

Director's Protest Resolution Report

**Cottonwood
Resource Management Plan**

August 18, 2009



Contents

Reader’s Guide..... 3

List of Commonly Used Acronyms 4

Protesting Party Index..... 5

Issue Topics and Responses..... 6

National Environmental Policy Act..... 6

 Range of Alternatives: Grazing..... 6

 Range of Alternatives: Noxious Weeds 8

 Analytical Discussion of Impacts: Bighorn Sheep..... 9

 Analytical Discussion of Impacts: Wilderness Characteristics..... 12

 Analytical Discussion of Impacts: Treaty-Reserved Resources 13

 Analytical Discussion of Impacts: Grazing and Noxious Weeds 14

 Analytical Discussion of Cumulative Impacts 15

 Mitigation 16

 Incomplete or Unavailable Information 17

 Best Available Data and Science 18

 Public Availability of Information 19

 Response to Comments 19

Federal Land Policy and Management Act..... 20

 Roadless Inventory 21

 Coordination with Other Agencies and Consistency with Other Policies 22

Areas of Critical Environmental Concern..... 24

Management of Bighorn Sheep 26

Forestry 27

Reader's Guide

How do I read the Report?

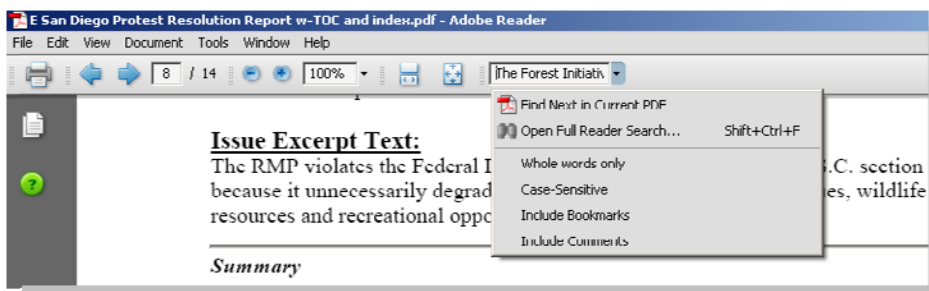
The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

| | | | |
|--|--|----------------------|--|
| Issue Topics and Responses | | | |
| NEPA | Topic heading | | |
| Issue Number: PP-CA-ESD-08-0020 -10 | Submission number | Protest issue number | |
| Organization: The Forest Initiative | Protesting organization | | |
| Protester: John Smith | Protester's name | | |
| Issue Excerpt Text: | Direct quote taken from the submission | | |
| Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis. | | | |
| Summary | General statement summarizing the issue excerpts (optional). | | |
| There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects. | | | |
| Response | BLM's response to the summary statement or issue excerpt if there is no summary. | | |
| Specific renewable energy projects are implementation-level decisions rather than RMP-level | | | |

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

| Protester | Organization | Submission Number | Determination |
|-------------------------------------|--|--------------------------|-----------------------|
| Brooks, Brad | The Wilderness Society Hells Canyon Preservation Council | PP-ID-COTTONWOOD-08-0004 | Granted in Part |
| Culver, Nada | The Wilderness Society | PP-ID-COTTONWOOD-08-0004 | Granted in Part |
| Dyson, Greg | Hells Canyon Preservation Council | PP-ID-COTTONWOOD-08-0004 | Granted in Part |
| Houston, George | Foundation for North American Wild Sheep | PP-ID-COTTONWOOD-08-0002 | Granted in Part |
| Macfarlane, Gary | Friends of the Clearwater | PP-ID-COTTONWOOD-08-0001 | Granted in Part |
| Oppenheimer, Jonathan & Smith, Brad | Idaho Conservation League | PP-ID-COTTONWOOD-08-0004 | Granted in Part |
| Penney, Samuel | Nez Perce Tribal Executive Committee | PP-ID-COTTONWOOD-08-0003 | Granted in Part |
| Thagard, Neil | Wild Sheep Foundation | PP-ID-COTTONWOOD-08-0005 | Dismissed—No Standing |

Issue Topics and Responses

National Environmental Policy Act

Range of Alternatives: Grazing

Issue Number: PP-ID-COTTONWOOD-08-0001-28

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

--Sheep grazing continues under every alternative in the Salmon River/Little Salmon River water shed (allotments like Marshall Mountain and Hard Creek)

--No alternative closes sensitive sheep habitat to grazing in those canyon corridors.

Issue Number: PP-ID-COTTONWOOD-08-0001-3

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

-There is almost no difference between grazing levels in the various alternatives Because of a) the crucial anadromous fish runs and the fact BLM is abandoning PACFISH and IN FISH; and b) bighorn sheep habitat in the Salmon River drainage, this should have been evaluated.

Issue Number: PP-ID-COTTONWOOD-08-0002-5

Organization: Foundation for North American Wild Sheep

Protester: George Houston

Issue Excerpt Text:

We have reviewed the changes in Alternative B in the Management Plan and recognize that the BLM has responded in part to our concerns in the development of the Final Management Plan by assigning Bighorn sheep to "special species status with emphasis on maintaining and improving habitat to provide for species' continued presence and conservation." What we see that appears to be absent from the plan is management strategies to ensure separation. Without effective separation, the ongoing precipitous decline of Bighorn sheep in Idaho will continue. That will very likely lead to the petitioning for listing as an endangered species, under ESA protection.

Issue Number: PP-ID-COTTONWOOD-08-0003-17

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

As stated below, none of the alternatives in the PRMP/FEIS propose to manage the program areas to provide for enhanced protection of bighorn sheep by eliminating or domestic sheep grazing in occupied bighorn sheep ranges. In fact, all of the alternatives, including the Preferred Alternative, propose no reduction in domestic sheep grazing.

Issue Number: PP-ID-COTTONWOOD-08-0003-24

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The four alternatives in the PRMP/FEIS all provide for the exact same domestic sheep allotments. The amount of cattle grazing in the alternatives varies but the amount of domestic sheep grazing does not. The PRMP/FEIS does not consider nor analyze any changes in the area grazed or in capacity of the allotments or the season of use in any of the domestic sheep allotments within the planning area, even though the BLM is aware that there has been documented transmission from domestic sheep to bighorn sheep of pathogens lethal to bighorn sheep in a clinical setting.

Issue Number: PP-ID-COTTONWOOD-08-0003-25

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The proposed goal of increasing grazing by nearly 19% over the current direction, by apparently grazing all or nearly all the acres in the BLM Area appears to be a "maximum production" sort of option that the discussion on page 2-9 of the PRMP/FEIS states is not considered in detail. It is clear that the PRMP/FEIS must propose alternatives that differ from the current management direction.

Issue Number: PP-ID-COTTONWOOD-08-0003-62

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The BLM, in the four alternatives considered in this PRMP/FEIS, did not consider any changes to domestic sheep grazing opportunities even though the

BLM recognizes the threat of disease transmission.

Summary

The PRMP/FEIS violates the NEPA because it does not analyze an adequate range of alternatives with respect to livestock sheep grazing.

Response

This protest issue is granted and is remanded to the Cottonwood Field Office and the Idaho State Director to complete a supplemental environmental analysis to be included in a Supplemental EIS, which will analyze the impacts of domestic sheep and goat grazing in the four allotments that overlap or occur in the vicinity of bighorn sheep habitat (Partridge Creek, No. 36240; Marshall Mountain, No. 36284; Hard Creek, No. 36242; Big Creek, No. 36358). While the BLM does not agree with the specific allegations raised in your protest, additional analysis will be helpful to the decisionmaker in developing a range of reasonable alternatives and in providing management direction for the four domestic sheep and goat grazing allotments that overlap bighorn sheep habitat. The Supplemental EIS will be for the limited purpose of analyzing the impacts of the four domestic sheep and goat grazing allotments which overlap bighorn sheep habitat. The additional analysis in the Supplemental EIS will support management decisions for the four allotments and will result in a separate ROD for the Cottonwood RMP. The Supplemental EIS process will be conducted pursuant to all applicable legal requirements, including consideration of a range of reasonable alternatives and providing the required opportunities for interagency coordination and consistency and public involvement. Upon completion and approval, this separate ROD will supersede direction provided in the 1981 Chief Joseph Management Framework Plan and 1982 North Idaho Range Management Program Summary and ROD. Until then, management of the four allotments will continue under the existing guidance. Accordingly, this protest issue is granted.

Other than this specific oversight regarding domestic sheep, the livestock grazing alternatives for horses and cattle in general, at the planning-area scale, do provide an acceptable range. As stated in the response to comments in the FEIS (PRMP/FEIS at U-105), the range of alternatives in the PRMP/FEIS were developed with consideration of resource issues, land ownership, and the BLM's multiple-use mandate to provide a level of available livestock grazing opportunities across all alternatives. Compared with current management, Alternative A, the alternatives in the PRMP/FEIS propose a reasonable range and variation regarding allocations for livestock grazing. Alternative B, the preferred alternative, would allocate 13% fewer AUMs and 14% fewer acres for livestock grazing compared to current management. Alternative C calls for a 16% reduction in AUMs and 18% fewer acres allocated. Alternative D would allow a 19% increase in AUMs and an 11% increase in acres allocated. The range of alternatives for horse and cattle grazing is in compliance with the NEPA.

Regarding issue number PP-ID-COTTONWOOD-08-0003-25 and the acreage figures listed in the PRMP/FEIS, the Proposed Action (Alternative B) proposes to reduce acres allocated to domestic livestock grazing from 122,732 acres (current management) to 105,619 acres (a 14% reduction) (PRMP/FEIS at 2-107). Alternative D does propose a 19% increase, or 135,850 acres

allocated to grazing, however, this is based on the acreage managed by the BLM prior to the transfer of 11,304 acres to the Bureau of Indian Affairs in accordance with the Snake River Water Rights Act of 2004. This transfer occurred between the release of the DRMP/DEIS and the release of the PRMP/FEIS. As described on page 1-2 of the PRMP/FEIS, because this amounts to only a 0.2% overall change in acres, the original acreage managed by the Cottonwood Field Office (143,830 acres) continued to be used throughout the PRMP/FEIS. Hence, 94% of the subject lands would be allocated to grazing under Alternative D, which emphasizes commodity production. The current acreages and allocations will be updated in the ROD.

Range of Alternatives: Noxious Weeds

Issue Number: PP-ID-COTTONWOOD-08-0003-11

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

However, as described below, the PRMP/FEIS fails to provide a reasonable range of alternatives to address grazing and noxious weeds and their impacts on treaty-reserved resources.

Issue Number: PP-ID-COTTONWOOD-08-0003-74

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

(3) failed to provide a reasonable range of alternatives for grazing and noxious weeds....

Summary

The PRMP/FEIS violates the NEPA because it does not analyze an adequate range of alternatives with respect to management of noxious weeds.

Response

The BLM considered a reasonable range of alternatives in the PRMP/FEIS concerning noxious weed management. Four alternatives were analyzed in detail in the PRMP/FEIS. The alternatives and management options considered but eliminated from detailed analyses are further explained in section 2.5 (PRMP/FEIS at 2-9).

The BLM's range of alternatives represented the full spectrum of options including a No Action Alternative (Alternative A); a Preferred Alternative emphasizing a balanced level of protection, restoration, and commodity production to meet needs for resource protection and resource use (Alternative B); an alternative emphasizing management strategies to preserve and protect ecosystem health (Alternative C); and an alternative emphasizing commodity production, amenities, and services (Alternative D) (PRMP/FEIS at 2-4 to 2-9).

For many resources and uses, the Cottonwood Field Office has a very restricted decision space due to governing laws, regulations, policies, and standing agreements. The result is little to no variation among alternatives for some objectives and actions. One such example is the management direction proposed for invasive species and noxious weeds. As stated in the response to comments on the DEIS:

The nature of BLM's weed control program, in scope, emphasis, and effectiveness is tied to local WMA partnerships. Due to a scattered land

pattern, BLM does not have the ability to effectively manage weeds alone, nor does it have a broad range of alternatives available other than to implement Integrated Pest Management components through a cooperative effort as budgets and workforce allow. The BLM will be implementing the strategy as prescribed in the DRMP/EIS regardless of alternative. The alternatives do not vary because under all scenarios, all management options for noxious weeds will be available to BLM managers. The BLM's participation in and commitment to Cooperative Weeds Management Areas necessitates flexibility in noxious weed control treatments to meet the BLM's obligations in weed management strategies that cross numerous ownership boundaries. Development and implementation of weed control on BLM lands is site specific and will be analyzed through the NEPA process at the project level. Potential impacts are assessed at that time and the project must conform to applicable BLM policy and guidance as shown in Table 1-3 p 1-9 of the DRMP/EIS.

(PRMP/FEIS at U-123).

Alternative C in the PRMP/FEIS emphasizes management strategies to preserve and protect ecosystem health (PRMP/FEIS at 2-7). There are two objectives and a number of subordinate actions in the Vegetation-Rangelands section of Alternatives B, C and D that specifically provide for protection and enhancement of native grasses (PRMP/FEIS at 2-28 to 2-29). The PRMP/FEIS analyzed an adequate range of alternatives with respect to management of noxious weeds.

Analytical Discussion of Impacts: Bighorn Sheep

Issue Number: PP-ID-COTTONWOOD-08-0001-19

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

One of the biggest problems with the plan is the failure to recognize the assessment of bighorn sheep risk in the area. The comments that provided that information were erroneously rejected in the response to comments section. As a result, the plan inadequately analyzes impacts to bighorn sheep.

Issue Number: PP-ID-COTTONWOOD-08-0003-19

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

On page 3-24 in the bighorn sheep wildlife section of the PRMP/FEIS the BLM recognizes that the Salmon River above Riggins has a native population of bighorn sheep in the planning unit. In the Grazing section of the PRMP/FEIS the BLM recognizes that the two domestic sheep allotments there present a

high risk of disease transmission from domestic to bighorn sheep. The document does not explain why the BLM would continue to graze domestic sheep within habitat occupied by the remaining native population of bighorn sheep in the planning area. Nor does the BLM examine the effect of that risk to the remnant native bighorn sheep population. The PRMP/FEIS should have, but did not, include an analysis of the impacts of the proposed actions to the resources affected. In this case the document should have analyzed the impacts to native bighorn sheep of continued domestic sheep grazing within occupied bighorn range.

Issue Number: PP-ID-COTTONWOOD-08-0003-20

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

In the comment letter submitted by the Environmental Protection Agency (EPA), dated November 22, 2006, the EPA concludes there is insufficient information presented to fully assess the

environmental impacts. In this instance the data that documents a decline in population trend has not been included in the analysis or discussion. The justification for continuing to authorize domestic sheep grazing adjacent to bighorn sheep herds is not presented.

Issue Number: PP-ID-COTTONWOOD-08-0003-21

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Finally, biologists from Idaho, Oregon, and Washington working on the recovery of bighorn sheep in Hells Canyon have reported large numbers of bighorn sheep lambs dying of pneumonia related illnesses. The lamb recruitment into the population was deemed insufficient to support the existing population. The BLM in the PRMP/FEIS has failed to embrace the existing threat to the bighorn sheep population and has therefore not analyzed this threat in its range of alternatives provided for in the PRMP/FEIS. Thus, it is clear that the BLM did not recognize or address the threat to bighorn sheep caused by its proposed actions or incorporate protections for bighorn sheep in the PRMP/FEIS even though the BLM proposes including the technical review developed by the Payette National Forest of the risk of disease transmission from domestic sheep to bighorn sheep.

Issue Number: PP-ID-COTTONWOOD-08-0003-41

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The PRMP/FEIS does not contain the population trend data developed by the Idaho Department of Fish and Game and so the longterm population trend of bighorn sheep is not recognized in the PRMP/FEIS. The decline of the bighorn sheep population reduces the diversity of wildlife in the area and disrupts the ecological function of the bighorn sheep as related to the native grasslands in the canyon. These concerns are not evaluated in the PRMP/FEIS.

Issue Number: PP-ID-COTTONWOOD-08-0003-42

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The BLM must analyze the impact of their action to

permit domestic sheep grazing in habitat occupied by the remaining native bighorn sheep population in the region. Then the BLM must analyze the impact of their leases collectively with the Nez Perce and Payette National Forest leases as facilitating grazing in a much larger part of the occupied bighorn sheep habitat than is simply occupied by the Partridge Creek and Marshall Mountain allotments. The PRMP/FEIS does not contain this analysis and should be returned to the Area so they can develop and incorporate this analysis and any changes to management activities that would be based on the analysis.

Issue Number: PP-ID-COTTONWOOD-08-0003-45

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The PRMP/FEIS does not evaluate the impact of the changes in source habitat for the bighorn sheep. The PRMP/FEIS does not contain analysis to consider the impact or how management of BLM lands should change to address the reduction in summer and winter range for bighorn sheep.

Issue Number: PP-ID-COTTONWOOD-08-0003-60

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The BLM recognizes the risk of disease transmission to bighorn sheep from domestic sheep grazing on the Partridge Creek and Marshall Mountain Allotments is "High". The BLM, after acknowledging the risk of disease transmission created by the permitted activity, does not analyze the impact of the risk to the bighorn sheep.

Issue Number: PP-ID-COTTONWOOD-08-0003-63

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Further, the PRMP/FEIS does not recognize the impact to the declining population of bighorn sheep of another outbreak of disease among the population. While the risk of transmission is recognized the impact of that transmission is not.

Issue Number: PP-ID-COTTONWOOD-08-0003-81

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

2) failed to identify and monitor habitat factors limiting the maintenance or expansion bighorn sheep populations in which the Tribe has a treaty-reserved interest;

Issue Number: PP-ID-COTTONWOOD-08-0004-22

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

In the Proposed RMP/FEIS, the agency included sections taken from the Disease Transmission Between Domestic and Bighorn Sheep on the Payette National Forest (USDA-FS 2006a). While these excerpts include pertinent information from the study, there were some important conclusions drawn

by the report that were left out of the PRMP/FEIS. Notably, in addition to concluding that "it is prudent to undertake management to prevent contact between the two species," the study undertaken by the Payette National Forest also concluded the following, which TWS also explicitly set out in its comments to the BLM:

1) when in close contact, domestic sheep commonly transmit diseases to bighorn sheep; 2) some of these diseases (e.g., Pasteurellosis or pneumonia) result in mortality of large portions of bighorn sheep herds and cause depressed recruitment for years, and thus have significant impacts on bighorn sheep population dynamics; and 3) bighorn sheep and domestic sheep must be kept separated if one of the management goals is to maintain viable populations of bighorn sheep. (p. 18).

Summary

The PRMP/FEIS violates the NEPA because it lacks sufficient analysis of impacts to bighorn sheep from continued domestic sheep grazing within occupied bighorn range. The BLM has failed to consider changes in habitat, declining population trends, and the impact of disease transmission from domestic sheep.

Response

This protest issue is granted and is remanded to the Cottonwood Field Office and the Idaho State Director to complete a supplemental environmental analysis to be included in a Supplemental EIS, which will analyze the impacts of domestic sheep and goat grazing in the four allotments that overlap or occur in the vicinity of bighorn sheep habitat (Partridge Creek, No. 36240; Marshall Mountain, No. 36284; Hard Creek, No. 36242; Big Creek, No. 36358). While the BLM does not agree with the specific allegations raised in your protest, additional analysis will be helpful to the decisionmaker in developing a range of reasonable alternatives and in providing management direction for the four domestic sheep and goat grazing allotments that overlap bighorn sheep habitat. The Supplemental EIS will be for the limited purpose of analyzing the impacts of the four domestic sheep and goat grazing allotments which overlap bighorn sheep habitat. The additional analysis in the Supplemental EIS will support management decisions for the four allotments and will result in a separate ROD for the Cottonwood RMP. The Supplemental EIS process will be conducted pursuant to all applicable legal requirements, including consideration of a range of reasonable alternatives and providing the required opportunities for interagency coordination and consistency and public involvement. Upon completion and approval, this separate ROD will supersede direction provided in the 1981 Chief Joseph Management Framework Plan and 1982 North Idaho Range Management Program Summary and ROD. Until then, management of the four allotments will continue under the existing guidance. Accordingly, this protest issue is granted.

Analytical Discussion of Impacts: Wilderness Characteristics

Issue Number: PP-ID-COTTONWOOD-08-0003-12

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The document also does not adequately analyze the wilderness, characteristics within and adjacent to the program areas....

Issue Number: PP-ID-COTTONWOOD-08-0003-57

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Finally, the PRMP/FEIS provides an inadequate analysis under any alternative regarding the potential effects of BLM's decision to continue grazing the "high" risk Marshall Mountain allotment on the

wilderness characteristics of the adjacent Frank Church/River of No Return Wilderness. Action 1 on page 2-198 of the PRMP/FEIS indicates that BLM will "manage 750 acres of the Frank Church/River of No Return Wilderness per the Wilderness Act." This proposed approach, however, fails to provide any meaningful discussion or propose a reasonable range of alternatives that would address the potential effects of continued domestic sheep grazing on the Marshall Mountain allotment.

Issue Number: PP-ID-COTTONWOOD-08-0003-75

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

(4) failed to consider the effects of proposed management direction on wilderness characteristics within and adjacent to the planning area....

Summary

The PRMP/FEIS violates the NEPA because it does not adequately analyze the impacts to lands with wilderness characteristics.

Response

The PRMP/FEIS complies with the NEPA in analyzing and disclosing the environmental impacts of its actions, including impacts to Wilderness Areas and to Wilderness Study Areas from the Proposed Plan (PRMP/FEIS at 4-342 to 4-346). With regard to lands with potential wilderness characteristics in the planning area, the Interdisciplinary Team review of BLM lands for wilderness character determined that none existed outside of Wilderness Areas or WSAs (PRMP/FEIS at 3-79). Thus, the only BLM-managed lands that possess wilderness characteristics are Wilderness Areas or WSAs.

The protest expresses specific concerns relating to the BLM's deference of impact analysis for wilderness characteristics. The discussion of direct and indirect effects in the PRMP/FEIS addresses these points. In Chapter 4 of the PRMP/FEIS, the BLM has provided an adequate and reasonable analysis that leads to a logical conclusion of the potential environmental consequences of the Preferred Alternative (Alternative B) and other alternatives (PRMP/FEIS at 4-1 to 4-400). Specifically, effects of the proposed management direction on wilderness are analyzed from 4-342 to 4-346.

The PRMP/FEIS does not authorize grazing in the Frank Church Wilderness Area or within the Marshall Mountain WSA. Grazing of sheep is authorized in the Marshall Mountain Allotment, but this allotment is outside of the WSA (DRMP/DEIS at Maps 16, 46).

Analytical Discussion of Impacts: Treaty-Reserved Resources

Issue Number: PP-ID-COTTONWOOD-08-0003-15

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The Tribe has clearly and consistently requested that the BLM analyze the impacts of the project on treaty-reserved resources, including fisheries, wildlife, and cultural plants. See, e.g., Attachment A at 1-2, 10,12. As the Tribe indicated in its December 13, 2006 letter, it was generally pleased with the Native American Tribal Uses section, which included a discussion of the Treaty of 1855 and the legal interests attendant to this agreement between sovereigns. See PRMP/FEIS at 3-81; This section appropriately states, that "[t]he BLM now has a trust responsibility to provide the conditions necessary for Indian tribal members to satisfy their treaty rights guaranteed them in the 1800s (citation omitted).

The Tribe's goal is the recovery of tribal resources, not just maintenance of the status quo. The BLM's responsibility to the Tribe, as enumerated by other federal laws, caselaw, and the BLM's own policy, is "to protect 'to the fullest extent possible' the tribal treaty rights, and the resources on which those rights depend." *Klamath Tribes v. Forest Service*, 24 Ind. Law Rep. 3017 (D. Or. 1996).

To ensure federal compliance with the Tribe's treaty, it is essential that the BLM examine the impacts of the project on all tribal resources and develop alternatives that maximizes protection and enhancement of those resources. As previously stated, the PRMP/FEIS does not provide sufficient information to adequately assess if the BLM has met their treaty and trust obligations.

Issue Number: PP-ID-COTTONWOOD-08-0003-72

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Summary

The PRMP/FEIS violates the NEPA because it fails to analyze the impacts to treaty-reserved resources. The PRMP/FEIS does not provide sufficient information to adequately assess whether the BLM has met their treaty and trust obligations.

The Tribe's review of the PRMP/FEIS reveals that the BLM did not adequately: (1) comply with the federal trust responsibilities owed to the Nez Perce Tribe by failing to adequately analyze and protect treaty rights and trust resources....

Issue Number: PP-ID-COTTONWOOD-08-0003-9

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The BLM Did Not Fulfill Its Federal Trust Responsibilities Owed to the Nez Perce Tribe by Failing to Adequately Analyze and Protect Treaty Rights and Trust Resources.

As a fiduciary, the United States and all its agencies owe a trust duty to the Nez Perce Tribe and other federally-recognized Tribes. See *United States v. Cherokee Nation of Oklahoma*, 480 U.S. 700, 707 (1987); *United States v. Mitchell*, 463 U.S. 206, 225 (1983); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). This trust relationship has been described as "one of the primary cornerstones of Indian law," FELIX COHEN, *HANDBOOK OF FEDERAL INDIAN LA W* 221 (1982), and has been compared to one existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus. See, e.g., *Mitchell*, 463 U.S. at 225.

The United States' trust obligation includes a substantive duty to consult with a tribe in decision-making to avoid adverse impacts to treaty resources and a duty to protect treaty-reserved rights "and the resources on which those rights depend." *Klamath Tribes v. Forest Service*, 24 Ind. Law Rep. 3017, 3020 (D. Or. 1996). The trust duty ensures that the United States conduct meaningful consultation "in advance with the decision maker or with intermediaries with clear authority to present tribal views to the ... decisionmaker." *Lower Brule Sioux Tribe v. Deer*, 911 F.Supp. 395, 401 (D. S.D. 1995).

Response

The PRMP/FEIS provides protection for and sufficiently analyzes the effects on tribal treaty/trust resources. The PRMP/FEIS provides protection for and sufficiently analyzes the effects on tribal treaty/trust resources. To the extent that this issue presents a challenge to the BLM's analysis of impacts to sheep as a tribal treaty trust resource, the BLM will undertake an analysis of impacts from domestic sheep and goat grazing on bighorn sheep through a Supplemental EIS. Please refer to responses specific to bighorn sheep and grazing in this report for additional information.

The PRMP incorporates a number of objectives, actions (PRMP/FEIS at 2-38 to 2-83, 2-200), and supporting appendices that address enhancement of the trust resources described (wildlife, fisheries, and cultural plants). Appendices such as Appendix V, Conservation Measures for Listed Species; Appendix W, Desired Conditions and Watershed and Aquatic Condition Indicators; and Appendix F, Aquatic and Riparian Management Strategy all address species and habitat management. Taken together, these provide for the long-term management of these trust resources.

Chapter 4 of the PRMP/FEIS analyzes the impacts to trust resources. Section 4.5.1 specifically describes impacts to Native American Tribal Uses (PRMP/FEIS 4-348 to 4-364). In addition, while not specifically identified as trust resources in the text, impacts to wildlife and fisheries are described respectively in sections 4.2.9 (PRMP/FEIS at 4-136 to 4-164) and 4.2.10 (PRMP/FEIS at 4-164 to 4-182). Impacts to vegetation are analyzed in the PRMP/FEIS at pages 4-67 to 4-136 and 4-182 to 4-198.

Analytical Discussion of Impacts: Grazing and Noxious Weeds

Issue Number: PP-ID-COTTONWOOD-08-0003-35

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

In addition to a lack of vegetation and noxious weed inventory, the PRMP/FEIS alternatives do not provide sufficient analysis regarding the effects of livestock grazing on noxious weed proliferation. Page 4-80 indicates that "[r]angelands are particularly prone to weed infestations due to disturbances from grazing livestock..." The BLM then asserts on page 4-83 that "[l]ivestock grazing can be used as a tool to manipulate and improve plant community composition. Livestock can transport seeds and fruits of native and nonnative species to other areas by physically removing the seed or fruit, or through the deposition of fecal matter. Although this can increase weed potential in rangelands, it also serves as a tool for distribution of seeds of native plants into areas that are otherwise difficult to access."

This section implies that the spread of noxious weeds is offset by the spread of native seed accomplished at the same time the noxious weed seeds are spread. The BLM already acknowledged that the CFO does not have vegetation inventories of the Planning Area but that even without inventories the noxious weed invasion is getting worse. The BLM provides no information documenting that native vegetation in "areas that are difficult to access" requires seed dispersal beyond what the existing wildlife provides. Accordingly, the PRMP/FEIS should be remanded to provide an adequate analysis of the environmental effects of livestock grazing on noxious weed proliferation and native vegetation.

Summary

The PRMP/FEIS violates the NEPA because it does not provide sufficient analysis of the effects

of livestock grazing on noxious weed proliferation.

Response

The PRMP/FEIS fully assesses and discloses the environmental consequences of livestock grazing on noxious weed proliferation in Chapter 4. Specifically, the PRMP/FEIS analyzes the effects of livestock grazing on weed management at pages 4-83, 4-92 to 4-93, 4-97, and 4-99. 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 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 “[t]he BLM provides no information documenting that native vegetation in ‘areas that are difficult to access’ requires seed dispersal beyond what the existing wildlife provides,” the protester assumes an implication that is not identified in the PRMP/FEIS. The PRMP/FEIS simply states that livestock may “contribute to weed infestations or may be used [as] a tool to control them” (PRMP/FEIS at 4-83). There is no conflict, but rather an identification of the different ways livestock may affect the spread of noxious weeds and native vegetation. In addition, this specific comment is taken out of context. The stated goal of the PRMP for livestock grazing is to “Provide opportunities for grazing while meeting rangeland health standards” (PRMP/FEIS at 2-107). As discussed on pages 4-83, 4-92, 4-97, and 4-99 of the PRMP, “ensuring that Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management ... are being met would require that weeds are not compromising value and function of rangelands and that grazing levels are such that they do not contribute to an increase in weed potential.” The BLM has adequately analyzed and disclosed the effects of livestock grazing on noxious weed proliferation and native vegetation.

Analytical Discussion of Cumulative Impacts

Issue Number: PP-ID-COTTONWOOD-08-0003-38

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Further, the PRMP/FEIS does not analyze the contribution of the domestic sheep grazing on BLM lands to the maintenance of the risk of disease transmission over the Nez Perce or Payette National

Forests based on the fact the same band(s) of domestic sheep move through the Partridge Creek allotment back and forth to winter allotments on the Nez Perce National Forest and the summer allotments on the Payette National Forest, using the BLM lands twice a year.

Issue Number: PP-ID-COTTONWOOD-08-0003-39

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The BLM, by permitting domestic sheep grazing in occupied bighorn sheep habitat, contributes to the maintenance of a network of several allotments (held by one allottee) whose continued use poses a direct threat to the continued survival of bighorn sheep populations in the Salmon River drainage above Riggins on lands managed by the USFS. The cumulative threat to the bighorn sheep of the maintenance of all these allotments extends outside

the borders of the BLM domestic sheep allotments. The NEPA review does not consider the cumulative threat the BLM permits pose to the bighorn sheep of the region.

Issue Number: PP-ID-COTTONWOOD-08-0003-76

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

(5) failed to adequately analyze cumulative effects....

Summary

The PRMP/FEIS violates the NEPA because it does not analyze the cumulative impacts of domestic sheep grazing to the maintenance of bighorn sheep populations in the planning area.

Response

This protest issue is granted and is remanded to the Cottonwood Field Office and the Idaho State Director to complete a supplemental environmental analysis to be included in a Supplemental EIS, which will analyze the impacts of domestic sheep and goat grazing in the four allotments that overlap or occur in the vicinity of bighorn sheep habitat (Partridge Creek, No. 36240; Marshall Mountain, No. 36284; Hard Creek, No. 36242; Big Creek, No. 36358). While the BLM does not agree with the specific allegations raised in your protest, additional analysis will be helpful to the decisionmaker in developing a range of reasonable alternatives and in providing management direction for the four domestic sheep and goat grazing allotments that overlap bighorn sheep habitat. The Supplemental EIS will be for the limited purpose of analyzing the impacts of the four domestic sheep and goat grazing allotments which overlap bighorn sheep habitat. The additional analysis in the Supplemental EIS will support management decisions for the four allotments and will result in a separate ROD for the Cottonwood RMP. The Supplemental EIS process will be conducted pursuant to all applicable legal requirements, including consideration of a range of reasonable alternatives and providing the required opportunities for interagency coordination and consistency and public involvement. Upon completion and approval, this separate ROD will supersede direction provided in the 1981 Chief Joseph Management Framework Plan and 1982 North Idaho Range Management Program Summary and ROD. Until then, management of the four allotments will continue under the existing guidance. Accordingly, this protest issue is granted.

Mitigation

Issue Number: PP-ID-COTTONWOOD-08-0004-35

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, the BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated."

Communities, Inc. v. Busey, 956 F.2d 619,626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA.

Issue Number: PP-ID-COTTONWOOD-08-0004-39

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

The Proposed RMP does not fulfill the BLM's obligations with regard to mitigating impacts, which

could be simply met by closing the referenced allotments.

Summary

The PRMP/FEIS violates the NEPA because it does not discuss mitigation measures in sufficient detail.

Response

The BLM complied with the NEPA by including a discussion of measures that may mitigate adverse environmental impacts of the alternatives in the PRMP/FEIS. *See* 40 CFR §§ 1502.14(f), 1502.16(h). Potential forms of mitigation include (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments. 40 CFR § 1508.20. Not taking certain actions, in other words, closing allotments as suggested by the protester, is only one of many potential forms of mitigation. The BLM must include mitigation measures in an EIS pursuant to the NEPA; yet the BLM has full discretion in selecting which mitigation measures are most appropriate, including which forms of mitigation are appropriate.

The PRMP/FEIS analyzed mitigation of environmental impacts on all resources and resource uses (PRMP/FEIS at 2-13, 2-64, 2-90, 2-119, 2-138, 2-202, 4-12, 4-44, 4-186, 4-233). Furthermore, several appendices to the PRMP, such as B, E, and L, consist of Best Management Practices that serve to mitigate the impacts of management actions. The BLM has also incorporated design features into the proposed action and alternatives that mitigate the potential impacts. *See* BLM Handbook H-1790-1 at 6.8.4. In the wildlife section, for example, a large proportion of actions under all alternatives are protective measures and mitigation measures for other actions (PRMP/FEIS at 4-139). Additionally, the BLM will conduct further analysis and select individual mitigation measures on a site-specific basis at the implementation level.

The Cottonwood PRMP/FEIS has included appropriate measures to mitigate adverse environmental impacts. As noted herein, the issue regarding the adequacy of the analysis of impacts from domestic sheep grazing is remanded to the State Director so that additional analysis can be performed. As appropriate, the analysis will include mitigation measures.

Incomplete or Unavailable Information

Issue Number: PP-ID-COTTONWOOD-08-0003-33

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The PRMP/FEIS recognizes that noxious weeds are spreading and native grasslands/rangelands are particularly a threat. Page 4-79 indicates that a goal of BLM is to "[p]revent establishment of new invasive plant species and reduce infested acreage of established invasive plant species." However, the BLM does not have vegetation inventories to describe the species present or the extent of the noxious weed infestations. The noxious weed problem

is recognized as expanding even without formal surveys. Without an inventory of vegetation and noxious weeds the Cottonwood Field Office cannot gauge the state of the native grasslands nor the management strategy needed to address the concern.

Summary

The PRMP/FEIS violates the NEPA because it fails to include inventories of vegetation and noxious weeds in the planning area.

Response

The BLM has acknowledged vegetation and noxious weed inventories are incomplete (PRMP/FEIS at 4-9). This information was not deemed essential in selecting among the alternatives. Nevertheless, as part of the proposed plan the BLM will support or conduct weed inventories with partners to provide for the efficient prioritization of weed control activities (PRMP/FEIS at 2-25).

Best Available Data and Science

Issue Number: PP-ID-COTTONWOOD-08-0003-59

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

As explained above, the PRMP/FEIS does not contain any bighorn sheep population data for bighorn sheep despite nearly twenty years of bighorn sheep population trend data available on the Idaho Department of Fish and Game web site. PRMP/FEIS at 3-24. Without the presentation and discussion of the data there can be no objective analysis of the problem of declining populations of bighorn sheep especially in the Salmon river canyon above Riggins.

Issue Number: PP-ID-COTTONWOOD-08-0003-66

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

In summary, the PRMP/FEIS fails to comply with FLPMA's mandate to assemble current data and new information regarding changed resource conditions

regarding bighorn sheep telemetry and risk of disease transmission. The BLM has acknowledged that the risk of disease transmission is "high" between bighorn and domestic sheep, but BLM has not taken any action or management direction with respect to the PRMP/FEIS to assemble this information and assess the potential impact that this information presents to the resource.

Issue Number: PP-ID-COTTONWOOD-08-0004-33

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

In responding to the numerous comments pointing to existing and relevant scientific study of the risk to bighorn sheep from continuing domestic grazing on the specific allotments at issue in this protest, the BLM has claimed to acknowledge this information but has neither followed its recommendations nor provided an adequate explanation for not doing so. Citing the report by the Payette National Forest without adopting the key conclusions does not comply with BLM's NEPA obligations and cannot justify the proposed management.

Summary

The PRMP/FEIS violates the NEPA because it fails to incorporate the best available data with regard to the risk to bighorn sheep from proximity to domestic livestock. The PRMP/FEIS does not contain current data and new information regarding bighorn sheep such population trends, telemetry, and risk of disease transmission.

Response

As noted herein, the issue regarding the adequacy of the analysis impacts from domestic sheep

grazing will be remanded to the Cottonwood Field Office and the Idaho State Director so that additional analysis can be performed. This analysis will incorporate relevant current scientific information regarding bighorn sheep.

Public Availability of Information

Issue Number: PP-ID-COTTONWOOD-08-0001-13

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

Furthermore, BLM's change from draft to final to no longer share monitoring information with the public is inappropriate(see Appendix F page 15 changes). There is no way the public can determine if BLM is truly attaining the conditions for riparian conservation areas (RCAs) without having access to the monitoring information.

Response

According to the CEQ's regulations implementing NEPA, agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases, and the lead agency shall, upon request, make available to the public the results of relevant monitoring. 40 CFR § 1505.3(d). The Aquatic and Riparian Management Strategy, Appendix F of the PRMP/FEIS, states, "The results of monitoring will be summarized and shared, as requested, with state and federal agencies, and tribes." (PRMP/FEIS at F-15). This statement does not prevent the BLM from making the results of monitoring available to the public upon request. As such, the BLM will make monitoring results available to the public upon request.

Response to Comments

Issue Number: PP-ID-COTTONWOOD-08-0003-13

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

nor does the document explain why the Tribe's comments "do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position..."

Issue Number: PP-ID-COTTONWOOD-08-0003-29

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Because the BLM did not analyze the Tribe's suggested alternative for eliminating domestic sheep grazing within occupied bighorn sheep range or improve its analyses, the BLM should have "explained why the [Tribe's] comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position." Id. at §1503.4(b). Without this information,

the Tribe is unsure what the impacts of the project will be and how the BLM has addressed their multiple legal obligations.

Issue Number: PP-ID-COTTONWOOD-08-0003-31

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Federal regulations require federal agencies to request comments from Tribes. 40 C.F.R. § 1503.1(a)(2)(ii). The BLM did request comments from the Nez Perce Tribe and the Tribe responded with precise comments as outlined in 40 C.F.R. § 1503.3(d), expressing strong reservations about BLM's decision permitting continued domestic sheep grazing within occupied bighorn sheep range. Unfortunately, the BLM did not adequately respond to the Tribe's detailed comments as required. "

Issue Number: PP-ID-COTTONWOOD-08-0003-51

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

Seventh, the Nez Perce Tribe is troubled with the inadequate responses BLM provided to several agency comments regarding the sufficiency of the PRMP/FEIS. For example, on Page U-1 EPA grades the PRMP/FEIS as an "EC-2" which means that the EPA has environmental concerns about the document

but lacks sufficient information to evaluate the concerns. The BLM answer is "thank you for the comment".

On page A1-4 EPA "recommends consideration of an alternative with a higher level of ecosystem protection and restoration. Again, the BLM answer was: "thank you for your comment".

Summary

The PRMP/FEIS violates the NEPA because it inadequately responds to comments from the Nez Perce Tribe and the Environmental Protection Agency.

Response

The BLM appreciates the comments provided by the Nez Perce Tribe, the Environmental Protection Agency, and other groups and individuals on the DRMP/DEIS. The BLM complied with the requirements of the NEPA by performing a detailed comment analysis which assessed and considered all substantive comments received on the DRMP/DEIS. *See* 40 CFR § 1503.4. In particular, all thirty submissions received were compiled, reviewed, and analyzed to determine whether the comments submitted were substantive. The method of comment collection and analysis is described in detail in the PRMP/FEIS at section 5.6 on pages 5-27 to 5-30.

The Interdisciplinary Team analyzed comments received to determine if the substantive comments warranted additions or modifications to the analyses. The Team also made factual corrections and provided explanations, as appropriate, where a comment did not warrant any action. Responses to substantive comments were provided, including the basis or rationale for the methodology or assumptions used and changes made to the document when applicable. Opinions, judgments, preferences, or views, although read and considered, were determined to be non-substantive comments and, therefore, did not warrant a response. Appendix U of the PRMP/FEIS contains the BLM's responses to comments. The response, "Thank you for your comment" usually indicates that the comment was not substantive.

Both of the EPA comments referred to by the protester were general statements taken out of context. These statements were in the introductory paragraphs of EPA's comment letter on the DRMP/DEIS. The attachment to this letter provided much more detailed comments supporting the general statements. The PRMP/FEIS, at pages U-4 to U-5, provides in-depth responses to those detailed comments in compliance with 40 CFR § 1503.4. Additionally, the BLM made specific changes to the Preferred Alternative in the PRMP/FEIS in response to the EPA's comments, such as the addition of water resources actions under Objectives 1 and 2 (pages 2-16, 2-18).

As noted herein, the issue regarding the adequacy of the analysis of impacts from domestic sheep and goat grazing is remanded to the Cottonwood Field Office and the Idaho State Director so that additional analysis can be performed through a Supplemental EIS. The Supplemental EIS process will be conducted pursuant to all applicable legal requirements, including providing the required opportunities for public involvement.

Federal Land Policy and Management Act

Roadless Inventory

Issue Number: PP-ID-COTTONWOOD-08-0001-6

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

--the FEIS and proposed RMP fail to meet NEPA requirements for a range of alternatives (or any alternative) in evaluating roadless areas or portions that may have been missed in the FLPMA section 603 inventory. Resource analysis is required by FLPMA (see sections 201 and 202), including the roadless resource. While BLM has completed its section 603 wilderness review (NOTE: The response to comments erroneously claims this obviates any need to, it is obligated under sections 201 and 202 to re-inventory the roadless resources during the RMP planning process and make any new recommendations that may result from it....

Issue Number: PP-ID-COTTONWOOD-08-0001-8

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

2-NEPA Violation-Failure to Look at Roadless Areas

Our comments described in detail the roadless areas BLM missed in the original 603 inventory (in part, due to a faulty Forest Service inventory which has been partially corrected). The general areas missed

were those part of the larger Meadow Creek roadless area, areas contiguous to other national forest roadless areas (French Mountain and Patrick Butte on the Payette and John day on the Nez Perce National Forest)

BLM is obligated to do such an inventory, contrary to the reply in the response to comments. The agency recently lost a case on this very issue. In *Oregon Natural Desert Association v. Bureau of Land Management*, (9th Cir 2008). The court held that BLM violated federal law when it failed to protect roadless areas through its reliance on outdated surveys of areas that were suitable for Wilderness designation when BLM had continuing duty to update its inventories). The normal avenue for updating surveys is through the RMP process, though it should be re-evaluated in a site-specific analysis where roadless areas may occur.

It should be recognized this is not merely for potential wilderness designation. Case law in many cases, including the recent *Lands Council v. Martin*, 2008 (9th Cir. 2008). In this case the court held that roadless areas have certain attributes that must be analyzed, such as water resources, soils, wildlife habitat, and recreation opportunities. These attributes possess independent environmental significance beyond their potential for wilderness.

Summary

The PRMP/FEIS fails to update surveys of roadless areas within the planning area and conduct a new inventory as required by the FLPMA.

Response

The BLM has authority under section 201 of the FLPMA to inventory public land resources, including characteristics such as wilderness and roadlessness, and to consider such information during land use planning. During the planning process, the BLM reviewed lands within the planning area to determine if conditions have changed and whether additional lands might be identified that possess wilderness characteristics. This review included existing lands that had been dropped from the previous wilderness inventory, lands not already designated as wilderness or WSAs, and lands acquired since the previous wilderness inventory (PRMP/FEIS at 3-79; Cottonwood Field Office Wilderness Characteristics Review, 7/29/08). This document is available to the public upon request.

As a result of this inventory and review, which included “roadless” as a criterion, the BLM determined that the areas referred to by the protester do not contain any wilderness characteristics (PRMP/FEIS at 3-79). The Cottonwood Field Office RMP Wilderness Characteristics Review provides a full rationale for this determination, including: proximity to private residences and land; existence of roads and trails; past harvesting and mining activities; and distance between BLM public land and U.S. Forest Service designated wilderness and inventoried roadless areas.

The BLM does not manage designated “roadless areas.” The BLM used roadless as a criterion during the wilderness inventory process in accordance with the FLPMA. However, the BLM carries out no roadless area management outside of designated WSAs. Consequently, the BLM does not use the term, roadless area, as a land use classification or as a specific designation as used by the U.S. Forest Service.

While the BLM is not required to conduct roadless area inventories for purposes of determining wilderness suitability during the RMP process, the BLM does have an obligation to inventory for lands with wilderness characteristics (roadlessness is one of many such characteristics). The BLM complied with this duty in developing the Cottonwood PRMP/FEIS.

Coordination with Other Agencies and Consistency with Other Policies

Issue Number: PP-ID-COTTONWOOD-08-0003-37

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

In March 2005, the Chief of the Forest Service issued a decision concluding that continued grazing of domestic sheep on the Payette National Forest in occupied bighorn sheep habitat threatened the viability of the bighorn sheep across the Payette National Forest [CITE].

First, the PRMP/FEIS fails to recognize the Chief's decision even though the Partridge Creek and Marshall Mountain allotments adjoin PNF allotments are in occupied bighorn sheep habitat.

Issue Number: PP-ID-COTTONWOOD-08-0003-54

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The IDF&G comment in A 3-31 recommends separation of domestic sheep from bighorn sheep occupied habitat. The Nez Perce Tribe has also adopted a policy not to graze domestic sheep close to bighorn sheep. The BLM may not have a policy to maintain a specific buffer between domestic sheep and bighorn sheep anymore on federal lands, but that

does not prevent the Cottonwood Area from adopting their own buffer to remain consistent with the recommendations of the Nez Perce Tribe and the Idaho Department of Fish and Game to maintain separation between domestic sheep and bighorn sheep populations. '

Issue Number: PP-ID-COTTONWOOD-08-0003-68

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

The PRMP/FEIS Violates FLPMA By Not Considering Tribal Bighorn Sheep Policy.

In addition to directing the BLM to assemble information and data that is responsive to changing resource conditions, the FLMPA also requires the BLM, in developing resource management plans, to consider tribal land management policies. Section 202(c)(9) provides in relevant part that the BLM coordinate with tribal governments in ensuring that policies of approved tribal land resource management programs are considered.

Issue Number: PP-ID-COTTONWOOD-08-0003-70

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

In its December 13, 2006 comments to the BLM, the Tribe indicated BLM allotments adjoining Forest Service allotments need to be managed in similar manner to the Forest Service allotments to protect bighorn sheep. Attachment A at 10. In January 2008, five months before the BLM published the PRMP/FEIS, the Tribe passed a series of administrative actions regarding tribal policy direction for bighorn sheep management within the ceded territory . . .

1 January 22, 2008 Nez Perce Tribal Executive Committee (NPTEC) Administrative Actions as follows:

9 Adopt a recovery goal for bighorn sheep of healthy, self sustaining numbers, well distributed across historic habitats in Hells Canyon and the Salmon River to ensure long term conservation and support treaty harvest across age and sex classes.

10 Establish a tribal standard of no contact between bighorn sheep and domestic sheep and encourage the federal land managers to adopt standard that would prohibit domestic sheep grazing within or adjacent to occupied bighorn sheep habitat.

11 Establish Tribal standard of using buffers to create space between occupied bighorn sheep habitat and domestic sheep grazing and encourage federal land managers to do the same.

12 Adopt a Tribal standard of promoting bighorn sheep restoration and expansion across historic habitats within Hells Canyon and the Salmon River.

13. Adopt Tribal standard and encourage federal land managers to do likewise that domestic sheep grazing is managed to maximize suitable bighorn sheep habitat.

14 Establish a Tribal standard of and encourage the federal land managers to also adopt an Adaptive Management Standard under which management of domestic sheep grazing must be reviewed at regular intervals and modified to ensure separation is maintained and risk of contact is reduced or eliminated, and allow for bighorn sheep expansion while changing domestic sheep management.

Collectively, these administrative actions provide a tribal policy framework for promoting healthy, harvestable population recovery goals for bighorn sheep, and encourages federal land managers to adopt these policies in accordance with the United States'

treaty and trust responsibilities to the Nez Perce Tribe.

Issue Number: PP-ID-COTTONWOOD-08-0003-77

Organization: Nez Perce Tribal Executive Committee

Protester: Samuel Penney

Issue Excerpt Text:

(6) failed to consider existing tribal policies regarding bighorn sheep population goals and objectives within and adjacent to the planning area.

Issue Number: PP-ID-COTTONWOOD-08-0004-41

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

III. The BLM's management of bighorn sheep is inconsistent with and will substantially interfere with the management by the Payette National Forest, the NezPerce Tribe and the Idaho Department of Fish and Game.

FLPMA requires that the BLM coordinate land use planning with the plans and policies of other state and federal agencies, and Indian tribes. 43 U.S.C. § 1712(c)(9).

Issue Number: PP-ID-COTTONWOOD-08-0004-42

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

Similarly, NEPA, as explained by the Council on Environmental Quality, also directs agencies to consider potential conflicts with the objectives of other plans, policies or controls, which requires an assessment of possibilities for resolving conflicts and a thorough consideration of how not resolving the conflict could "impair the effectiveness of land use control mechanisms for the area." 40 C.F.R. § 1502.16(c); Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 23a. The Payette National Forest has closed allotments to domestic sheep grazing based on its recognition of the risks to bighorn sheep in the area and the unreliability of other methods to sufficiently prevent these risks. The Nez Perce Tribe made similar recommendations to the Forest Service and the BLM, and has also emphasized the importance of the bighorn sheep in the Cottonwood Field Office as a cultural resource. The Idaho Department of Fish and Game is also charged with maintaining a viable population of bighorn sheep.

Summary

The BLM has failed to coordinate with Tribes and other agencies as required by the FLPMA. In addition, the PRMP/FEIS does not consider potential conflicts with the objectives of other land use plans, policies, or controls as required by the NEPA. Lastly, the PRMP/FEIS does not consider the potential impairments that may result from not resolving those conflicts.

Response

Section 202(c)(9) of the FLPMA requires the BLM, to the extent consistent with applicable Federal laws, to coordinate its planning and management actions with similar planning and management actions of other Federal, State, and local agencies and Tribal governments. The BLM's planning regulations elaborate on this statutory mandate by providing coordination requirements. One of these requirements is to invite Tribes and other Federal, State, and local governments to participate as cooperating agencies. 43 CFR § 1610.3-1(b). With regard to consistency, RMPs "shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments, and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." 43 CFR § 1610.3-2(a).

Recognizing its obligations to coordinate with the Nez Perce Tribe, the Cottonwood field manager and staff met with Tribal staff and members of the Tribal Council a number of times during the planning process (Meeting Notes August 3, 2004; December 10, 2004; January 11, 2005; July 19, 2005; January 17, 2006; March 22, 2007; August 17, 2008; September 2, 2008). In an effort to involve the Tribe in its analysis and decision making process, the BLM also invited the Tribe to become a formal cooperating agency for the development of the RMP/EIS (Cottonwood Field Office Letter dated September 24, 2004). Cooperating agency status, formally agreed to in a memorandum of understanding, would have allowed the Tribe to play a direct role in the preparation of the plan and in the environmental effects analysis. The Tribe did not accept this invitation, but chose to continue participation indirectly through comments and discussions.

As noted herein, the issues regarding the adequacy of the range of domestic sheep grazing alternatives and the analysis of impacts from domestic sheep grazing are remanded to the Cottonwood Field Office and the Idaho State Director so that additional analysis can be performed through a Supplemental EIS. As part of the Supplemental EIS process, the BLM will coordinate, as appropriate and necessary, with other Federal agencies, state and local governments, and Tribes.

Areas of Critical Environmental Concern

Issue Number: PP-ID-COTTONWOOD-08-0001-11

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

BLM failed to adopt two critical areas-Craig Mountain and Partridge Creek-as ACECs. FLPMA requires BLM to establish ACECs yet the proposed action reduces the amount of ACECs from present (see PEIS page 2-6). Partridge Creek is unique old growth ponderosa pine habitat. It also contains possible bighorn sheep habitat.

Craig Mountain is an existing ACEC. It would be eliminated under the proposed action. It is crucial wildlife habitat and contains some of the only remaining mountain quail populations in Idaho (the Craig mountain populations are mainly the result of reintroductions).

Summary

The PRMP/FEIS fails to adopt Craig Mountain and Partridge Creek as ACECs as required by the FLPMA.

Response

The FLPMA requires the BLM to “give priority to the designation and protection of areas of critical environmental concern.” 43 USC § 1712(c)(3). The Preferred Alternative reflects the BLM’s proposals for designation and management of ACECs. BLM Manual § 1613.23(A). There is no requirement to carry forward all of the potential ACECs into the Preferred Alternative. The BLM’s policy does require that all potential ACECs be carried forward as recommended for designation into at least one alternative in the DRMP/DEIS. BLM Manual § 1613.22(B). In the Cottonwood PRMP/FEIS, Alternative C carries forward all potential ACECs for designation, including Craig Mountain and Partridge/Elkhorn (PRMP/FEIS at 2-7). Further, existing ACECs are subject to reconsideration when RMPs are revised. BLM Manual § 1613.21(A)(1). The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the Preferred Alternative. Rationale for all ACEC decisions will be provided in the ROD and supported by analysis in the EIS.

The relevant and important values for Craig Mountain were scenic, cultural, federally listed fish, bald eagle, Spalding’s catchfly, Idaho BLM Sensitive wildlife and plants, and a National Historic Trail. Special management attention is not required to protect this area because these values are adequately protected by other management actions in the PRMP/FEIS (Action 3 at 2-28; Action 2 at 2-50; Action 4 at 2-51; Action 7 at 2-53; Actions 1 & 2 at 2-59; Actions 1 to 6 at 2-63 to -65; Action 1 at 2-67; Actions 1 to 6 at 2-77; Actions 4 to 7 at 2-108, -109; Actions 6 & 7 at 2-141; and Appendices C, F, V, and W).

For Partridge Creek/Elk Horn, old growth, natural processes, and Idaho BLM sensitive wildlife were the relevant and important values. The PRMP/FEIS identifies other protective measures for these values in the objectives and actions listed above for Craig Mountain, and specifically in Objective 2, Actions 1 and 2 (PRMP/FEIS at 2-23 and 2-24). Action 1 directs the Cottonwood Field Office to “[p]erform site-specific analysis on forest vegetation project proposals.” Action 2 states, “When applying treatments in the vicinity of stands which are large tree and/or old growth stands, these treatments will contribute toward the restoration of the structure and composition of old growth stands according to the pre fire-suppression old growth characteristics.”

Management of Bighorn Sheep

Issue Number: PP-ID-COTTONWOOD-08-0002-10

Organization: Foundation for North American Wild Sheep

Protester: George Houston

Issue Excerpt Text:

The management plan does not provide for the use of buffers between domestic sheep and Bighorn sheep even though buffers were part of the BLM policy until recently. We believe that separation of the species is key to eliminating contact between them and buffers are the mechanism to maintain separation.

Issue Number: PP-ID-COTTONWOOD-08-0004-13

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

Allowing domestic sheep grazing in an area where there is the potential for physical contact with bighorn sheep negates the objective of maintaining a viable population of bighorn sheep. The two species are incompatible, and the RMP needs to be forthright in discussing it will ensure that bighorns and domestic sheep do not come into contact with one another. Included in this, the BLM must reconcile the incompatibility of these two species.

Issue Number: PP-ID-COTTONWOOD-08-0004-27

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq., requires the

BLM to manage the public lands under the principles of multiple use and sustained yield. While FLPMA includes both range and wildlife habitat in the definition of multiple use, the statute also clarifies that the BLM's management must seek to achieve the "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment." 43 U.S.C. § 1702(c). RMPs are explicitly required to comply with these guidelines, as well. 43 U.S.C. § 1712(a). In the context of bighorn sheep habitat, as discussed above and concluded by the federal court, without specific action to separate bighorn sheep from domestic livestock, there is likely to be "permanent impairment" of the genetic diversity of bighorns and of this native population, in particular.

Issue Number: PP-ID-COTTONWOOD-08-0004-47

Organization: The Wilderness Society

Protester: Brad Brooks

Issue Excerpt Text:

Further, the information presented by the public is consistent with the agency's Instruction Memorandum 98-140 (Revised Guidelines for Management of Domestic Sheep and Goats in Native Wild Sheep Habitats -attached and incorporated by reference as Exhibit 5to this protest), which acknowledges the "devastating consequences to the wild sheep" from interaction with domestic sheep and "the consensus among both wild and domestic sheep specialists that the most effective tool for minimizing disease problems is to keep them physically separated." Nonetheless, the agency has refused to close allotments and has not provided a scientifically-acceptable basis for its conclusions.

Summary

Management of bighorn sheep, as proposed in the PRMP/FEIS, is inconsistent with BLM policy and accepted science and risks permanent impairment of the genetic diversity of bighorn sheep and of this native population.

Response

The referenced Instruction Memorandum (98-140) is no longer in effect. The Instruction Memorandum had an expiration date of September 30, 1999. The expiration was extended by Instruction Memorandum 2000-030 to September 30, 2001. This latter Instruction Memorandum further stated that the extended memorandum "will not be extended further."

As noted herein, the protest issues regarding the range of alternatives for sheep and goat grazing and the analysis of the impacts from sheep and goat grazing are remanded to the Cottonwood Field Office and the Idaho State Director so that additional analysis can be performed on the impacts of domestic sheep and goat grazing in bighorn sheep habitat through a Supplemental EIS. The Supplemental EIS process will be conducted pursuant to all applicable legal requirements, including consideration of a range of reasonable alternatives and providing the required opportunities for interagency coordination and consistency and public involvement. Upon completion and approval, a separate ROD will supersede direction provided in the 1981 Chief Joseph Management Framework Plan and 1982 North Idaho Range Management Program Summary and ROD. Until then, management of the four allotments will continue under the existing guidance.

Forestry

Issue Number: PP-ID-COTTONWOOD-08-0001-18

Organization: Friends of the Clearwater

Protester: Gary Macfarlane

Issue Excerpt Text:

The RMP/FEIS does not identify old growth standards and stands, rather they are listed as desired future conditions. In any case, the desired future condition of 10 percent old growth is far below what occurred naturally here. Research by Lesica (1996), suggests that old growth occupied 20-50% of many pre-settlement forest ecosystems in the Northern Rockies (Lesica, P. 1995. Using fire history models to estimate proportions of old-growth forest in northwest Montana, USA. *Biological Conservation* 77: 33-39).

Summary

The PRMP/FEIS is inconsistent with BLM policy because it does not identify old growth standards and stands.

Response

The PRMP does not specifically include a “process for identifying old growth forest stands.” However, the PRMP does include a hierarchical approach comprised of goals, objectives, and actions. At the highest level, the PRMP includes the goal: “Manage forests to maintain or improve forest health, composition, structure, diversity consistent with site potential, and Historical Range of Variability.” (PRMP/FEIS at 2-21). Within this goal, the PRMP includes the objective to “[m]anage for forest health and/or habitat diversity in [Desired Future Condition] blocks ... of 1,000 or more forested acres.” (PRMP/FEIS at 2-21). This goal includes the management action to “[d]efine old growth according to best science and local knowledge.” (PRMP/FEIS at 2-22). To attain the goal and objective, the BLM will identify the actual stand conditions with site-specific analysis at the implementation stage. The technique to define old growth is referenced in Appendix D, page D-2, as footnotes to Table D-2:

Characteristics of Old-Growth Forests in the Intermountain Region (Hamilton 1993) and *Old-Growth Forest Types of the Northern Region* (Green et al. 1992, errata corrected 2005)

The different descriptions of structure and composition characteristic of the forest type are to be applied to different areas administered by the Field Office due to the ecological variation encountered in Regions 1 (Nez Perce and Clearwater National Forests) and 4 (e.g., Payette

National Forest) of the Forest Service. Lands South of the Salmon River below the confluence of the Salmon and Little Salmon rivers would follow Hamilton (1993). Others areas would use the descriptions of Greene et al. (1992). The two references noted above will be updated as relevant science improves.

The PRMP/FEIS contains an implicit definition of old growth and a process for identifying old growth stands. Because the PRMP/FEIS failed to make the identification process clear, this definition and process will be more explicitly stated and incorporated into the ROD.