at 14; NTT DQA Challenge at 25 – 26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2; BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not provided, an exceptionally rigorous robustness check was performed as required (OMB Guidelines, V(3)(b)(ii)(B)(ii), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8). The studies upon which the NTT Report

relies are therefore unverifiable and not reproducible, which is inconsistent with the DQA guidelines (OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8). The COT Report similarly cited frequently to a study whose data and programs are not public and, therefore, not reproducible (COT DQA Challenge, Exhibit A at 7).

Issue Number: PP-WY-BUFFALO-GRSG-15-08-34

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Both the NTT and COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate (OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459). Because the NTT and COT Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective

Issue Number: PP-WY-BUFFALO-GRSG-15-13-1

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: There is no scientific support for using the 0.6-mile lek buffer to conserve nesting and brood-rearing habitat. The BLM has already acknowledged in numerous draft GRSG plans that a .25-mile lek buffer is also inadequate to protect GRSG from surface disturbance in important seasonal habitats.

Summary:

The Buffalo PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Buffalo PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances in the Proposed Alternative.

Response:

Before beginning the Buffalo PRMP/FEIS, the BLM gathered data from all sources, reviewed the adequacy of existing data, identified data gaps, and determined the type of data necessary to support informed management decisions at the land-use plan level.

In March 2012, the FWS initiated a collaborative approach to develop range-wide conservation objectives for the GRSG to inform the 2015 decision about the need to list the species and to inform the collective conservation efforts of the many partners working to conserve the species. In March 2013, this team of State and FWS representatives, released the Conservation Objectives Team (COT) report based upon the best scientific and commercial data available at the time that identifies key areas for GRSG conservation, key threats in those areas, and the extent to which they need to be reduced for the species to be conserved. The report serves as guidance to Federal land management agencies, State GRSG teams, and others in focusing efforts to achieve effective conservation for this species. The COT Report qualitatively identifies threats/issues that are important for individual populations across the range of GRSG, regardless of land ownership.

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM in the planning process. The group produced a report in December 2011 that identified science-based management considerations to promote sustainable GRSG populations. The NTT is staying involved as the BLM works through the Strategy to make sure that relevant science is considered, reasonably interpreted, and accurately presented; and that uncertainties and risks are acknowledged and documented.

Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

“The Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of Greater Sage-Grouse” (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) then provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service's “warranted but precluded” finding for the species. For these threats,

the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and 15 state agencies including the Wyoming Game and Fish Department and relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Chapter 3) and impact analysis (PRMP/FEIS, Chapter 4). A list of information and literature used is contained in Chapter 5 of the Buffalo PRMP/FEIS.

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the DLUPA/EIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapter 4). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the DLUPA/EIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze all available data.

The BLM considered a variety of literature with regard to lek buffer size, including the COT Report, the NTT Report, and Manier et al. 2013. The alternatives in the Buffalo PRMP/FEIS considered a range for lek buffers sizes and dates (SS WL-4025; p. 201). The impacts of the various buffers are analyzed in Section 4.4.9 of Chapter 4 (p. 1229). As such, the BLM has considered the best available science when determining lek buffers.

Public Participation

Issue Number: PP-WY-BUFFALO-GRSG-15-01-8

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text: There were two changes from the DRMP to the PRMP that are significant to WWA’s and SCWC’s missions and to our members. The first is the change from the DRMP to the PRMP in which the 6,864 acres of the Face of the Bighorn unit that was to be managed to protect wilderness characteristics and was to

be closed to mineral leasing was reopened to mineral leasing in the PRMP with a NSO stipulation. The second change is the removal of the Fortification Creek Elk Area from the list of ACECs that will be designated. These changes, especially in the case of the Fortification Creek Elk Area, contain previous information that was not included in the DRMP. Thus the public has not the opportunity to review and comment on this information, which violates requirements of NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-02-2

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: The Wyoming Buffalo LUPA states, “The BLM has incorporated management of Sagebrush Focal Areas into its proposed management approach for GRSG. Sagebrush Focal Areas are a subset of PHMA and represent recognized “strongholds” for the species that have been noted and referenced by the conservation community identified as having the highest densities of the species and other criteria important for the persistence of the species (Ashe: 2014) (Chapter 4, page 1295). The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-4

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The RMP reflects a significant new alternative and proposed management structure that was not previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised RMP developed with the benefit of supplemental NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration’s policy on transparent and open government.

Under NEPA, the BLM is required to supplement existing NEPA documents when, as it has done for the RMP, it makes substantial changes to the proposed action (40 CFR § 1502.9(c)(1)(i)); *Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the RMP reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the RMP, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by the BLM is a plain violation of NEPA. Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including the BLM, to exercise regulatory authority “on the open exchange of information and perspectives among State, local and tribal officials” in a manner to promote “economic growth, innovation, competitiveness and job creation.” The BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different RMP which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-11

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest substantial changes made between the Draft RMP and Proposed RMP without notice and an opportunity for public comment. In particular, the Trades protest the adoption of

a whole new GRSG implementation policy found in Appendix B. Although the BLM maintains that components of the GRSG implementation plan were analyzed in other alternatives, the vast majority of the information is completely new. The Proposed RMP contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan. These proposed changes violate NEPA because they were not included in the Draft RMP and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-19

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: The Resource Council has litigation related to this FOIA request pending in Federal District Court in Washington, DC. Meanwhile, however, BLM has a separate and unique obligation under NEPA that prevents the agency from incorporating by reference or using third-party information “unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment” (40 C.F.R. § 1502.21). NEPA’s implementing regulations provide that “Material based on proprietary data which is itself not available for review and comment shall not be incorporated by

reference” (Id).

In this EIS, BLM incorporated some of the most important information – information related to its reasonably foreseeable development scenario for oil and gas resources – without disclosing that information to the public. As long as the incorporated information remains unavailable to the public, the BLM’s EIS will violate NEPA.

Issue Number: PP-WY-BUFFALO-GRSG-15-15-1

Organization: Avian Powerline Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Wyoming Buffalo LUPA states, “The BLM has incorporated management of Sagebrush Focal Areas into its proposed management approach for GRSG. Sagebrush Focal Areas are a subset of PHMA and represent recognized “strongholds” for the species that have been noted and referenced by the conservation community identified as having the highest densities of the species and other criteria important for the persistence of the species (Ashe, 2014) (Chapter 4, page 1295).” The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

Summary:

- Between the DRMP and PRMP, changes were made from protecting wilderness characteristics to reopening for mineral leasing and in ACEC designations, without the public review and comment on this information;
- The BLM is obligated by NEPA to make available for inspection by interested persons during the comment period information incorporated by reference (40 CFR 1502.21);

- The establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment;
- The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed RMP or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan; and
- The BLM incorporated information related to its reasonably foreseeable development scenario for oil and gas resources without disclosing that information to the public

Response:

The BLM did not sufficiently provide public participation opportunities between the Draft and Final EIS.

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

NEPA Handbook H-1790-1, page 101

“If you make major changes to the draft EIS, the final EIS should be a complete full text document. The content of a full text document is substantially the same as the corresponding draft EIS except that it includes copies of substantive comments on the draft EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4). A full text final EIS may incorporate by reference some of the text or appendices of the draft EIS.”

43 CFR 1610.2 Public participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations. (f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

- (1) General notice at the outset of the process inviting participation in the identification of issues (See 1610.2(c) and 1610.4-1);
- (2) Review of the proposed planning criteria (See 1610.4-2);
- (3) Publication of the draft resource management plan and draft environmental impact statement (See §1610.4-7);
- (4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See 1610.4-8 and 1610.5-1(b)); and
- (5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See 1610.5-1(b)).

The BLM considered all substantive comments received and revised the plan based on certain issues raised in the comments, as presented in this Proposed RMP and Final EIS. The BLM prepared a Comment Analysis Report that summarizes all substantive comments received during the 90-day public comment period and the BLM's responses to those comments, including how the agency revised the RMP and EIS based on comments. The Comment Analysis Report is presented in Appendix Y (p. 2671) (section 1.5, page 17). Appendix C, page 1843, provides a summary of the public involvement process.

The Draft RMP and EIS public comment period closed in September 2013. The BLM received approximately 134 individual comment letters and two form emails with approximately 2,143 submissions. The BLM identified 2,142 unique comments from the comment documents received which touched on a wide range of issues. While many of the comments strongly supported the Preferred Alternative in the Draft RMP and EIS, commenters also identified areas where the document could be improved. The Buffalo Field Office (BFO) carefully evaluated these comments (see Appendix Y (p. 2671)) (Chapter 2, page 28). Based on comments received during this period, the BLM revised the RMP where appropriate. Changes made to the Draft RMP and EIS based on comments are reflected in the Proposed RMP and Final EIS.

The Proposed RMP includes components of the alternatives analyzed in the Draft RMP/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternative analyzed. As such, the BLM has determined that the Proposed RMP is a minor variation and that the impacts of the Proposed RMP would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS that would require additional analysis or public comment on that analysis (Chapter 2, page 27). A complete summary of changes to Alternative D to develop the Proposed RMP/Final EIS begins in Chapter 2 on page 27. This summary explains where new provisions found in the Proposed RMP were analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses.

Alternatives A and C of the Draft EIS analyzed the effects of not designating the Fortification Creek ACEC (table 36 7000). The Fortification Creek ACEC (ACEC-7003) is not being carried forward in the Proposed RMP. The State of Wyoming has primary management authority over the elk herd. State management and the Fortification Creek RMP Amendment (BLM 2011c)

decisions, which are carried forward in the Proposed RMP and Final EIS, are sufficient to conserve a viable elk herd and the other ACEC values.

Some commenters at the Draft EIS stage wanted additional acreage managed to protect wilderness characteristics while others did not want any lands managed to protect wilderness characteristics. The BLM continued with the 6,864 acres identified in the Draft RMP and EIS as they are the best suited for management to maintain identified wilderness characteristics. Fluid mineral leasing was changed from closed in the Draft RMP and EIS to leasing with a No Surface Occupancy stipulation in the Proposed RMP and Final EIS. The No Surface Occupancy stipulation enables BLM to protect wilderness characteristics while allowing for potential fluid mineral development through techniques such as horizontal/directional drilling.

An assessment of the Proposed RMP consistency with USFWS Conservation Objectives Team (COT) Report was completed, and a summary comparison of alleviated threats to GRSG was also prepared (see Table 2.2). An implementation framework for GRSG management (Appendix B (p. 1779)) has been added which includes adaptive management and monitoring strategies developed in cooperation with the USFWS and State of Wyoming. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in Priority Habitat Management Area, and Priority Habitat Management Area would be managed as open to saleable minerals in the Proposed Plan, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternatives B in the Draft EIS (a 4 mile closure around all occupied or undetermined Greater Sage-Grouse leks). The monitoring framework was further refined in the Final EIS, and further clarification as to how disturbance cap calculations would be measured were developed. A quantitative cumulative effects analysis for GRSG was included in the Final EIS.

With regard to the inclusion of SFAs, as designated in other GRSG proposed plans, the Protestors are incorrect in their assertion that SFAs are proposed as part of the Buffalo PRMP/FEIS. Section 4.4.9.9.3., Existing Conditions in WAFWA MZ I, and the Buffalo RMP Planning Area, provide a summary of existing conditions and past and present actions for the Buffalo planning area, as well as for WAFWA MZ I as a whole. While the Protestors are correct in their citation of language in the PRMP/FEIS regarding SFAs, it is taken out of context in their protest. As referenced, “[t]he BLM has incorporated management of Sagebrush Focal Areas into its proposed management approach for GRSG. Sagebrush Focal Areas are a subset of PHMA and represent recognized “strongholds” for the species that have been noted and referenced by the conservation community identified as having the highest densities of the species and other criteria important for the persistence of the species (Ashe 2014). (Chapter 4, page 1295).” This statement is provided as part of a summary of past and present actions within MZ I. Specifically, “[t]here is one Sagebrush Focal Area comprising 1,807,600 acres in MZ I, in Montana,” (PRMP/FEIS, p. 1295),

The agency provided adequate public involvement in the planning and NEPA process.

Impacts – Greater Sage-Grouse

Issue Number: PP-WY-BUFFALO-GRSG-15-06-16

Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: The EIS fails to discuss these impacts resulting from development and sage brush removal in winter habitat or respond to comments noting these impacts. Nor does it provide any sense of the long-term impact of winter habitat loss on the persistence of GRSG in the Bighorn Basin. More troublingly, it misleadingly suggests that surface disturbance of all winter concentration areas will be limited. The EIS defines core areas to include winter concentration areas (FEIS 22- 23). Thus, any core-area protections should necessarily apply to winter concentration areas (e.g., 5% disturbance limit and restriction of one development site per 640 acres). In fact, while BLM has mapped “winter habitat,” no inventory or mapping of winter concentration areas in the Buffalo Field Office planning area exists, so it is impossible to know whether core areas actually include these areas.

Issue Number: PP-WY-BUFFALO-GRSG-15-06-17

Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-WY-BUFFALO-GRSG-15-10-17

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et al. 2013, Taylor et al. 2012).

Issue Number: PP-WY-BUFFALO-GRSG-15-10-9

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: We protest the creation of forage reserves for livestock within sage-grouse habitat. LR:11.7 at 259 encourages the establishment of forage reserves but the plan amendment neither provides management direction for these nor does the FEIS analyze the impacts of designating and using forage reserves on GRSG and their habitats. If forage reserves are established within GRSG habitat, the recovery from the absence of perennial livestock grazing can quickly be undone by a single-season of active grazing use. The PRMP/FEIS should rather have specified that forage reserves will be created for GRSG forage (e.g. allotments closed to domestic livestock), thus actually helping to conserve, protect, and recover the species.

Summary:

The Buffalo PRMP/FEIS fails to adequately analyze the impacts to GRSG because:

- it fails to address comments that identify impacts from development and loss of sagebrush in winter habitat or long-term impacts on the persistence of GRSG. It's not clear if winter habitat is included in core areas and subjected to possible limitations. No inventory or mapping of winter concentration areas exist in the Buffalo field office;
- the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations; and
- it does not provide direction for forage reserves nor analyze the impact of designating forage reserves on GRSG and their habitats.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H – 1601-1, p. 23-24).

NEPA directs that data and analysis in the EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and the NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1)(b)).

In compliance with NEPA, The BLM considered all public comments submitted on the Draft Buffalo RMP/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix Y of the Buffalo Resource Management Plan Revision presents the BLM's responses to all substantive comments.

A land planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The effectiveness of these decisions on changes GRSG populations will be evaluation based on criteria in the monitoring plan see Appendix B of the Buffalo PRMP/FEIS.

The Proposed RMP and Final EIS provides an estimate of potential surface disturbance (see Appendix T) sufficient for making a reasoned choice among the alternatives, and employs the assumption that such disturbance would affect vegetation communities proportionally to their current extent, this would include sagebrush. However, the exact location of projects and their effects on various habitat types will not be known until projects are proposed.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling), the scope of the was conducted at the programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts to GRSG habitat, which includes both summer and winter habitat, which could potentially result from on the ground changes. This analysis

identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Buffalo PRMP/FEIS includes analysis of livestock grazing (which includes reserve common allotments) on GRSG and their habitats. The Designation and management criteria for future Reserve allotments are implementation planning level decisions to be made based on needs and resource objectives.

Impacts – Air Quality and Noise

Issue Number: PP-WY-BUFFALO-GRSG-15-06-13

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan revision by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a GRSG lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations” (WBEA at 131). The proposed Buffalo RMP provides, “The BLM would evaluate the potential for limitation of new noise sources on a case-by-case basis as appropriate” (FEIS at 62). It is completely inappropriate to alter allowable noise thresholds on a case-by-case basis, as the science does not show that impacts to GRSG vary on a case-by-case basis. BLM proposes a limit of 10 dBA above ambient as measured at the lek, with no ambient noise level defined in the plan (FEIS at 62). The ambient level needs to be set at 15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-13

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: In addition to failing to analyze the cumulative impacts on air resources, the Buffalo RMP requires no mitigation to address these impacts, providing only that “[f]or major projects, such as the development of a large natural gas field or mineral development project ... the BLM may require proponents to demonstrate compliance with ambient air quality standards and other federal, state, and local air quality regulations” (Id. at 656 (emphasis added)).

Issue Number: PP-WY-BUFFALO-GRSG-15-16-15

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to consider indirect air pollution impacts from foreseeable coal combustion. Conservation Groups protest the BLM’s unlawful failure to consider the indirect effects of air pollution from coal combustion.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-16

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Despite actually foreseeing the inevitable combustion of this coal, the FEIS fails entirely to address the myriad environmental impacts that will result from combustion of 9 to 12 billion tons of coal.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-17

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: These effects of coal combustion should have been acknowledged, addressed, quantified, and monetized in the FEIS, given the BLM's recognition that the coal from the planning area provides 20% of the United States' coal supply (FEIS at 399). The FEIS, however, failed entirely to address these insidious and deleterious, but wholly foreseeable, impacts. There is no question that they are foreseeable. The FEIS specifically foresees that, pursuant to the Proposed RMP, coal production will continue at current rates of "400 and 500 million tons annually" and that the coal is "expected to be used almost entirely as steam coal for electric generation and other industrial applications" (FEIS 405, 843). Because the combustion of the coal in the planning area is a reasonably foreseeable indirect effect of the Proposed RMP's decision to make it available for continued leasing and strip-mining, the FEIS was required to assess the air pollution impacts that will result from combustion (40 CFR § 1502.16(b)). As noted, the FEIS expressly recognized its obligation to consider indirect air pollution impacts (FEIS at 650) but despite this recognition, nowhere in the analysis of air pollution effects does the FEIS even mention the word "indirect effect," let alone analyze the significance of

continued combustion of 9-12 billion tons of coal.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-18

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to adequately analyze air quality impacts in a number of other regards. The FEIS falls short of complying with NEPA in a number of other regards. Notably, the FEIS relies on inaccurate information and false assumptions in disclosing air quality impacts and inappropriately fails to address the findings of the BLM's own reports indicating that impacts will be significant under NEPA due to violations of the NAAQS and other air quality standards.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-19

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: In comments on the DEIS, it was pointed out that the BLM was relying on wildly inaccurate emission inventory data and assumptions in analyzing and assessing the air quality impacts of the RMP. In the FEIS, the agency entirely failed to address these inaccuracies and ensure an adequate analysis of air quality impacts. With regards to coal development, the FEIS indicates that current NOx emissions from coal production are 509 tons per year (See FEIS at 655). Yet as noted in comments on the DEIS, the BLM's own recent coal leasing EISs indicate that actual NOx emissions, at least from coal mining in Campbell County, are far higher. Indeed, a review of the BLM's recent EISs shows that, in total, NOx emissions expected from

present leasing activity may be as high as 21,074 tons/year.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-2

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Buffalo RMP fails to appropriately assess air impacts from development authorized under the plan, including by failing to consider indirect effects from coal combustion and failing to revise its ozone analysis in light of the best science.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-20

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: With the BLM's own data showing that NOx emissions from coal mining are far higher, the Agency must revise its air quality analysis and assessment accordingly. Such a significant underestimation of emissions makes it extremely likely that the Agency is underestimating NOx impacts to ambient air quality, in particular the 1-hour NO2 NAAQS.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-22

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Overall, it appears that the BLM's assessment of current emissions in the planning area in the FEIS is completely baseless. To put into context how erroneous the emission inventory calculations are, the BLM's estimate of total

baseline NOx emissions in the planning area of 1,194 tons/year is more than 30 times lower than the total emissions just from coal mines (using high emission projections), oil and gas, and coal-fired power plants in the Buffalo Field Office. It similarly appears that BLM grossly underestimated (or outright failed to address) VOC, SO2, and CO2 emissions. This, in turn, indicates that the BLM's projections of future emissions under the proposed RMP and the other action alternatives are entirely baseless. For instance, the FEIS discloses that coal mining under the proposed RMP will lead to the emission of 630 tons per year of NOx (See FEIS at 677). This projection is completely unsupported and contradictory to the BLM's own disclosures in its coal leasing EISs. In light of this, the BLM was required to revise its DEIS in accordance with 40 CFR § 1502.9(a) because it was so inadequate as to preclude meaningful analysis. The agency did not, and therefore the current FEIS violates NEPA due to its failure to analyze and assess potentially significant impacts.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-25

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Similarly, the 2014 Powder River Basin Coal Review 3A report cites violations of the ozone, PM2.5, and PM10 NAAQS in a number of Class I and sensitive Class II areas in the region (See PRB II at 3-7 – 3-18). These results are not cited in the FEIS or addressed in the analysis and assessment of impacts. In the FEIS, the BLM asserts that the 2014 report "will not be" used to inform planning decisions because of unaccounted for oil and gas development in the Buffalo Field Office and adjacent areas (FEIS at 297). Yet if anything, the fact that the 2014 found

violations of NAAQS even without considering additional emissions from future oil and gas development underscores the need for BLM to utilize the report in order to effectively disclose impacts and make an informed decision. The agency cannot simply reject information under NEPA because it believes it may underestimate impacts. Amazingly, despite the reported data and its reference in the FEIS, the analysis and assessment of air quality impacts does not even attempt to analyze actual impacts to air quality in the context of air quality standards. Instead, the FEIS only compares emissions data. It is unclear why this modeling data was not addressed in the actual analysis and assessment of impacts, or why BLM did not attempt to analyze air quality impacts in light of the dire predictions of the Powder River Basin Coal Review. Nevertheless, it further underscores that BLM failed to comply with NEPA by refusing to analyze and assess how current and projected emissions from reasonably foreseeable development will directly, indirectly, and cumulatively affect air quality.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-26

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: That the BLM did not address the air quality findings of the 2009 and 2014 Powder River Basin Coal Review in its analysis and assessment of air quality impacts indicates the agency did not rely on “high quality” information and “accurate” scientific analysis in accordance with NEPA (40 CFR § 1500.1(b)). If anything, the BLM rejected valid and credible scientific data indicating the air quality impacts are significant. Such selective dismissal of information reflects a lack of scientific and

professional integrity, which are critical for effective NEPA implementation (40 CFR § 1502.24). The fact that expert critique indicates that the coal review reports underestimate the air quality impacts of reasonably foreseeable actions that will be implemented under the RMP further underscores that the agency fell far short of complying with NEPA in its FEIS.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-29

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Given that the BLM acknowledges that all of the coal made available by its plan will be burned, it is unlawful for BLM to then fail to account for the emissions that will result from combustion.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-30

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: It is certainly true that the BLM disclosed direct greenhouse gas emissions emitted during the mining process, which the agency calculated to be between 9.74 and 9.81 million metric tons of CO₂-e in 2024 for the various alternatives. FEIS at 683, Table 4.14. The BLM, however, never addressed its decision not to calculate CO₂ emissions from the combustion of coal from the planning area, even though BLM and other federal agencies have been calculating CO₂ emissions from combustion for coal mining proposals for years.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-33

Organization: Western Environmental Law Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Proposed RMP conducted no air quality modeling for emissions, and failed to provide a hard look detailed analysis of impacts (See FEIS at 680; see also *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998)). “To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency’s] decisions, can be assured that the [agency] provided the hard look that it is required to provide.”

Issue Number: PP-WY-BUFFALO-GRSG-15-16-34

Organization: Western Environmental Law Center
Protestor: Kyle Tisdel

Issue Excerpt Text: In order to sufficiently understand the scope of methane emission impacts expected from the proposed action, the BLM should quantify estimated emission rates and analyze alternatives that would mitigate these impacts. However, even without specific data from the proposed action, we can assume leakage somewhere between these two extremes and, even at the low end, emissions reductions would not be trivial. The agency’s refusal to consider

Issue Number: PP-WY-BUFFALO-GRSG-15-16-35

Summary:

The PRMP/FEIS violated NEPA by failing to:

- take a hard look and evaluate the effects of the Required Design Feature of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB, thus failing to adequately

Organization: Western Environmental Law Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Buffalo Proposed RMP fails to provide any detailed, hard look analysis of the proposed actions’ contribution to GHG pollution. While the BFO provides charted emissions estimates under each alternative, this is all the agency offers. There is no discussion or analysis of how these emissions will impact specific resources in the Buffalo planning area, and the BLM fails to identify

Issue Number: PP-WY-BUFFALO-GRSG-15-16-9

Organization: Western Environmental Law Center
Protestor: Kyle Tisdel

Issue Excerpt Text: In the FEIS, the Buffalo Field Office failed to consider the multiple effective and environmentally sustainable methods and practices to reduce methane waste. As noted in our Draft Comments, while BLM has in the past claimed that it will impose methane mitigation measures at the site-specific stage, it has failed to do so. Moreover, the RMP-stage is the appropriate place to address these measures to ensure consistency, put the oil and gas industry on notice of what leasing on BLM lands will look like, and meet its duties to address this issue as required by NEPA, the Federal Land Policy and Management Act (“FLPMA”), the Mineral Leasing Act, and Secretarial Order 3226.

protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts;

- violated NEPA, FLPMA, the Mineral Leasing Act, and Secretarial Order 3226 by failing to consider mitigation measures reducing methane emissions; environmentally sustainable methods and practices to reduce methane waste; failed to assess air impacts from development authorized under the plan; failed to use the best available science in the ozone analysis; and failed to provide analysis of how current and future methane emissions will impact air quality;
- take a hard look at impacts to air quality and offer mitigation to address these impacts;
- consider impacts from air pollution due to Coal Combustion 40 CFR § 1502.16(b).;
- take a hard look at the contribution to GHG pollution and impacts to specific resources; and
- revise the DEIS in accordance with 40 CFR§ 1502.9(a) therefore the current FEIS violates NEPA due to its failure to analyze and assess potentially significant impacts.

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Buffalo PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Air quality for the planning area was discussed and analyzed in Chapter 4 of the Buffalo PRMP/FEIS. This chapter includes discussion on the impacts from carbon combustion, ozone, emissions, methane waste, and GHG effects. The Buffalo Field Office (BFO) resource specialists provided the construction, operations, developed acreage, and production activity data used to estimate emissions for resource emission sources. Other activity data were derived from the surface disturbance and RFA tables (Appendix G (p. 1937)). For conventional natural gas, coalbed natural gas (CBNG), and oil development, emissions were prepared for activities on federal mineral estate in the planning area. The estimation of emissions from coal mining activity relied on information contained in the Environmental Protection Agency's (EPA's) National Emission Inventory (NEI) (EPA 2011a) and the Final Mineral Occurrence and Development Potential Report (BLM 2009c) for the planning area (FEIS 650).

The Buffalo PRMP/FEIS air impact analysis for the planning area used an emission comparison approach which included the most current information available. The RMP presents a qualitative description of potential impacts, and includes emission inventories of BLM actions in the Buffalo planning area. Appendix M (p. 2239) provides a detailed description of the assumptions, activity data, emission factors, and general approach followed in estimating emissions for the various resource sectors and pollutants (Chapter 4, page 650).

Emission factors used to estimate proposed emissions were obtained from (1) the EPA NONROAD2008a Emissions Model (EPA 2008); (2) the Wyoming Department of Environmental Quality (DEQ) best available control technology (BACT) standards for natural gas-fired internal May 2015 Chapter 4 Environmental Consequences Air Quality 652 Buffalo PRMP and FEIS combustion engines (Wyoming DEQ 2013c); (3) the EPA MOBILE6.2.03 mobile emissions factor model for on-road motor vehicles (EPA 2003); (4) EPA AP-42 Compilation of Air Pollutant Emissions Factors (EPA 1995); (5) the American Petroleum Institute (API) Compendium of Greenhouse Gas Emissions Estimation Methodologies for Oil and Natural Gas Industry (American Petroleum Institute 2009); (6) EPA State Inventory Tool Module (EPA 2011c); (7) the Western Governors Association Western Regional Air Partnership (WRAP) (Western Regional Air Partnership 2005); (8) 40 CFR Part 98 — Subpart W; (9) Wyoming DEQ Guidance on Oil and Gas Production Facilities (Wyoming DEQ 2013a); and (10) EPA's NEI (EPA 2013b). The Technical Support Document (TSD) for Air Quality (Appendix M (p. 2239)) includes detailed information regarding the data and assumptions used to estimate emissions for each project alternative and the emission totals for each activity per year (Chapter 4, page 652).

A base year emission inventory was developed for 2005 based on available historical equipment counts, records of production and activity, and other information. In addition to the base

inventory, two future-year inventories (2015 and 2024) were prepared based on various alternative levels of activity, operations, and equipment usage for all of the activities associated with each of the managed resources. For all of the alternatives examined for the base and future years, coal mining and oil and natural gas (conventional and coalbed) development are the largest contributors to total air emissions compared to other managed activities in the May 2015 Chapter 4 Environmental Consequences Air Quality 654 Buffalo PRMP/FEIS planning area. For coal mining, the emissions were estimated based on emissions prepared by the State of Wyoming as contained in EPA NEI (EPA 2011a) and production rate data and forecasts included in the Final Mineral Occurrence and Development Potential Report (BLM 2009c) for the Buffalo planning area. For oil and natural gas development, the emission estimates are based on reasonable foreseeable estimates of well counts, production and development rates, and existing technologies used in the field. (Buffalo PRMP/FEIS 654)

The Buffalo RMP/EIS planning area is not encompassed by the Wyoming Basin Rapid Ecoregional Assessment; however, it is part of the Northwestern Plains REA, which was reviewed and referenced in the PRMP/FEIS. Additionally, the Wyoming Basin REA does not provide additional information that would result in effects outside the range of effects already discussed in the Buffalo PRMP/FEIS planning effort.

The Buffalo PRMP/FEIS includes a bibliography and reference section in Chapter 5, which lists information considered by the BLM in preparation of the Buffalo PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to noise limits relating to leks perimeters, air quality, and coal combustion in the Buffalo PRMP/FEIS.

Impacts – Oil and Gas

Issue Number: PP-WY-BUFFALO-GRSG-15-09-11

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: Additionally, the BLM's EIS text goes against its ultimate conclusion. In a chart, the BLM discloses that there will be 486,957 acres of short-term disturbance and 128,068 acres of long-term disturbance if its proposed Alternative D is implemented, leading to a conclusion that there will be "Moderate Adverse" impacts from long-term erosion (EIS at 277). However, within the text of the EIS, BLM does not disclose any impacts (short or long-term) that will result if development

occurs in these sensitive areas, regardless of applied mitigation measures.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-14

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In this EIS, the BLM has not even mentioned the words "idle" and "orphaned" let alone attempted to explain the scope of the problem and any impacts that are currently occurring or will foreseeably occur during the planning period. The BLM should disclose any impacts that will result from idle and orphan wells, company bankruptcies, and other issues. Specifically, the BLM should

disclose the reclamation liability that will be passed on to the public as a result of wells

without financially solvent operators.

Summary:

The Buffalo PRMP/FEIS fails to disclose all impacts of future oil and gas development; specifically those resulting from idle and orphan wells and impacts of development in sensitive areas.

Response:

The PRMP/FEIS provides an adequate discussion of the environmental consequences, including the cumulative impacts, of the presented alternatives. As required by 40 CFR 1502.16, the PRMP/FEIS provides a discussion of the environmental impacts of the alternatives including the proposed action, any adverse environmental effects that cannot be avoided should the alternatives 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 that would be involved in the proposal should it be implemented. The PRMP/FEIS provided sufficiently detailed information to aid in determining whether to proceed with the preferred alternative or make a reasoned choice among the other alternatives in a manner such that the public could have an understanding of the environmental consequences associated with the alternatives, in accordance with 40 CFR 1502.1.

The Buffalo PRMP/FEIS describes the potential impacts to soils in Chapter 4 of the FEIS. Section 4.1.3.2, Impacts [to soils] Common to All Alternatives, states, "the BFO chose to describe the existing environment and place restrictions on the sensitive areas. Depending upon a host of soil and site variables and disturbance type, BLM may recommend avoiding these sensitive areas or mitigating the disturbances on a site-specific basis. BLM policy is to minimize any soil loss from permitted disturbances. All proposed disturbances will have a site-specific NEPA analysis and are required to have a construction, stabilization, and reclamation plan that specifically addresses erosion based on the existing soil and site conditions. The Wyoming DEQ also requires erosion control measures in their Storm Water Pollutant Prevention Plan (SWPPP) permitting process to help prevent erosion and sediment transport" (p. 703).

The figures presented by the protester, as part of Table 2.41, provide a broad summary of the soil and water analyses. 486,957 acres of short-term disturbance represents 14 percent of the federal mineral estate (3,386,530 acres), while 128,068 acres of long-term disturbance represents 3.8 percent disturbance to the overall federal mineral estate. Using the quantification defined in the Methods and Assumptions section for Chapter 4 (Buffalo PRMP/FEIS p. 646-647), it was determined that the combination of long-term disturbance (14 percent) and short-term disturbance (3.8 percent) would constitute as a moderate impact, which is identified as an impact of 5-10 percent of the resource (p. 647).

Section 4.1.3.6 discloses the potential impacts to soils specifically related to implementation of the proposed plan. "Alternative D could potentially disturb 215,496 acres (28%) of BLM surface and 669,739 acres (20%) of federal fluid mineral estate possessing soils with a severe erosion hazard; 170,590 acres (22%) of BLM surface and 412,145 acres (12%) of federal fluid mineral estate with slopes equal to or greater than 25 percent; 455,090 acres (58%) of BLM surface and

1,514,445 acres (45%) of federal fluid mineral estate possessing soils with poor reclamation suitability; and 218,928 acres (28%) of BLM surface and 685,950 acres (20%) of federal fluid mineral estate potentially containing LRP areas consisting of but not limited to badlands, rock outcrops, or slopes susceptible to mass movement. A construction, stabilization, and reclamation plan does not mean that impacts will be avoided. In the short term, impacts are similar to Alternative C (because surface-disturbing activities are not prohibited) and long-term impacts would be less, dependent upon the successful implementation and maintenance of the mitigation measures applied” (p. 727). In addition, impacts from fluid mineral development are included on page 728.

Idle and Orphaned Wells

In regards to the protest issue regarding idle and orphaned wells, the analysis of idle/orphaned wells is not within the scope of a land use-level document, but rather implementation-level, and was therefore not considered in the Buffalo PRMP/FEIS. The BLM will continue to require, and review, bonds prior to the commencement of surface disturbing activities related to drilling operations, as directed by 43 CFR 3104.

Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13). A more quantified or detailed and specific analysis would be required only if the scope of the decision included implementation actions. As specific actions that may affect the area come under consideration, the BLM and the Forest Service will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts - Water

Issue Number: PP-WY-BUFFALO-GRSG-15-16-37

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The FEIS is further deficient because although the Proposed RMP contemplates extensive oil and gas extraction, the FEIS fails to take a hard look at the impacts of hydraulic fracturing (or

“fracking”), the process which will almost certainly be used for some of this activity (78 Fed. Reg. at 31638/3). The BLM estimates that roughly 90% of new wells on federal lands are hydraulically fractured. Hydraulic fracturing using a fracturing fluid together with a proppant is used to extract oil and gas from shale formations, and a similar process is used for coalbed natural gas extraction.

Summary:

The Buffalo PRMP/FEIS violated NEPA by failing to take a hard look and consider the impacts of fracking a process used to extract oil and gas from shale and in coalbed natural gas extraction.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Buffalo PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In the Buffalo PRMP/FEIS, Appendix V, Oil and Gas Operations, page 2599, the appendix summarizes the Bureau of Land Management’s (BLM) procedures for considering proposals to conduct exploration, leasing and production operations for federal oil and gas. This appendix is provided for information purposes only, and is not necessarily a complete statement of rights, obligations, or processes. This appendix is not a part of the BLM’s land use plan decision for the RMP. On page 2615 of this appendix, hydraulic fracturing is discussed and was considered therefore the following conservation measure is included for permitting activities, “When drilling or hydraulic fracturing within 0.5 mile of a known or presumed occupied hibernacula entrances and passages, the BLM will coordinate with the USFWS to ensure that the drilling will be conducted in a manner that will not compromise the structural integrity or alter the karst hydrology of the hibernacula.”

The Buffalo PRMP/FEIS includes a bibliography and reference section in Volume 3, Chapter 5, References which lists information considered by the BLM in preparation of the Buffalo PRMP/FEIS planning effort.

The BLM complied with NEPA’s requirement to consider and analyze the environmental consequences/impacts from hydraulic fracturing in the Buffalo PRMP/FEIS.

Impacts - Grazing

Issue Number: PP-WY-BUFFALO-GRSG-15-06-18

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Summary:

The PRMP/FEIS violates NEPA because it does not provide sufficient analysis of the effects of livestock grazing on cheatgrass.

Response:

The Buffalo PRMP/FEIS fully assesses and discloses the environmental consequences of livestock grazing on upland plant communities and invasive plant species in Section 4.4.2, "Vegetation – Grassland and Shrubland Communities" (p. 970-1010), Section 4.4.4, Invasive Species and Pest Management (p. 1049-1086) and Section 4.4.9.9.6. "Threats to Greater Sage-Grouse in Management Zone I" (p. 1302-1330). Annual grass, specifically cheatgrass and Japanese brome, are discussed on p. 1319-1320.

As required by 40 CFR § 1502.16, a discussion of "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" was provided.

The Buffalo PRMP/FEIS presented 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 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.

With regard to the protest statement that "This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem." the protester simply disagrees with the science supporting the BLM's assertion that "grazing can be used to reduce fuel load and reduce the risk of wildfire (Connelly et al. 2004, p. 7, 28-30). Under certain conditions, grazing can reduce the spread of invasive grasses, if applied early in the season before the grasses have dried (Strand and Launchbaugh 2013). Light to moderate grazing does not appear to affect perennial grasses, which are important to nest cover (Strand and Launchbaugh 2013) "(Buffalo PRMP/FEIS, p. 1320).

The BLM has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

Impacts - Other

Issue Number: PP-WY-BUFFALO-GRSG-15-09-12

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text:

BLM failed to consider impacts related to coal exports. As discussed in Section II supra, the BLM ignored impacts related to coal exports, arguing it is “not appropriate” for the agency to consider impacts that stem from increased export of federal coal from the planning area. However, also as discussed in Section II supra, coal exports and associated impacts are reasonably foreseeable and should be considered in the EIS.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-13

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: The BLM’s failure to consider any impacts related to coal exports is a blatant violation of NEPA’s “hard look” requirements.

Issue Number: PP-WY-BUFFALO-GRSG-15-09-15

Organization: Powder River Basin Resource Council

Protestor: Shannon Anderson

Issue Excerpt Text: In the EIS, the BLM failed to meet the “hard look” requirements to consider environmental impacts related to bond release status. While BLM includes a table in its EIS that discloses – without any

explanation or basis – what the agency projects as cumulative disturbance and cumulative reclamation from coal leasing and mining, the table does not disclose the very important metric of reclamation success: bond release (EIS at 843). In its EIS, the BLM failed to disclose the bond release status for each of the planning area coal mines that will likely apply for additional coal leases during the planning period. Additionally, and importantly, the BLM does not disclose any environmental impacts related to the lack of bond release and subsequent lack of contemporaneous reclamation.

Issue Number: PP-WY-BUFFALO-GRSG-15-15-2

Organization: Avian Powerline Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Wyoming Buffalo LUPA states, “For infrastructure (or facilities) that have potential to cause direct avian mortality (e.g., wind turbines, guyed towers, airports, wastewater disposal facilities, transmission lines), the USFWS recommends locating structures away from high avian-use areas such as those used for nesting, foraging, roosting or migrating, and the travel zones between high-use areas. If the wildlife survey data available for the proposed project area and vicinity do not provide the detail needed to identify normal bird habitat use and movements, they recommend collecting that information prior to determining locations for any infrastructure that may create an increased potential for avian mortalities. The USFWS also recommends contacting the USFWS Wyoming Ecological Services Office for

project-specific recommendations.” (Appendix K, page 2205) Because guy wires extend from a structure to the ground, there is theoretically a potential for GRSG collisions. However, data from an APLIC-member utility indicates that GRSG collisions with guy wires on electric utility structures have not been documented. The structures themselves may serve as a visual cue and flying birds may be avoiding guy wires because they are seeing the associated towers. Because of the lower risk of collision, large-scale marking of power pole guy wires in sagebrush habitats is not likely to provide a measurable conservation benefit. However, if collisions are documented on a particular structure or section of line, appropriate line marking methods could be implemented as part of a company’s APP. In addition to marking guy wires, the impacts of removing guy wires have not been analyzed in the LUPA FEIS. The removal of guy wires would result in the need for taller, more robust structures,

potential replacement of structures, and potentially more surface disturbance.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-38

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The failure to address the impacts of hydraulic fracturing is particularly egregious because, in promulgating the fracturing rule, the BLM stated that impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas development,” would be analyzed during the “land use planning” process (80 Fed. Reg. at 16,191). The BLM must follow through on that commitment here. Conversely, because the BLM failed to consider these impacts in development of the fracking rule, the fracking rule plainly cannot provide a substitute for consideration of these impacts here.

Summary:

The Buffalo PRMP/FEIS violated NEPA by failing to take a hard look at the impacts related to coal exports from the planning area; did not consider environmental impacts related to bond release status; did not analyze environmental impacts related to the lack of bond release and subsequent lack of contemporaneous reclamation; did not analyze impacts of removing or marking guy wires; failed to consider and address the impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas development.”

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Buffalo PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all

conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Removal or marking of guy wires from existing infrastructure was not analyzed in the Buffalo PRMP/FEIS, however upon renewal of existing authorizations or new proposed facilities, new site specific NEPA analysis would be conducted and the placement of guy wires would be assessed at that time.

In the Buffalo PRMP/FEIS, Appendix V, Oil and Gas Operations, page 2599, the appendix summarizes the Bureau of Land Management's (BLM) procedures for considering proposals to conduct exploration, leasing and production operations for federal oil and gas. This appendix is provided for information purposes only, and is not necessarily a complete statement of rights, obligations, or processes. This appendix is not a part of the BLM's land use plan decision for the RMP. On page 2615 of this appendix, hydraulic fracturing is discussed and was considered therefore the following conservation measure is included for permitting activities, "When drilling or hydraulic fracturing within 0.5 mile of a known or presumed occupied hibernacula entrances and passages, the BLM will coordinate with the USFWS to ensure that the drilling will be conducted in a manner that will not compromise the structural integrity or alter the karst hydrology of the hibernacula." Hydraulic fracturing is the process of creating small cracks, or fractures, in deep, underground geological formations to liberate oil or natural gas and allow it to flow up the well for capture. To fracture the formation, fracturing fluids – approximately 99.5 percent water and sand, with the remaining percentage chemical additives – are injected down the wellbore into the formation. The fluid, injected under pressure, causes the rock to fracture along weak areas. These fractures typically range from 0.1 to 0.3 inches in width, 20 to 300 feet in height, and 300 to 1,500 feet in length. When the fractures are complete, and pressure is relieved, the fluids flow back up the well where they are captured and stored for later treatment or disposal. As the fluids flow back up, sand remains in the fractures and props the rock open. This allows the oil and gas to seep from the rock into the pathway, up the well and to the surface for collection. In the planning area, the targeted formations for hydraulic fracturing are often more than 7,000 feet underground, and some 2,000 feet below any drinking water aquifers. The process is much different for Coalbed Natural Gas (CBNG) wells than the deeper oil and gas wells. CBNG wells have water enhancements and are not hydraulic fractured as defined above. The water enhancement consists of up to 3,000 bbls of chlorinated water pumped at high rates

into the coals. The pressure rarely exceeds 1,500 psi and other chemicals and sand are not used. This process cleans the cleats of the coals around the wellbore and allows the formation water and CBNG to flow more freely into the casing for extraction. (Appendix V, page 2615).

Although the topic of coal exports is not specifically mentioned in the PRMP/FEIS, in Chapter 3, Section 3.1.2, Geological Resources, current and future trends for coal mining is discussed. The minerals currently being explored for and developed in the planning area are coal, crude oil, natural gas (including CBNG), Wyoming-type bentonite, uranium, sand, gravel, clinker (porcellanite; locally called “scoria”), and stone. See Mineral Resources for more information on these minerals. Coal, oil, and natural gas are extremely important mineral commodities in the PRB; extraction of these minerals and ranching are the biggest income-producing industries in the planning area (see Social and Economic Resources). Over 80 percent of all coal mined on federal lands in the United States comes from the Buffalo planning area. See also Leasable Minerals – Coal and Leasable Minerals – Fluids for more information regarding these resources. Table 3.5, “Some Important Mineral-bearing Formations in the Buffalo Planning Area” (p. 326) lists some of the most important mineral-bearing rock and rock strata in the planning area (generally listed from youngest to oldest, and from least to greatest depth) (Love et al. 1993). (Chapter 3, page 325).

Impacts from coal mining are discussed throughout Chapter 4 and a reclamation plan is required for the authorization of all surface-disturbing activities for the protection of soil, water and other resources. Federal coal resources will be managed under all alternatives consistent with the specific coal planning criteria as required at 43 CFR 3420.1 and 43 CFR 3460. These requirements include identifying federal coal lands as unsuitable for coal leasing that fall under any of the coal unsuitability criteria, managing multiple use conflicts, and not leasing federal coal lands where there is a qualified surface owner that denies consent to lease. (Buffalo PRMP/FEIS, Chapter 4, Section 4.2.2.8, page 844).

The Buffalo PRMP/FEIS includes a bibliography and reference section in Volume 3, Chapter 5, References which lists information considered by the BLM in preparation of the Buffalo PRMP/FEIS planning effort.

The BLM complied with NEPA’s requirement to consider the potential use of hydraulic fracturing and potential coal mining in the Buffalo PRMP/FEIS.

Impacts – Lands with Wilderness Characteristics

Issue Number: PP-WY-BUFFALO-GRSG-15-01-2

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text: WWA’s inventory submissions meet the minimum standard for further review. However, the BLM has yet

to evaluate the new information, document their findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM’s consideration. Without these steps, the BLM does not have the relevant information to adequately analyze the impacts of the amendment alternatives. NEPA requires an adequate analysis of this information, and the NEPA documents must

be “high quality”. Additionally, “accurate scientific analysis” is also necessary for successfully carrying out NEPA procedures (40 C.F.R. 1500.1(b)). An analysis that is not based on the most current information possible does not demonstrate “high quality” information or “accurate scientific analysis”. If the BLM is basing their analysis on older information, this does not constitute “high quality” information. This is especially relevant when the BLM has had adequate indication, provided by WWA’s inventory submission, that there is new information and that resource conditions may have

changed. Additionally, BLM Manual 6310 recognizes that conditions related to wilderness characteristics can change over time (BLM Manual 6310 at 2). In order to meet the procedural requirements of NEPA and BLM Manual 6310, the BLM should ensure that they have evaluated the new citizen inventory information, documented their findings, made the findings available to the public, and retained a record of the evaluation and the findings as evidence of the BLM’s consideration before the release of the Record of Decision (ROD).

Summary:

The BLM failed to document that it has considered citizen inventory information for Lands with Wilderness Character reports.

Response:

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Section 202(c)(4) of FLPMA requires that “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”. Also, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

The BLM relied on a current inventory of the resources of the public lands when preparing the Buffalo PRMP/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Section 3.6.7 and 4.6.7 of the Buffalo PRMP/FEIS. Section 3.6.7 documents the current character and inventory summaries, including those informed by public input. As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the Buffalo PRMP/FEIS.

GRSG - General

Issue Number: PP-WY-BUFFALO-GRSG-15-06-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not made a showing through its collective

NEPA analyses that GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern

Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that responses of GRSG to human-induced habitat alternations are remarkably similar across the species' range. Given that the science does not differ significantly across the species' range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

Issue Number: PP-WY-BUFFALO-GRSG-15-07-10

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Lander planning area includes high-density GRSG habitat, yet imposes more reasonable GRSG measures on development, prescribing a 5% disturbance threshold with viable exception criteria as compared to the Buffalo RMP's proposed 3% disturbance threshold. However, despite this significant departure from a 2014 land use document, the RMP provides no justification or explanation for this difference in GRSG protective measures.

This dramatic difference in BLM land use plans for the same species is the hallmark of arbitrary and capricious decision-making that would not withstand legal scrutiny under a challenge brought pursuant to the Administrative Procedures Act. The BLM must consider revising the RMP to provide reasonable management prescriptions in line with the Lander RMP.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the lack of consistent management parameters across the range of the species, or adequate explanations for variation where that exists. The management specified in the PRMP/FEIS differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. GRSG habitat needs, especially hiding cover, do not vary widely across its range, thus it is a failure on the part of the agencies not to provide consistent parameters or at minimum an explanation for the variation between plans.

Issue Number: PP-WY-BUFFALO-GRSG-15-13-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Most other proposed final GRSG plans adopt a 3% disturbance cap in priority GRSG habitat and Sagebrush Focal Areas (where designated), including the Oregon FEIS (2-18, Table 2-3, Action SSS 3; Action SSS 4); North Dakota FEIS

(ES-11; 2-10, Objective SS-1.1); Nevada/Northeastern California FEIS (2-20; 2-21-2-22; Append. F, exceptions); Idaho/Southwestern Montana FEIS (ES-16; 2-29, AD-1); Northwest Colorado FEIS (1-39; 1-40; 1-41; 2-16; Append. H); and the South Dakota FEIS (ix, Table ES-2; 41). The 5% disturbance cap in Wyoming is not equivalent to three percent (or less) disturbance caps adopted elsewhere in sage-grouse range. Some claim that the five percent cap incorporated from the Wyoming state “core area” GRSG conservation strategy in federal GRSG plans in the state is equivalent to the three percent cap recommended in the NTT report and other references (see, e.g., Wyoming FEIS: 4-339) because the Wyoming strategy also counts other types of disturbance against its cap, including temporary habitat loss from fire and vegetation removal (e.g., Wyoming DEIS: 2-118, Table 2-1, Action 115; 2-181, Table 2.5), that are not typically counted in the 3% cap. But this rationale is flawed.

Issue Number: PP-WY-BUFFALO-GRSG-15-13-3

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: The Buffalo FEIS should follow the example set by the South Dakota plan. The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4)-the Buffalo plan should avoid doing the same); prohibit renewable energy development, and require managers

to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/around winter range to preserve the areas by reducing future fire risk (SO FEIS: 48).

Issue Number: PP-WY-BUFFALO-GRSG-15-13-4

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: It is unclear what scientific reference supports a shorter 6-inch minimum average grass height in sage-grouse nesting and brood-rearing habitat. Other proposed final federal GRSG plans would adopt taller average grass height in sage-grouse nesting and brood-rearing habitat. For example, desired habitat conditions in GRSG habitat in the Oregon FEIS includes perennial grasses ≥ 7 inches high on arid sites and ≥ 9 inches on mesic sites in sage-grouse breeding habitat, including lekking, pre-nesting, nesting, and early brood-rearing habitats (citing Gregg et al. 1994; Hanf et al. 1994; Crawford and Carver 2000; Hagen et al. 2007; Jon Bates, USDA ARS, pers. comm. 2/10/2015) (Oregon FEIS: 2-41, Table 2-4). Desired habitat condition in the HiLine plan includes perennial grasses at ≥ 7 inches high in GRSG breeding habitat (HiLine FEIS: 42, Table 2.4; 195, Table 2.27). The Proposed Plan in the Idaho FEIS includes desired conditions for GRSG habitat that include perennial grasses and forbs ≥ 7 inches high during nesting and early brood-rearing season (Idaho FEIS: 2-20, Table 2-3). While these plans also provide that desired conditions may not be met on every acre of GRSG habitat and that a specific site's

ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (similar to the Buffalo FEIS) (and recognizing that these additional disclaimers, by themselves, further complicate grazing management in sage-grouse range), the plans at least adopt science-based minimum standards for evaluating grazing effects and informing adaptive management of GRSG nesting and brood-rearing habitat.

Issue Number: PP-WY-BUFFALO-GRSG-15-13-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Nevada/Northeastern California plan has adopted this desired condition for managing GRSG habitat (2-18, Table 2-2). This provision sets a science-based (Lockyear et al. in press) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

Issue Number: PP-WY-BUFFALO-GRSG-15-13-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Buffalo plan should follow the example set by the Nevada and Oregon plans. Although the Nevada plan also has its deficiencies

concerning climate change management, it better addresses BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [GRSG] habitat due to climate stress" as a threat to GRSG; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on sage-grouse and sagebrush habitat, and the Proposed RMPA adopts objectives and associated actions to adaptively manage for climate change impacts on the species. The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas", generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for GRSG over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current GRSG range. The purpose of these areas is to benefit sage-grouse over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Summary:

Protests identified inconsistencies among the various Sub-regional GRSG Land use plan amendments and revisions. These differences include how the LUPA addresses grazing management, surface disturbance caps, and GRSG habitat in general and may lead to arbitrary decisions in each sub-region.

Response:

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning

Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM has used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG – Density and Disturbance Cap

Issue Number: PP-WY-BUFFALO-GRSG-15-10-10

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan does not include grazing as a surface disturbance subject to the disturbance cap. Rather, the plan considers it a diffuse disturbance. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupt vegetation communities, disturb and compact soils, reduce forage for wildlife, and make reestablishment of native vegetation difficult in the surrounding area (PRMP/FEIS at 1132). By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation

Summary:

Protests dispute the application of density and disturbance caps of being:

- insufficient to protect GRSG as the calculation does not include disturbance associated with livestock grazing; and
- not based on science.

Response:

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated

practices it assigns to other uses. There are no RDF's related to livestock grazing, the primary use of these public lands.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-16

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to analyze whether the GRSG populations in the planning area will be conserved, enhanced, or recovered by the management actions within the plan. For example, there is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or whether the Buffalo Field Office GRSG can actually withstand the 5% disturbance cap within priority habitat and exemptions proposed in the plan (which, incidentally, is higher than the 3% cap proposed in other plans) (PRMP/FEIS at 1287).

with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011,p. 8)

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed RMP Revision that address these impacts (see Section 2.7.4 of the Buffalo PRMP/FEIS).

The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in this RMP Revision.

GRSG – Required Design Features

Issue Number: PP-WY-BUFFALO-GRSG-15-03-6

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: Devon is particularly concerned the BLM will attempt to impose the “Required Design Features” on all activities in the Planning Areas, including

existing leases. Design features should be site specific, and not “one-size fits all”. Thus, land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions (See BLM Handbook H-1601-1, II.B.2.a, pg. 13 (Rel. 1-1693 3/11/05)).

Summary:

Land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions (See BLM Handbook H-1601-1, II.B.2.a, pg. 13

Response:

The BLM’s Land Use Planning Handbook (H-1601-1) says at II.B.2.a, pg. 13

“The land use plan must set the stage for identifying site-specific resource use levels. Site-specific use levels are normally identified during subsequent implementation planning or the permit authorization process. At the land use plan level, it is important to identify reasonable development scenarios for allowable uses such as mineral leasing, locatable mineral development, recreation, timber harvest, utility corridors, and livestock grazing to enable the orderly implementation of future actions. These scenarios provide a context for the land use plan’s decisions and an analytical base for the NEPA analysis. The BLM may also establish criteria in the land use plan to guide the identification of site-specific use levels for activities during plan implementation.”

The application of RDFs and BMPs in this RMP Revision set reasonable scenarios by which allowable uses may be permitted. These will also provide for site-specific analysis and activities upon implementation.

Therefore, the BLM is within its authority to establish and prescribe management actions and stipulations within a Land Use Plan according to Handbook H-1601.

GRSG – Habitat Objectives

Issue Number: PP-WY-BUFFALO-GRSG-15-10-6

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: Table 2-4 on page 81 of the PRMP/FEIS, which provides the BLM’s review of the literature regarding GRSG habitat needs, falsely concludes that 6” grass height is adequate for nesting habitat. This is incorrect. The literature clearly determines a minimum grass height

of 7”. This implies that grasses taller than 7” improve recruitment. Unfortunately, the BLM fails to even implement a 6” grass height requirement, stating that “the habitat objectives provide the broad vegetative conditions we strive to obtain across the landscape that indicate the seasonal habitats used by GRSG.” Thus, the BLM purposefully makes the requirements non-implementable and unenforceable and are therefore, not adequate regulatory mechanisms.

Summary:

The Buffalo PRMP/FEIS failed to use the best available science in establishing a vegetation objective for minimum grass height of 6 inches for nesting GRSG habitat.

Response:

The BLM developed and analyzed alternatives, including habitat objectives, in the Buffalo PRMP/FEIS using the best available information in compliance with federal laws, guidelines, and policies. The BLM included references that support decisions with regard to Livestock Grazing Management and Habitat Management Objectives.

Habitat management objectives are discussed in Section 2.5.7 “Greater Sage-Grouse Habitat Management Objectives” (Buffalo PRMP/FEIS, p. 80 to 89). Table 2.4, “Seasonal Habitat Desired Conditions for Greater Sage-Grouse”, details each scientifically-referenced habitat objective. The values for the indicators were derived using a synthesis of current local and regional GRSG habitat research and data and reflect variability of ecological sites. The habitat cover indicators are consistent with existing indicators used by the BLM.

The best available science supports the BLM perennial grass and forb height habitat objective of “adequate nest cover > 6 inches (15.2 cm) or as determined by ESD site potential and local variability” (Buffalo PRMP/FEIS, p. 85), including:

- Connelly, J.W., M.A. Schroeder, A.R. Sands, and C.E. Braun. 2000. Guidelines to manage sage-grouse populations and their habitats. *Wildlife Society Bulletin* 28:967-985;

- Connelly, J.W., K.P. Reese, and M.A. Schroeder. 2003. Monitoring of Greater sage-grouse habitats and populations. University of Idaho College of Natural Resources Experiment Station Bulletin 80. University of Idaho, Moscow, ID;
- Doherty, K.E., D.E. Naugle, J.D. Tack, B.L Walker, J.M. Graham and J.L. Beck. 2014. Linking Conservation Actions to Demography: Grass Height Explains Variation in Greater Sage-grouse Nest Survival. *Wildlife Biology*, 20(6): 320-325;
- Hagen, C.A., J.W. Connelly, and M.A. Schroeder. 2007. A meta-analysis of greater sage-grouse *Centrocercus urophasianus* nesting and brood-rearing habitats. *Wildlife Biology* 13 (Supplement 1):42-50;
- Herman-Brunson, K.M.,K.C. Jensen, N.W. Kaczor, C.C. Swanson, M.A.Rumble, and R.W. Klaver.2009. Nesting Ecologyof Greater Sage-Grouse *Centrocercus urophasianus* at the Easter Edge of their Historic Distribution. *Wildl. Biol.* 15:237-246;
- Stiver, S.J., E.T. Rinkes, D.E. Naugle, P.D. Makela, D.A. Nance, and J.W. Karl. In Press. Sage-Grouse Habitat Assessment Framework: Multi-scale Habitat Assessment Tool. Bureau of Land Management and Western Association of Fish and Wildlife Agencies Technical Reference XXXX-X. U.S. Bureau of Land Management, Denver, Colorado.

The USFWS and WGFD are cooperating agencies for the RMP and were involved in development of the Final EIS. Current and proposed BLM management is designed to help support WGFD population objectives for big game and GRSG. The management actions related to fish, wildlife, and special status species, included in this RMP, are expected to mitigate impacts to wildlife and are based on recommendations from the appropriate state and federal agencies; the BLM will continue to work with the USFWS and WGFD when implementing the RMP.

In response to the GRSG management objectives described in the 2006 WAFWA “Greater Sage-grouse Comprehensive Conservation Strategy”, many reports have been prepared for the development of management recommendations, strategies, and regulatory guidelines. The NTT report (NTT 2011), Conservations Objectives Team (COT; USFWS 2013), and the Summary of Science, Activities, Programs and Policies that Influence the Rangewide Conservation of Greater Sage-Grouse (also referred to as the BER; Manier et al. 2013) are the most widely used reports that have been incorporated and address the effects of implementing GRSG conservation measures on public lands. Both documents helped planning teams identify issues within their planning area, determine the context within the management zone, prioritize habitats, and assist in creating a range of alternatives with management actions that can alleviate or mitigate threats to GRSG at an appropriate level. Both the NTT report and the COT report tier from the WAFWA Greater Sage-grouse Comprehensive Conservation Strategy (Stiver et al. 2006).

The BLM used the best available science to identify habitat objectives and its decision reflects objective criteria that can be implemented across the range of ecosystems and habitats in the Buffalo planning area.

GRSG – Data and Inventories

Issue Number: PP-WY-BUFFALO-GRSG-15-06-20

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The State of Wyoming has developed current lek population density mapping based on 2014 data, which is readily available to the BLM. The BLM should have included such a population density buffer map with its Buffalo FEIS as part of its NEPA baseline information fulfillment; failure to do so violates NEPA. The majority of identified nesting habitat in the Buffalo Field Office lies outside designated Core and Connectivity Areas (FEIS at Map 37).

Issue Number: PP-WY-BUFFALO-GRSG-15-06-8

Organization: Wild Earth Guardians

Summary:

The Buffalo PRMP/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by not including the State of Wyoming’s 2014 lek population density mapping data or the Wyoming Basins Ecoregional Assessment.

Response:

The BLM used the most recent and best information available that was relevant to a land-use planning-level analysis. The State of Wyoming’s 2014 data was not available to the BLM prior to the close of the comment period on the Draft RMP/EIS on September 26, 2013. The BLM will continue to work with the State of Wyoming on GRSG management. As stated on page 179 of the Buffalo PRMP/FEIS, “The BLM will coordinate new recommendations, mitigation, and GRSG habitat objectives and management considerations with the WGFD and other appropriate agencies, local government cooperators, and the Wyoming SGIT. These measures will be analyzed in site-specific NEPA documents, as necessary.”

The Buffalo planning area is not encompassed by the Wyoming Basin Rapid Ecoregional Assessment; however, it is part of the Northwestern Plains REA, which was reviewed and referenced in the PRMP/FEIS. The Wyoming Basin REA does not provide additional information that would result in effects outside the range of effects already discussed in the Buffalo PRMP/FEIS planning effort. The information used was relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives for the Buffalo PRMP/FEIS.

GRSG- Livestock Grazing

Protestor: Erik Molvar

Issue Excerpt Text: This policy required the BLM to complete an Ecoregional Assessment for the Wyoming Basins Ecoregion (Id. at 11). This Wyoming Basins Ecoregional Assessment publication (“WBEA”) was completed in 2011, and the BLM should reference the findings of this report as they apply to Wyoming, which falls substantially within the Wyoming Basins Ecoregion, in order for the BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-4

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits on season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated. In order to conserve, protect, and enhance GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting GRSG (See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008). This nesting season is crucial for the species' survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are shortcomings of the plan.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-7

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The agencies also fail to define grazing as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1- June 15). And yet, the best science recommends that grazing be restricted during this same period. However, the only seasonal

Summary:

- The BLM fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science; and
- Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.

restrictions on livestock grazing pertain to vague and inadequate limits on trailing and bedding activities near occupied leks. This limited protection is inconsistent with other perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PRMP/FEIS should be revised to limit spring season harms to leks.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-8

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS doesn't analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations. Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year, the PRMP/FEIS has not considered limiting grazing in this way within the planning area. The PRMP/FEIS also doesn't specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover GRSG, the PRMP/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

Response:

- The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55).

Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8):

“Sage-grouse are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Buffalo PRMP/FEIS that address these impacts. The BLM did not fail to use the best available science in the Buffalo PRMP/FEIS. Section 2.5.4. BLM Proposed Plan for Greater Sage-Grouse Habitat Management (p. 59 to p. 75) details numerous goals, objectives, management actions and allowable uses that address threats to the GRS and that will conserve GRS habitat. Section 2.8.4. Alternative D – Proposed RMP provides a summary of how the scientifically referenced Habitat Objectives described in Section 2.5.7 (p. 80 to p. 89) will be attained.

- When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

In accordance with BLM’s Land Use Planning Handbook and BLM IM No. 2012-169, BLM considered a range of alternatives with respect to both areas that are available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. The analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Buffalo PRMP/FEIS and that address resource issues identified during the scoping period. The Buffalo PRMP/FEIS analyzed four alternatives, which are described in Chapter 2, Resource Management Alternatives (p. 25 through 280). Seventeen alternatives were also considered but not carried forward for detailed analysis (Section 2.6, p. 94 through 99). These were eliminated because “(1) they would not fulfill requirements of the Federal Land Policy and Management Act (FLPMA) or other existing laws or regulations, (2) they did not meet the purpose and need, (3) they were already part of an existing plan, policy, or administrative function, or (4) they did not fall within the limits of the planning criteria” (Buffalo PRMP/FEIS, p. 94).

Under Alternatives Considered, But Not Carried Forward for Detailed Analysis, Section 2.6.6 Land Resources – No Livestock Grazing (Buffalo PRMP/FEIS, p. 98), states that “BLM determined that resource conditions on BLM-administered lands in the planning area do not warrant such a blanket elimination of livestock grazing because 97 percent of allotments (122 out of 125) assessed to date meet the Wyoming Standards for Healthy Rangelands. The non-attainment areas are confined to small portions on each of the three allotments (9,601 acres total). All three allotments are progressing towards the standards. The BLM does not have data showing that resource conflicts in these areas can be resolved by closing them to public land grazing.”

Additionally, “Reduction or elimination of livestock grazing could become necessary on specific allotments where livestock grazing is causing or contributing to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental analysis, and would be based on several sources of information. These sources include: monitoring studies, reviewing current range management science, obtaining input from livestock operators and stakeholders, and assessments of ability to meet the Wyoming Standards for Healthy Rangelands. Alternative B analyzes closing 467,897 acres or 60 percent of BLM surface to livestock grazing for resource conflict including Greater Sage-Grouse habitat and SRMAs.”

The BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands in an RMP. Suitable measures, which could include reduction or elimination of livestock grazing, or season restrictions, are provided for in this RMP/EIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses.

All alternatives would allow the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment or group of allotments) level after the

appropriate monitoring, Rangeland Health Assessments, site-specific NEPA and environmental review, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives.

The BLM considered a reasonable range of alternatives and considered grazing restrictions in the Buffalo PRMP/FEIS in full compliance with NEPA; changes to individual permits is not appropriate at the land management planning scale and would occur at the implementation stage.

Administrative Procedures Act

Issue Number: PP-WY-BUFFALO-GRSG-15-08-19

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The Trades protest the

BLM's adoption of several elements of the Proposed RMP, specifically, the compensatory mitigation requirement; the "net conservation gain" standard; and RDFs, because each constitutes a substantive rule that the agencies cannot apply before they complete the formal rulemaking procedures required by the APA. See 5 USC § 553.

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedures Act, when it implemented a number of changes to management practices - including a "net conservation standard," required design features, lek buffer distances, and density and disturbance caps – without first completing a formal rulemaking process.

Response:

The Federal Land Policy and Management Act details the BLM's broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Buffalo PRMP/FEIS specifically addresses the goals, objectives, and conservation measures needed to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need, pages 4-7). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

The regulations concerning land use planning, 43 CFR 1610, states that "guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed...[including] national level policy which has been established through Director-approved documents (Section 1610.1(a)(1)).

Section 1.6 of this RMP/EIS details how Director-approved guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

The Buffalo PRMP/FEIS does not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally, as well as the process followed for this planning effort specifically, provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA.

Air Quality, Climate Change, and Noise

Issue Number: PP-WY-BUFFALO-GRSG-15-03-7

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 USC § 7401 – 7671q. Under the express terms of the CAA, the EPA has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality (WDEQ). See 42 USC § 7401 - 7671q; 40 CFR pts. 50 - 99; 40 CFR § 52.2620 (Wyoming’s State Implementation Plan); Wyo. Stat. Ann. § 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. (WAQSR) Chs. 1 - 14. The Secretary of the Interior, through the IBLA, has determined that, in Wyoming, the State of Wyoming and not the BLM has authority over air emissions:

Issue Number: PP-WY-BUFFALO-GRSG-15-03-8

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: The BLM should also recognize that the agency does not have the

authority to implement, regulate, or enforce the PSD increment. The BLM’s lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of Understanding (MOU) issued by the Department of the Interior, Department of Agriculture, and the EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. See Memorandum of Understanding Among Department of Agriculture, Department of the Interior and the EPA Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Wyoming’s PSD program currently controls Wyoming’s enforcement of the PSD program within the State of Wyoming (78 Fed. Reg. 73,445 (Dec. 6, 2013); 78 Fed. Reg. 69,998 (Nov. 22, 2013); 76 Fed. Reg. 44,265 (July 25, 2011)). There is no justifiable or legal support for the BLM’s alleged authority over PSD analysis. Given the limits on the BLM’s authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, the BLM must revise the objectives set forth in the Proposed Buffalo RMP regarding visibility and PSD consumption.

Issue Number: PP-WY-BUFFALO-GRSG-15-03-9

Organization: Devon Energy Production Company, LLP

Protestor: Dru Bower-Moore

Issue Excerpt Text: FLPMA does not require or authorize the BLM to enforce air quality controls. Instead, FLPMA provides: “In the development and revision of land use plans, the Secretary shall... (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans” (43 USC § 1712(c)(8)). The language of the statute demonstrates the BLM is required to “provide for compliance,” not independently regulate air emissions (Id). So long as the Buffalo RMP does not interfere with the enforcement of state and federal pollution laws, the BLM has satisfied its obligations under FLPMA. FLPMA does not authorize the BLM to independently regulate air quality control measures such as those imposed in the Proposed Buffalo RMP.

Issue Number: PP-WY-BUFFALO-GRSG-15-04-1

Organization: Denbury Onshore, LLC

Protestor: Michael James

Issue Excerpt Text:

In addition, the Proposed RMP states that the BLM may impose mitigation measures beyond those imposed by Wyoming DEQ and beyond the application of Best Available Control Technology ("BACT"). But the BLM does not have direct authority over air quality issues under the Clean Air Act, 42 U.S.C. § 7401 et seq. The CAA grants Wyoming- and not the BLM- "primary responsibility for assuring air quality within the entire geographic area comprising [the] State." 42 U.S.C. § 7407(a).

Issue Number: PP-WY-BUFFALO-GRSG-15-08-20

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 USC § 7401 – 7671q. Under the express terms of the CAA, the EPA has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality (WDEQ) (See 42 USC § 7401 - 7671q; 40 CFR pts. 50 - 99; 40 CFR § 52.2620 (Wyoming’s State Implementation Plan); Wyo. Stat. Ann. § 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. (WAQSR) Chs. 1 – 14). The Secretary of the Interior, through the IBLA, has determined that, in Wyoming, the State of Wyoming, and not the BLM, has authority over air emissions:

Issue Number: PP-WY-BUFFALO-GRSG-15-08-21

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM should also recognize that the agency does not have the authority to implement, regulate, or enforce the PSD increment. The BLM’s lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of Understanding (MOU) issued by the Department of the Interior, Department of Agriculture, and the EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. See Memorandum of Understanding Among Department of Agriculture, Department of

the Interior and the EPA Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Wyoming's PSD program currently controls Wyoming's enforcement of the PSD program within the State of Wyoming (78 Fed. Reg. 73,445 (Dec. 6, 2013); 78 Fed. Reg. 69,998 (Nov. 22, 2013); 76 Fed. Reg. 44,265 (July 25, 2011)). There is no justifiable or legal support for the BLM's alleged authority over PSD analysis. Given the limits on the BLM's authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, the BLM must revise the objectives set forth in the Proposed RMP regarding visibility and PSD consumption.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-22

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: FLPMA does not require or authorize the BLM to enforce air quality controls. Instead, FLPMA provides: "In the development and revision of land use plans, the Secretary shall... (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans" 43 USC § 1712(c)(8)). The language of the statute demonstrates the BLM is required to "provide for compliance," not independently regulate air emissions.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-23

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: The BLM Buffalo Air Resources Management Plan, included as Appendix N to the Proposed RMP, similarly represents a legally impermissible extension of BLM authority with respect to air matters. The Buffalo Air Resource Management Plan is inappropriate for several reasons. First, the provisions of the Air Plan set forth in detail when and how the BLM will conduct air quality modeling for oil and gas operations. The provisions of Appendix N do not comply with the MOU among the United States Department of Agriculture, United States Department of the Interior, and the United States EPA regarding air quality analyses and mitigation for federal oil and gas decisions through the NEPA process. This Memorandum, executed on June 23, 2011, is the current national management guidance determining when and how air quality modeling for oil and gas projects will be conducted.

Issue Number: PP-WY-BUFFALO-GRSG-15-08-24

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Nevertheless, given the BLM's lack of authority over air quality, it is inappropriate for the agency to impose emissions or mitigation measures on oil and gas operations at all, especially when a project proponent has already agreed to mitigation in full compliance with state and federal requirements. Instead, emission controls should only be imposed by agencies with expertise and authority over air quality in Wyoming, which, according to the Secretary of the Interior, is the WDEQ.

Issue Number: PP-WY-BUFFALO-GRSG-15-13-7

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Properly addressing climate change in GRSG planning would require the BLM to analyze the effectiveness of their proposed conservation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis of climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate as their baseline for analysis. For example, the impacts of habitat disturbance may be more pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-10

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Buffalo Field Office must consider foreseeable impacts to visibility and air quality degradation that will result from development authorized by the Buffalo RMP and EIS. In particular, the Buffalo Field Offices must consider the air quality impacts from coal, oil and gas development in the planning area. Much of air pollution from fossil fuel development and operations, which is specifically discussed, below, also degrades visibility. Section 169A of the Clean Air Act (“CAA”), 42, USC § 7401 et seq. (1970) sets forth a national goal for visibility, which is the “prevention of any future, and the remedying of any existing, impairment of visibility

Issue Number: PP-WY-BUFFALO-GRSG-15-16-27

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The failure of BLM to adequately analyze and assess air quality impacts indicates the agency has fallen short of ensuring compliance with state and federal air quality standards in accordance with FLPMA. See 43 USC § 1712(c)(8). FLPMA, as well as regulations implementing FLPMA, specifically state that the BLM shall, in the process of developing and revising RMPS, “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standard or implementation plans” (Id.; see also 43 CFR § 1601.0-8 (stating that approval of RMPs shall be consistent with 43 USC § 1712)). Here, because the BLM refused to analyze and assess air quality impacts, and worse presented inaccurate information regarding present and reasonably foreseeable direct, indirect, and cumulative emissions, the proposed RMP fails to ensure protection of state and federal air quality standards. The fact that the agency refused to address its own reports demonstrating that air quality standards, including several NAAQS, would be violated as a result of reasonably foreseeable development further underscores that the proposed RMP fails to meet FLPMA’s air quality protection mandate.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-3

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Buffalo RMP fails to take a hard look at the impacts of climate change, including by underreporting the

climate impacts of its proposal, excluding any social cost of carbon analysis, failing to commit to mitigation measures to address the serious issue of methane emissions and waste, and failing to address the impacts of coal, oil, and gas development on human resiliency.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-31

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Conservation Groups maintain that the BLM did not, in fact, disclose all of the additional GHG emissions that would result from the planning area alternatives. When taking into account direct, indirect, and cumulative impacts, as the BLM must, it becomes clear that the BLM improperly downplayed the climate impacts of the plan by omitting the key component of the equation when tallying up the greenhouse gas emissions. When evaluating the climate impacts of a federal coal lease, CO2 emissions from combustion are by far the biggest component, and they are also the component that the BLM omitted here.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-32

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Summary:

The BLM violated the Clean Air Act (42 USC Sections 7401 – 7671q), for the following reasons:

- It does not have direct authority over air quality or air emissions nor does the agency have the authority to implement, regulate, or enforce the PSD increment;
- It must consider foreseeable impacts to visibility and air quality degradation that will result from development, including oil and gas activities;
- It did not take a hard look at impacts of climate change;
- It has not included climate mitigation measures in the PRMP/FEIS;

Issue Excerpt Text: The key consideration for purposes of NEPA, however, is that the BLM told the public that its plan would result in up to 196.2 million tons of CO2, but the reality is that the combustion alone will generate 16.9 billion tons of CO2. Put another way, the actual climate emissions are at least 86 times greater than what the BLM disclosed to the public. By not calculating any of the CO2 emissions from combustion of the 10.2 billion tons of coal made available by the Proposed RMP, the BLM has omitted from consideration the vast majority of the greenhouse gasses associated with the plan. NEPA requires agencies to analyze and disclose the direct and indirect impacts of their decisions. BLM's failure to meet this simple, clear, and long-standing mandate renders BLM's Final EIS both misleading and legally invalid.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-36

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: There is absolutely no mention, much less analysis, in the Proposed RMP/FEIS of these growing impacts or the necessity to employ climate mitigation measures to ensure landscape and human resiliency and their ability to adapt and respond to climate change impacts.

- It failed to use the social cost of carbon in the analysis.

In addition, the BLM must:

- evaluate reasonably foreseeable impacts to visibility and air quality from development authorized in the EIS;
- evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
- examine cumulative environmental consequences in a changed climate as the baseline; and
- examine impacts such as habitat disturbance in concert with climate change.

Response:

Authority and Air Quality Impacts

The BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”.

Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2). NEPA also requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)).

Through its RMPs, the BLM establishes desired outcomes for air quality and sets “area-wide restrictions” needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2). The Buffalo PRMP/FEIS seeks to manage the public lands in a manner that appropriately protects air quality and its related values, as described in the management goals for air quality (see Table 2.7– Air Quality). In the Buffalo PRMP/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal land management actions anticipated under the Buffalo PRMP/FEIS on air quality. The BLM developed emission control strategies and mitigation measures [i.e. “area-wide restrictions] to address those impacts and achieve desired outcomes for air quality and visibility. Chapter 4, Section 4.1.1.1 explains the methodology used to assess impacts to air quality, including from mineral development. Emissions from some aspects of mineral development such as oil shale development were not estimated, since the potential for development was considered low.

Establishing air quality and visibility measures and conducting a PSD analysis in the Buffalo PRMP/FEIS that may be applied to future actions in the planning area does not mean that the BLM is writing new regulations, nor is the BLM establishing itself as a regulatory agency or establishing mitigation measures that are intended to supersede the agencies with regulatory authority over air quality, such as the Wyoming Department of Environmental Quality. Rather, the BLM is responding to estimated impacts from the Buffalo PRMP/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act.

The Buffalo PRMP/FEIS adequately assesses the potential impacts to air quality from minerals development and does not exceed the BLM’s statutory authority by proposing restrictions for activities that impact air quality and/or visibility.

Climate Change

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The BLM applies this requirement to the preparation of RMP revisions and amendments. An analysis of greenhouse gases is presented in Section 4.1.1.8 and climate change impacts have been considered under the appropriate resource sections throughout Chapter 4 of the Buffalo PRMP/FEIS. For example, Section 4.4.9.9.6 acknowledges that “...climate change is likely to affect habitat availability to some degree by decreasing summer flows and limiting growth of grasses and forbs, thereby limiting water and food supply (BLM 2012). Sensitive species such as GRSG, which are already stressed by declining habitat, increased development, and other factors, could experience additional pressures as a result of climate change.” Including an analysis of a future climate scenario as the baseline for the cumulative effects analysis would be highly speculative.

No court case or existing guidance currently requires that estimates of the social cost of carbon associated with potential greenhouse gas emissions be included in a NEPA context, even though the social cost of carbon is currently used in a regulatory context.

The BLM complied with Secretarial Order 3289 in developing the Buffalo PRMP/FEIS.

ACECs

Issue Number: PP-WY-BUFFALO-GRSG-15-01-6

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text:

The BLM did not give priority to the designation and protection of ACECs as required by FLPMA and the BLM’s planning guidance. The Buffalo PRMP does not comply with FLPMA or BLM Manual 1613.

Issue Number: PP-WY-BUFFALO-GRSG-15-01-7

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text: The 2 units that will be managed for ACECs total 2,847 acres. The acreage of the combined units that the PRMP states that is eligible for ACEC designation is 536,300 acres. Thus, the PRMP will only designate 0.5% of the eligible acreage as ACECs. This demonstrates that the BLM has not given priority to the designation and protection of ACECs as required by FLPMA. Additionally, the BLM has not supplied an analysis that supports the lack of designation of the remaining 6 ACEC eligible units as required by the BLM’s ACEC Manual 1616. This ACEC manual explicitly states that all areas that meet the relevance and importance criteria “must be identified as potential ACECs and fully considered for designation and management in resource management planning” (Manual 1613, Section 21). For

potential ACECs (those that the BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section 22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section 21 (Identifying Potential ACECs). The PRMP does not include the required analysis as to why 6 of the 8 qualifying ACECs are not designated, with the exception of the Fortification Creek Elk Area.

Issue Number: PP-WY-BUFFALO-GRSG-15-06-21

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although the BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. The BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where the BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs, yet has instead developed a new, less-restrictive designation for them, the BLM has failed to put designation of ACECs first, in violation of FLPMA.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The BLM’s failure to designate GRSG Areas of Critical Environmental Concern (ACECs) violates FLPMA. The power to protect ACECs is the seminal tool Congress gave the BLM to protect unique and special values on lands it manages. FLPMA imposes a duty on the BLM to use this tool by placing a priority on protecting ACECs in the land use planning process. However, BLM has violated this duty in the National GRSG Planning Strategy, as the FEIS uniformly fails to recommend designation of GRSG ACECs, even though the science and analysis in the FEIS underscores that GRSG ACECs are the only means to achieve adequate protection of critical sagebrush-steppe habitats needed to ensure survival of the GRSG across its range.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-13

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The BLM has violated its FLPMA duties in the FEIS, individually and cumulatively, both by failing to conduct the analysis of potential ACECs required under FLPMA and its implementing regulations and BLM Handbook; and by failing to designate GRSG ACECs in all key habitats (focal areas and priority habitats) which are essential to conservation of the species in each state and across the range.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-14

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The BLM’s Wyoming FEIS fails to prioritize the designation and protection of ACECs. Indeed, although BLM received several nominations for GRSG ACECs, and the BLM concluded that these nominations met the “significance” and “importance” criteria. The BLM failed to designate any GRSG ACEC. The BLM similarly failed to provide any reasoned explanation for its refusal to prioritize and protect ACECs, which is especially troubling here since the BLM acknowledged that ACEC designation would provide better protections to GRSG.

Issue Number: PP-WY-BUFFALO-GRSG-15-10-15

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: Specifically, the FEIS violates FLPMA in the following ways:

- 1) The BLM acknowledged that a land class designation affording greater protection to sage- grouse was necessary, but failed to establish GRSG ACECs;
- 2) The BLM failed to explain its decision not to designate ACECs;
- 3) The BLM arbitrarily and capriciously determined not to protect all PPH as ACECs;
- 4) The BLM relied on inappropriate assumptions in identifying potential ACECs. BLM failed to give priority to designation and protection of ACECs because it did not designate areas that, by its own admission, satisfied the criteria for ACEC designation.

Issue Number: PP-WY-BUFFALO-GRSG-15-05-3

Organization: Cameco
Protestor: Josh Leftwich

Issue Excerpt Text: The BLM’s

designation of the Pumpkin Buttes Area of Critical Environmental Concern (ACEC) is arbitrary, capricious, and unlawful. The BLM has not provided sufficient evidence that the site meets the criteria necessary for ACEC designation.

To be designated as an ACEC, an area must meet the relevance and importance criteria established in 43 CFR § 1610.7-2. The BLM quotes language from these regulations and summarily states that the Pumpkin Buttes TCP is important because it has “qualities that make it fragile, sensitive, irreplaceable and vulnerable to adverse change” (See Appendix S). The BLM does not, however, elaborate upon what these qualities are. The BLM has not provided the information or documentation necessary to support its ACEC designation.

The Pumpkin Buttes do not require special management attention.
To be designated as an ACEC, an area must require special management attention to protect the important and relevant values (43 CFR § 1601.0-5). This means additional management measures are required because standard or routine management prescriptions are not sufficient to protect the resource. See BLM Manual 1613, Area of Critical Environmental Concern. Although the BLM makes conclusory statements that the current and proposed management is insufficient to protect the relevance and importance criteria, no specific explanation is given as to why the Pumpkin Buttes require special management above and beyond those protections already afforded by BLM without the ACEC designation. The BLM claims that the Pumpkin Buttes are eligible for the ACEC designation due to its rare and sensitive archeological remains as well as the site's significance to several Native American tribes. As acknowledged in the RMP and addressed in Cameco's

comments on the DEIS, this area already has been designated a Traditional Cultural Property (TCP) and is thus already protected

by the National Historic Preservation Act (NHPA).

Summary:

The Buffalo Proposed RMP/FEIS fails to comply with the FLPMA mandate to conduct the analysis for potential ACECs and give priority to designating eligible ACECs to protect relevant and importance values. BLM created Sagebrush Focal Areas, which are less restrictive than an ACEC designation and failed to provide an explanation as to how such a designation would protect the identified resource values.

The Buffalo Proposed RMP/FEIS should not designate the Pumpkin Buttes ACEC because the BLM has not provided sufficient evidence that the site meets the criteria necessary for ACEC designation and because the Pumpkin Buttes area does not require special management attention.

Response:

The BLM has acted consistent with FLPMA, which provides that BLM in its land use plans give priority to the designation and protection of areas of critical environmental concern. BLM policy does not require that a potential ACEC's relevant and important values be protected to the same level or degree of protection in all plan alternatives: "[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention" (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that "[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes" (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The Buffalo PRMP/FEIS analyzed a range of alternatives for the management of potential ACECs. The Buffalo PRMP/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Additionally, Section 2.5.3, Development of the BLM Proposed Plan for GRSG Habitat Management, as well as the proposed plan chart on pages 179-220, describe how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for greater sage-grouse in the most valuable habitat.

Sagebrush Focal Areas, as referenced. Section 4.4.9.9.3., Existing Conditions in WAFWA MZ I and the Buffalo RMP Planning Area, provides a summary of existing conditions and past and present actions for the Buffalo planning area, as well as for WAFWA MZ I as a whole. While the protestors are correct in their citation of language in the PRMP/FEIS regarding SFAs, it is taken out of context in their protest. As referenced, "[t]he BLM has incorporated management of Sagebrush Focal Areas into its proposed management approach for GRSG. Sagebrush Focal Areas are a subset of PHMA and represent recognized "strongholds" for the species that have been noted and referenced by the conservation community identified as having the highest

densities of the species and other criteria important for the persistence of the species” (Ashe 2014) (Chapter 4, page 1295). This statement is provided as part of a summary of past and present actions within MZ I. Specifically, “[t]here is one Sagebrush Focal Area comprising 1,807,600 acres in MZ I, in Montana,” (PRMP/FEIS, p. 1295),

The BLM adequately considered the protection of relevant and important values in the Buffalo PRMP/FEIS.

Section S.1.1 provides detailed supporting evidence as to why the BLM determined that the Pumpkin Buttes area “meets the relevance criteria since it contains several a rare and sensitive archeological resources, and is a significant religious and cultural resource important to several Native American tribes” and as to why the area “meets the importance criteria since it retains has qualities which give it special worth and distinctiveness” (Buffalo PRMP/FEIS, Section S.1.1).

Section S.1.1 also explains as to why standard management of the area (including standard management afforded by the NHPA) is not sufficient to protect the area: “The existence of fluid mineral leases under the majority of the area, numerous uranium claims and proposed mining operations, nearby wind-energy development and the existence of multiple communications towers on the buttes creates a difficult management condition in which it is exceedingly difficult to effectively balance resource concerns. Additionally, there are intangible significant aspects of the area, such as cultural and religious significance to the tribes that standard surface occupancy management decisions cannot adequately address” (Buffalo PRMP/FEIS, Section S.1.1).

The BLM properly determined that the Pumpkin Buttes area met the relevance and importance criteria and required special management. Thus, the BLM properly proposed to designate the area as an ACEC.

Fluid Minerals

Issue Number: PP-WY-BUFFALO-GRSG-15-07-7

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Wyoming Game and Fish Department (WGFD) and FWS, BLM is ceding its authority over oil and gas development to the FWS; in other words, providing the FWS a de facto veto authority over decision-making vested solely with the

BLM via the Mineral Leasing Act and FLPMA. The BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency (See 43 CFR § 3101.1-4).

Issue Number: PP-WY-BUFFALO-GRSG-15-08-10

Organization: Petroleum Association of Wyoming

Protestor: Esther Wagner

Issue Excerpt Text: Further, under current management, the BLM applies a timing limitation buffer to sharp-tailed GRSG leks of 0.64 miles (Proposed RMP, Record No. WL-4025, pg. 168). In the BLM’s Proposed

RMP, the agency proposes a substantial increase in the seasonal buffer from 0.64 miles to 2.0 miles (Proposed RMP, Record No. WL-4025, pg. 168). The BLM has proposing an increase of over 300 percent, but has not justified or explained the agency's rational or support. The BLM has no sound justification for this significant change in buffer distances to sharp-tailed GRSG. Instead, BLM openly admits its reasoning is merely based on speculation. In the Final EIS itself, BLM states that: "Sharp-tailed grouse population trends are not known at this time; however, populations are thought to be declining due to habitat removal and fragmentation by O&G development and urbanization throughout the planning area" (Proposed RMP, pg. 482 (emphasis added)). Further, the agency has proposed to increase the

timing stipulation from April 1 to May 30 to April 1 to July 15, a substantial increase. The BLM cannot add this new and unsupported restriction on valid existing leases. Because the BLM's proposed increase to sharp-tailed GRSG lek buffer distances and timing windows is based on speculation, BLM has no sound basis for making such significant modifications to its sharp-tailed GRSG management.

Issue Number: PP-WY-BUFFALO-GRSG-15-16-4

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The Buffalo RMP fails to take a hard look at hydraulic fracturing.

Summary:

The Buffalo PRMP/FEIS violates FLPMA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

The Buffalo PRMP/FEIS violates NEPA by failing to take a "hard look" at hydraulic fracturing.

Response:

Approval of exceptions, modifications, and waivers

The Buffalo PRMP/FEIS does not contain the requirement of unanimous approval of the BLM, Wyoming Game and Fish Department and the USFWS to authorize exceptions to lease stipulations; however, coordination with applicable state or Federal agencies in the review of requests for exceptions, modifications and waivers is provided for by the BLM Washington Office Instruction Memorandum 2008-032.

As stated in 43 CFR 3101.1-4, "a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts." While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer's determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, “BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented,” (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

Hydraulic Fracturing

The Buffalo PRMP/FEIS assesses and discloses the environmental consequences of the Proposed Plan and alternatives in Chapter 4. As required by 40 CFR § 1502.16, the following were provided in the PRMP/FEIS: a discussion of 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 PRMP/FEIS presented 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. 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.

While hydraulic fracturing in particular is not analyzed in depth in the FEIS, discussion of hydraulic fracturing, as well as other procedures for considering proposals to conduct exploration, leasing and production of oil and gas are included in Appendix V of the PRMP/FEIS. The BLM will conduct subsequent NEPA analyses for site-specific project and implementation-level actions, such as for oil and gas field development, and other ground disturbing activities proposed. These activity plan-level analyses 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 offered the opportunity to participate in the NEPA process for these specific implementation actions.

Sharp-tailed grouse lek buffers and timing restrictions

The management actions identified for the management of wildlife, such as WL-4025, were developed in coordination with cooperators, including the WGFD, and are designed to meet the obligations of the BLM to uphold federal and state laws and policies, as well as support population objects set by the WGFD. Additionally, the PRMP is subject to all valid, existing rights, and new lease stipulations would not be applied to existing leases. However, COAs may be applied to permits on a site-specific basis. Further discussion regarding valid, existing rights can be found in Section 1.2 of this report.

Special Status Species

Issue Number: PP-WY-BUFFALO-GRSG-15-06-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In the Buffalo RMP EIS, the BLM has failed to apply in its preferred Alternative D the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and as a result development approved under the proposed plan violate the directives of the BLM Sensitive Species Policy and will result in both unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these areas, undermining the effectiveness of the Core Area strategy as an adequate regulatory mechanism in the context of the decision.

Issue Number: PP-WY-BUFFALO-GRSG-15-06-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

The Objectives of BLM's sensitive species policy includes the following: "To initiate

Summary:

Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of BLM Sensitive Species Policy. In the Buffalo PRMP/FEIS, BLM fails to apply its preferred alternative D which violates directives of BLM Sensitive Species Policy.

Response:

Contrary to the protest issues raised, the proposed land use plan revision for the Buffalo PRMP/FEIS analyzed in the FEIS does satisfy the BLM's Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM's Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual 6840.02.B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for the conservation (Manual 6840.2.B). This

proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA" (BLM Manual 6840.02). Under this policy, District Managers and Field Managers are tasked with "Ensuring that land use and implementation plans fully address appropriate conservation of BLM special status species" (BLM Manual 6840.04(E)(6)).

Issue Number: PP-WY-BUFFALO-GRSG-15-06-7

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG toward ESA listing in violation of the BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act. The agency, through the Wyoming RMP Amendment, needs to provide management that will prevent this decline of GRSG across the planning area.

policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM multiple use mission as specific in the FLPMA (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans" (Handbook 1601-1, Appendix C, at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions" (Handbook 1601-1, Appendix C, at 4).

As described and analyzed in the Buffalo PRMP/FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis. A key part in the plan is the establishment of scientifically-referenced GRSG Habitat Management Objectives (see Buffalo PRMP/FEIS, Section 2.5.7. Greater Sage-Grouse Habitat Management Objectives, p. 80 to p. 89). The BLM refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat. Land use allocations in the Proposed Plan would limit or eliminate new surface disturbance in Priority Habitat Management Area, while minimizing disturbance in General Habitat Management Area. In addition to establishing protective land use allocations, the Proposed Plan for GRSG management would implement a suite of management tools such as disturbance limits, GRSG habitat objectives and monitoring, mitigation approaches, adaptive management triggers and responses, and lek buffer-distances throughout the range (see Appendix B (Buffalo PRMP/FEIS, p. 1779)). These overlapping and reinforcing conservation measures will work in concert to improve GRSG habitat condition and provide clarity and consistency on how the BLM will manage activities in GRSG habitat (see Buffalo PRMP/FEIS, 2.5.3., "Development of the BLM Proposed Plan for Greater Sage-Grouse Management", p. 59).

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the PRMP/FEIS. For example as described in Appendix D. Best Management Practices and Appendix J. Mitigation Guidelines for Surface-Disturbing and Disruptive Activities, Wyoming Bureau of Land Management.

Since, land planning-level decision is broad in scope. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. Again, the Buffalo PRMP/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Buffalo PRMP/FEIS, the management proposed in the Buffalo PRMP/FEIS satisfies BLM's intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Lands with Wilderness Characteristics

Issue Number: PP-WY-BUFFALO-GRSG-15-01-1

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text: The BLM did not follow BLM guidance regarding the response to citizen Lands with Wilderness Characteristics inventory submission

Issue Number: PP-WY-BUFFALO-GRSG-15-01-3

Organization: Wyoming Wilderness Association

Protestor: Kyle Wilson

Issue Excerpt Text: The necessity on the part of the BLM to revisit its inventory information and update its inventories is

Summary:

The BLM did not provide an adequate response to citizens' wilderness inventories during the planning process, and the documentation provided for inventories indicates that BLM did not follow Manual 1630 for the following areas: The North Fork of the Powder River and Fortification Creek.

Response:

The BLM's efforts to inventory for and consider lands with wilderness characteristics in the Buffalo PRMP/FEIS conform to BLM Manuals 6310 and 6320, BLM Washington Office Instruction Memorandum No. 2013-106, and the underlying requirements of Sections 201 and 202 of FLPMA. Manual 6310 provides BLM direction in inventorying for lands with wilderness characteristics as required by Section 201(a) of FLPMA; i.e. "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." The policy provides direction for reviewing new inventory information including requiring the BLM to "compare existing data with the submitted information, determine if the conclusion reached in previous BLM inventories remains valid, determine whether the area qualifies as lands with wilderness characteristics, and document its findings," (Manual 6310 at B.2). It also directs the BLM "to document the rationale for the findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM's consideration" (Manual 6310 at B.2.). Manual 6320 provides BLM with direction on the consideration of inventoried lands with wilderness

further highlighted by divergences between the BLM's and citizen's inventory data. While the BLM does have recent inventories on record for these areas, their inventory findings diverge from WWA's inventory findings. Upon review of the BLM inventory documents, it is clear that the difference in inventory findings is likely a result of a difference in procedure, particularly as related to adhering to BLM Manual 6310. These differences and the relevant guidance provided by BLM Manual 6310 are detailed below for each area of interest. Our areas of interest related to this topic include:

(1) The North Fork of the Powder River Citizen Identified Lands with Wilderness Characteristics, and (2) Fortification Creek Western Sub-Unit Citizen Identified Lands with Wilderness Characteristics.

characteristics through the land use planning process as part of the BLM's land use planning obligations under Section 202(c)(4) of FLPMA; i.e. "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 BLM relied on a current inventory of the resources of the public lands when preparing the Buffalo PRMP/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Sections 3.6.7 and 4.6.7 of the Buffalo PRMP/FEIS. Section 3.6.7 responds specifically to the North Fork Powder River and Fortification Creek areas. Therefore, the BLM met its obligations under FLPMA and the aforementioned policies in considering wilderness characteristic resources in developing the Buffalo PRMP/FEIS.

Clarifications and Clerical Errors

Issue Number: PP-WY-BUFFALO-GRSG-15-03-11

Organization: Devon Energy Production Company

Protestor: Dru Bower-Moore

Issue Excerpt Text: Proposed Management Action No. SS WL-4024 indicates that surface use should be restricted within primary management

habitat area (PHMA) from March 15 to June 30 each year (Proposed Buffalo RMP, pg. 191). Similarly, the Wyoming Executive Order only limits surface use from March 15 to June 30 in PHMA. The BLM's proposed stipulation in Appendix H, however, states that surface use should be restricted from March 1 to June 30 and only within .6 of a mile from an occupied lek (Proposed Buffalo RMP, Appd. H, pg. 1993).

Summary:

There is an error in the description of timing restrictions between Chapter 2 and Appendix H wherein the starting date for restriction varies from March 1 to March 15

Response:

This error is noted. The starting date for timing restrictions should in fact be March 15 (ending June 30), as referenced in management action SS WL-4024 of the proposed plan. This correction will be noted in the ROD.