



***Bureau of Land Management  
Director's Protest Resolution  
Report***

**Idaho Greater Sage-Grouse  
Proposed Resource  
Management Plan  
Amendment and Final  
Environmental Impact  
Statement (PRMPA/FEIS)**

March 15, 2019

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## Acronyms

ACEC	area of critical environmental concern
AMS	analysis of the management situation
BLM	Department of the Interior, Bureau of Land Management
CEQ	The Council on Environmental Quality
CFR	Code of Federal Regulations
COT	Conservation Objectives Team
DOI	Department of the Interior
EIS	environmental impact statement
ESA	Endangered Species Act
FLPMA	Federal Land Policy and Management Act
Forest Service	United States Forest Service
GHMA	general habitat management area
IDFG	Idaho Department of Fish and Game
IM	Instruction Memorandum
MD	management decision
MMPRDA	Materials and Minerals Policy, Research and Development Act of 1980
NEPA	National Environmental Policy Act
OFR	open file report
OHMA	other habitat management area
PHMA	priority habitat management area
RMP	Resource Management Plan
RNA	research natural areas
SFA	sagebrush focal areas
SO	Secretarial Order
SSS	special status species
USC	United States Code
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
UUD	unnecessary or undue degradation
WAFWA	Western Association of Fish and Wildlife Agencies

## Protesting Party Index

Protester	Organization	Determination
Carrie Mann	Friends of the Earth	Dismissed – Comments Only
Greta Anderson, <sup>1</sup> Nancy Hilding, Michael Saul Mark Salvo, Karimah Schoenhut, Rebecca Fischer, Steve Holmer,	Western Watersheds Project, <sup>1</sup> Prairie Hills Audubon Society, Center for Biological Diversity, Defenders of Wildlife, Sierra Club Environmental Law Program, WildEarth Guardians, American Bird Observatory,	Denied – Issues and Comments
Katie Fite	Wildlands Defense	Denied – Issues and Comments
Laura Skaer	American Exploration & Mining Association	Denied – Issues and Comments
Michael Wetzel	N/A	Dismissed – No Standing
Nada Culver, <sup>2</sup> Brian Rutledge, Jayson O'Neill, Mary Greene, Robert McEnaney	The Wilderness Society, <sup>2</sup> National Audubon Society, Western Values Project, National Wildlife Federation, Natural Resources Defense Council	Denied – Issues and Comments
Paul Turcke	Blue Ribbon Coalition	Denied – Issues and Comments
William Myers	P4 Productions LLC	Denied – Issues and Comments

<sup>1</sup> This letter was cosigned by multiple parties. In this report, it is referenced as Greta Anderson, Western Watersheds Project

<sup>2</sup> This letter was cosigned by multiple parties. In this report, it is referenced as Nada Culver, The Wilderness Society

## Endangered Species Act Consultation

### The Wilderness Society

#### Nada Culver

**Issue Excerpt Text:** The changes made in the Proposed Amendments will also affect plants and wildlife species, including those that are listed as threatened or endangered under the ESA. Since these are new risks of harm, related to the new purpose and need, circumstances and policies that underlie these Proposed Amendments, BLM cannot rely on findings from the 2015 ESA consultations. The ESA requires that BLM again undertake consultation with FWS under the ESA before amending the 2015 Sage-grouse Plans.

**Summary:** BLM has improperly relied on findings from the 2015 Endangered Species Act (ESA) consultations and must conduct new consultations, because the changes in the Proposed Amendments will create new risks of harm to threatened and endangered plants and wildlife species.

**Response:** According to Section 7 of the ESA, 16 US Code (USC) 1536, the BLM must engage in consultation with the United States Fish and Wildlife Service (USFWS) for actions that may affect endangered species.

In 2015, the BLM Idaho engaged in informal consultation with USFWS and determined that there would not be any effects on listed species from the actions proposed in 2015. In 2018, the BLM Idaho again engaged in informal consultation with USFWS regarding the Proposed RMP Amendment/Final EIS. The informal consultation found that there would not be any effects on listed species from the actions proposed in the Proposed RMP Amendment/Final EIS. Therefore, the BLM has fulfilled its obligations

under Section 7 of the ESA and the BLM does not need to take further ESA compliance before amending the 2015 Greater Sage-Grouse Approved RMP Amendment/Record of Decision.

Because the BLM has confirmed through informal consultation with the USFWS in 2018 that the agency has fulfilled its obligations under Section 7 of the ESA, the BLM denies this protest.

## **FLPMA—ACECs/RNAs**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** As WWP et al. (2018) stated in their comments and protests of the 2015 ARMPAs and their Complaint challenging the adequacy of those ARMPAs, BLM has failed to carry out its FLPMA-mandated obligation to prioritize the designation and protection of areas of critical environmental concern (ACECs) by failing to designate sage-grouse habitat as an ACEC. WWP et al. 2018 at 66-67. As defined in the PRMP, Biologically Significant Units (BSUs) contain "relevant and important" habitat for sage-grouse. Consequently, they meet the criteria for designation as ACECs. 43 C.F.R. 1610.7-2. Nevertheless, BLM never even considered designating sage-grouse ACECs in the process of producing the PRMP, let alone prioritizing such designation. This violated NEPA and FLPMA.

**Summary:** BLM has failed to prioritize the designation and protection of Areas of Critical Environmental Concern (ACEC) by failing to consider or prioritize designating Greater Sage-Grouse habitat as an ACEC.

**Response:** As provided by 43 Code of Federal Regulations (CFR) 1610.7-2, areas having potential for ACEC designation and protection management shall be identified and considered throughout the resource management planning process. Therefore, BLM's policies require it to consider and carry forward all potential ACECs as recommended for designation in at least one alternative in the Draft Proposed RMP Amendment/Final EIS (BLM Manual Section 1613.22.B). There is no requirement to carry forward potential ACECs into the Proposed RMP Amendment/Final EIS.

Since the BLM properly considered and analyzed the designation of ACECs in 2015, as required by law, and since BLM has no new information to suggest it is necessary to reconsider those prior decisions, the BLM has determined the issue of ACECs to fall outside the scope of this planning effort that is intended to better align federal management with state management plans.

Because the BLM properly considered ACECs in the 2015 plan and there is no new information to suggest that it is necessary to reconsider those decisions and because the BLM has determined the issue of ACECs falls outside the scope of this effort, the BLM denies this protest.

### **WildLands Defense**

#### **Katie Fite**

See also NEPA—Range of Alternatives

**Issue Excerpt Text:** We Protest that BLM again failed to consider ACEC protections necessary protect sage-grouse from irreparable harm.

**Summary:** The BLM has violated FLPMA by failing to prioritize the designation and protection of ACECs by not designating Greater Sage-Grouse habitat as an ACEC. The BLM violated NEPA by not considering ACECs in the process of producing the Proposed RMP Amendment/Final EIS.

**Response:** As provided by 43 CFR 1610.7-2, areas having potential for ACEC designation and protection management shall be identified and considered throughout the resource management

planning process. Therefore, BLM’s policies require it to consider and carry forward all potential ACECs as recommended for designation in at least one alternative in the draft RMP Amendment (BLM Manual Section 1613.22.B). There is no requirement to carry forward potential ACECs into the Proposed RMP Amendment.

The BLM has great 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 Proposed RMP Amendment. As described, the BLM Manual 1613.33.E provides direction for when the BLM may choose not to designate potential ACECs like it did in this case.

The BLM properly considered and analyzed the designation of ACECs in 2015. No new information suggests it is necessary for the BLM to reconsider those decisions, and as a consequence, the BLM has determined the issue of ACECs fall outside the scope of this effort to better align federal management with state management plans.

Because the BLM properly considered ACECs in the 2015 plan and there is no new information to suggest that it is necessary to reconsider those decisions and because the BLM has determined the issue of ACECs falls outside the scope of this effort, the BLM denies this protest.

## **FLPMA—General**

### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** Although FLPMA Section 202(c)(9) gives State and local governments a specific statutory role in the federal land use planning process, it does not authorize BLM to defer to State or local plans if they conflict with Federal law and the purpose of FLPMA. With respect to the proposed mitigation strategy, BLM has unlawfully deferred to the State of Idaho and appears to have capitulated to the States' demands for consistency rather than seeking to resolve the conflicts between the States' plans and federal law.

**Summary:** BLM has unlawfully deferred to the State of Idaho’s local land use plans rather than resolving conflicts between state plans and federal law.

**Response:** Section 202(c)(9) of FLPMA 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 [those] consistent with federal law and the purposes of this act.” However, BLM land use plans may not be consistent with state, local, and tribal plans when it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other federal laws and regulations governing the administration of public lands (43 CFR 1610.3-2(a)).

40 CFR 1506.2(d) requires that EISs, “discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

Under decision MD-MR-3, BLM describes consultation with the State of Idaho and the Idaho Governor’s Office as part of coordination with the Technical and Policy Team. This government to government consultation with the State of Idaho, like other consultation with state, local, and tribal governments, all help fulfill BLM’s obligation to coordinate its planning efforts (43 CFR 1610.3-1). Nowhere in the plan is there a decision that delegates or otherwise cedes federal decision-making authority to the State of Idaho.

In accordance with federal law, regulations and policies, the BLM has given consideration to state, local and tribal plans that are germane to and consistent with the development of the Idaho Proposed RMP Amendment/Final EIS. The BLM worked closely with state, local, and tribal governments during preparation of the Idaho Proposed RMP Amendment/Final EIS. Chapter 5 of the Draft RMP Amendment/EIS and the Proposed RMP Amendment/Final EIS describe the coordination that has occurred throughout the development of the planning process. A list of the local, state, and tribal plans that the BLM considered can be found in Chapter 1, Section 1.4.

The agency will discuss why remaining inconsistencies, if any, between the Idaho Proposed RMP Amendment/Final EIS 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).

For the reasons stated above, the BLM satisfied the consistency requirements under FLPMA in preparation of the Idaho Proposed RMP Amendment/Final EIS in properly coordinating its planning efforts with state, local and tribal government plans, including State of Idaho’s management plans, as appropriate given federal law and regulations; the BLM denies this protest.

### **WildLands Defense**

#### **Katie Fite**

**Issue Excerpt Text:** BLM has failed to complete long-promised Travel Plans, and they are nowhere on the horizon (several Bruneau-area plans, Owyhee area, Salmon BLM plan, others have not even undergone any modern day Travel Planning at all).

**Summary:** BLM has failed to complete travel plans for certain areas within the state planning area.

**Response:** Section 202(a) of FLPMA requires the Secretary of the Interior, with public involvement, to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” Section 202(c) of FLPMA provides that the Secretary, in developing and revising land use plans, shall: (1) use and observe the principles of multiple use and sustained yield; (2) use an interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; (3) give priority to the designation and protection of ACECs; (4) use the inventory of public lands, resources and other values, to the extent it is available; (5) consider both present and potential uses of public lands; (6) consider the relative scarcity of values involved; (7) weigh long-term benefits against short term benefits; (8) provide for compliance with applicable pollution control laws; and (9) coordinate with other federal departments and agencies, Indian tribes, and states and local governments.

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.”

According to 43 CFR 1610.4-1, “At the outset of the planning process, the public, other federal agencies, state and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The Field Manager, in collaboration with any cooperating agencies, will analyze those suggestions and other available data, such as records of resource conditions, trends, needs, and problems, and select topics and determine the issues to be addressed during the planning process. Issues may be modified during the planning process to incorporate new information.

The identification of issues shall also comply with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).”

The purpose and need of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS is to enhancing cooperation and coordination with the State of Idaho, align with DOI and BLM policy directives that have been issued since 2015, and incorporate appropriate management flexibility and adaptation to better align with Idaho’s conservation plan. That said, BLM considered potentially including Travel and Transportation Management decisions and found that they were outside of the scope of the Final EIS’s purpose and need. As a consequence, BLM determined that they did not constitute reasonable alternatives to the proposed action deserving of further consideration. Furthermore, outside of Off-Highway Vehicle Management Areas, BLM is not required to make, and typically does not make, implementation-level decisions about travel and transportation management planning (e.g. specific route restrictions and closures) as part of land use planning efforts.

The BLM does not need to complete travel and transportation management planning for this current land use planning effort, based on the reasons stated above. The BLM denies this protest.

### ***Western Watersheds Project***

#### ***Greta Anderson***

**Issue Excerpt Text:** Finally the plan abdicates too much federal authority to the states. There are multiple problems with the proposed plan's approach that gives increased and undue authority to the state. First, there is no legal or regulatory basis for giving state governments' interests more consideration than other interested parties. While it's true that FLPMA, by its own terms, does not diminish states' authority to manage wildlife, neither does FLPMA instruct BLM to defer to the states. States' views are but one of many perspectives that the agency should consider, just as extractive uses should not be given preferential treatment under the "multiple use" mandate. Second, the states have already shown that they are poor managers of sage-grouse, as demonstrated by the discussion of current regulatory mechanisms in FWVS's 2010 "warranted but precluded" decision. Finally, BLM has an affirmative obligation to manage federal lands for wildlife conservation, even if states have different views. According to Nie et al.'s (2017) review of federal wildlife management authority, federal agencies are often too deferential to states, and the management scheme described in the FEIS would exacerbate this shortcoming. We protest on this basis.

### ***WildLands Defense***

#### ***Katie Fite***

**Issue Excerpt Text:** We Protest the further significant devolution of federal powers to state and local interests in the plan amendments.

**Summary:** BLM has improperly or impermissibly abdicated too much authority to the states in the development of the Proposed Amendments.

**Response:** The BLM is obligated to coordinate its planning process with state and local governments, provide for meaningful involvement in the development of the BLM’s resource management plans, and, if possible, develop resource management plans in collaboration with cooperating agencies. 43 CFR 1610.3-1(a)(3), (4), and (5). Further, a BLM land use planning decision must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with the purposes, policies, and programs of federal law and regulations. 43 CFR 1610.3-2(a).

The BLM has not abdicated authority to the State of Idaho or local governments. As specified in the planning effort’s purpose and need, FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and wildlife. As the sovereign entities with the lead role in

managing game species, including Greater Sage-Grouse, states play a critical role in conserving the Greater Sage-Grouse and its habitat. Under decision MD-MR-3, BLM describes consultation with the State of Idaho and the Idaho Governor's Office as part of coordination with the Technical and Policy Team, helping fulfill BLM's obligation to coordinate with state governments (43 CFR 1610.3-1). Nowhere in the plan is there a decision that could be construed as delegating or otherwise ceding federal decision-making authority to the State of Idaho.

Since the BLM has not improperly or impermissibly delegated its authority to a state and since the BLM has great discretion to determine how to best carry out its FLPMA mandates for planning, including by incorporating consistent state plans, the BLM denies this protest.

***The Wilderness Society***

***Nada Culver***

**Issue Excerpt Text:** Quite to the contrary, the "process" described by BLM in its response to public comments clearly does not satisfy-nor can it serve as a lawful surrogate for- the AMS required by 43 C.F.R. § 1610.4-4 and the BLM's Land Use Planning Handbook, H-1601-1.

***The Wilderness Society***

***Nada Culver***

**Issue Excerpt Text:** Finally, the public has no means by which to measure the success of the 2015 Sage-grouse Plans without a new AMS.

***The Wilderness Society***

***Nada Culver***

**Issue Excerpt Text:** The BLM violated key provisions of its planning regulations, including the requirement to prepare an analysis of the management situation, or AMS. This analysis, required by 43 C.F.R. § 1610.4-4, is an essential first step in the land use planning process.

***The Wilderness Society***

***Nada Culver***

**Issue Excerpt Text:** The BLM's assertion in its response to comments that "the current management situation is similar in condition to that assessed in 2015" is manifestly false. Since 2015, the 2015 Sage-grouse Plans were in place such that density and disturbance stipulations, compensatory mitigation, net conservation gain, required design features (RFDs), special focal areas (SFAs) etc. were in effect. It is impossible for the public to understand the effects of those management efforts because the management situation has not been evaluated since their implementation.

**Summary:** The BLM's reliance on the 2015 AMS does not adequately dispense with its obligations under 43 CFR 1610.4-4 and the BLM's Land Use Planning Handbook, H-1601-1.

**Response:** Pursuant to 43 CFR 1610.4-4, "The Field Manager, in collaboration with any cooperating agencies, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the types of resources for development or protection."

At the beginning of Chapter 3 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the RMP explains that the BLM analyzed the management situation in full compliance with its regulations and policies. The BLM evaluated inventory and other data and information, partnering with the US Geological Survey (USGS) and coordinating extensively with states, to help provide a basis for formulating reasonable alternatives. The BLM described this process in its Report to the Secretary in

response to SO 3353 (Aug. 4, 2017). Among other things, the Report describes how the BLM coordinated “with each State to gather information related to the [Secretary’s] Order, including state-specific issues and potential options for actions with respect to the 2015 Greater Sage-Grouse Plans and IMs to identify opportunities to promote consistency with State plans.” (Report to the Secretary at 3.) Implementing that direction, the Idaho Greater Sage-Grouse RMPA/Final EIS incorporates, as appropriate, information in a USGS report that identified and annotated Greater Sage-Grouse science published since January 2015 (Carter et al. 2018), a report that synthesized and outlined the potential management implications of this new science (Hanser et al. 2018), and other best available science.

The BLM denies this protest.

### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** NTT Report; 2. COT Report; 3. SO 3330; 2 The NTT Report has been thoroughly scrutinized. In particular, reviewers and the public have questioned its scientific validity, its use of professional judgment in place of science, and its simplistic management consideration that, inter alia, fail to account for variations in the location, timing, and use of habitat by the greater sage-grouse. E.g., Megan Maxwell, BLM's NTT Report: Is it the Best Available Science or a Tool to Support a Pre-determined Outcome? (May 20, 2013); Rob Roy Ramey II, Ph.D, Review of Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team (NTT) Dated December 21, 2011 (Sept. 19, 2013). True and accurate copies of these articles are attached hereto as Exhibits 3 and 4, respectively. AEMA Protest of the Idaho Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 11 of 29 4. 2014 FWS Memo; 5. 2014 FWS Mitigation Framework; 6. 2014 USGS Lek Buffer Study; 7. "Range-Wide Network of Priority Areas for Greater Sage-Grouse? A Design for Conserving Connected Disturbances or Isolating Individual Zoos?" by Michele R. Crist, Steven T. Knick, & Steven E. Hanser (USGS, Open-File Report 2015-1158) ("Crist Study"); and 8. Monograph. These documents suffer from significant defects, including being outcome-orientated and reverse-engineered. Most importantly, these documents rely on landscape-scale land use planning principles that Congress rejected when it used the Congressional Review Act (5 U.S.C. §801 et seq. "CRA") to rescind BLM's Planning 2.0 Rule. In overturning the Planning 2.0 Rule, Congress reaffirmed its intent that DOI must develop resource management plans like the GSG LUPs in compliance with the land management principles in FLPMA, which does not authorize the landscape-scale planning measures embraced in the Planning 2.0 Rule and the 2015 GSG LUPAs. Because the CRA prohibits agencies from reinstating a similar rule through rulemaking, BLM must not replicate the now defunct policies in its Planning 2.0 Rule in the 2018 PRMPA. Congress has made it clear that FLPMA does not authorize landscape-scale management of public lands. Therefore, the 2018 PRMPA must not be based on landscape-scale management philosophies.

**Summary:** BLM has unlawfully based the Proposed RMP Amendment/Final EIS on landscape-scale management philosophies, which FLPMA does not authorize.

**Response:** The BLM must develop its public land use plans, here the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, under Section 202 of FLPMA (43 USC 1712) and the BLM’s land use planning regulations. FLPMA does not require a particular one size fits all planning effort, and the BLM may rely upon its professional judgement in determining what scale is appropriate for the circumstances at hand to develop a land use plan.

The BLM developed the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS under Sthe BLM’s land use planning regulations. FLPMA does not identify the scale at which the BLM must develop its land use plans. The BLM has the discretion to determine the planning scale appropriate to the

management situation. Congressional disapproval of Planning 2.0 – which made several changes to BLM’s planning regulations -- does not affect BLM’s authority to determine the proper scale of a planning effort.

As described above, the BLM based its plan on existing planning authorities and did not violate NEPA, FLPMA, or other statutes, regulations, policies, or directives concerning land use planning and environmental quality. The BLM denies this protest.

## **FLPMA—Locatable Minerals**

### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** BLM's proposed mitigation strategy violates the directive under § 1732(b) that clearly establishes that FLPMA does not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act. FLPMA expressly provides that none of its land use planning provisions, among others "shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress" (43 U.S.C. § 1732(b), emphasis added).

**Summary:** The mitigation strategy in the Proposed RMPA/Final EIS violates FLPMA by amending the Mining Law of 1872 or impairing the rights of locators or claims under that Act.

**Response:** The BLM implements land use planning decisions differently with respect to authorizing uses related to or authorized under the Mining Law of 1872. The difference stems from the language of Section 302(b) of FLPMA, which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning (see 43 USC 732(b)). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining law (43 CFR 3809.420(a)(3)).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law through land use planning decisions. Accordingly, the BLM will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law and BLM’s regulations.

Because all proposed actions considered in the Proposed Plan will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR 3809, this protest is denied.

### ***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** The Proposed Plan directly conflict with FLPMA's and MMPDA's requirement that the Secretary must manage public lands to respond to the Nation's needs for minerals. Specifically, the restrictions that are contrary to FLPMA's directive include, but are not limited to: Sections 2.2 and 2.4; Objective SSS 4; MD SSS 10; MD SSS 20; MD SSS 27; MD SSS 29; MD SSS 30; MD SSS 32; MD SSS 35; MD SSS 44; MD GRSG-RT-ST-069-Standard; MD MT 3; MD LR 2; MD LR 8; MD LR 14; MD TTM 4; Appendix B; Appendix C; Appendix E; Appendix F; and Appendix K.

**Summary:** The Proposed RMP Amendment/Final EIS violates FLPMA and the Mining and Minerals Policy Act of 1970 by conflicting with the requirement that the Secretary must manage public lands to respond to the nation’s need for minerals.

**Response:** Notwithstanding that the “requirements” of FLPMA and MMRDA identified by the protestor are in fact policy directives and thus are not mandatory obligations for the BLM to follow in its planning decisions, the purpose and need of the Proposed Plan identifies a need to align with Department of the Interior (DOI) and BLM policy directives issued since 2015. These directives support the policies identified in the MMRDA and FLPMA regarding the nation’s need for a domestic source of natural resources. The BLM squarely addresses this consideration on page 1-2 in the Proposed RMPA, where it referenced SO 3349, American Energy Independence. This SO ordered agencies in the DOI to reexamine practices “to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families.” Accordingly, the Proposed Plan clearly aligns those policies found in FLPMA and MMRDA.

For the reasons stated above, this protest is denied.

### ***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** Throughout the PRMPA/FEIS, BLM refers to “Valid Existing Rights” (hereinafter “VERs”) with the implication that the impact of certain restrictions, guidelines, and objectives would be mitigated because the VER would be protected. For locatable minerals the term “valid existing right,” is a specific term that is reserved for those claims after a “discovery” of a valuable mineral deposit has been made. Therefore, the proposal to honor VERs does not clearly encompass and protect the Mining Law Section 22 rights associated with claims prior to a discovery of a valuable mineral deposit. In the context of the PRMPA, VERs must clearly mean all mining claims in good standing - with or without a discovery.

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the Mining Law of 1872.

**Response:** The BLM implements land use planning decisions differently with respect to authorizing uses related to or authorized under the Mining Law of 1872. This difference in how land use planning applies to authorizations under the Mining Law is in no way tied to “valid existing rights” in a particular mining claim or site, but rather stems from the language of section 302(b) of FLPMA which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning. See 43 U.S.C. § 1732(b). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws. 43 CFR 3809.420(a)(3).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law through land use planning decisions. Accordingly, the BLM will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law and BLM’s regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a “valid existing right,” including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the proposed RMP Amendment/Final EIS, or any other time.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

### ***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** Despite, and in direct conflict with this legal obligation, BLM nevertheless has retained severe restrictions and prohibitions from the 2015 Amendments such seasonal and year-round

travel and transportation restrictions, lek buffers, disturbance caps, seasonal timing restrictions, among others that, if applied to locatable mineral activities, would violate rights granted by the Mining Law (30 U.S.C. § 22) and FLPMA, including rights of ingress and egress.

### **American Exploration & Mining Association**

#### **Laura Skaer**

*See also Other Laws*

Prohibiting or restricting mineral exploration and development on lands co-located with sage-grouse habitat, by way of limits placed upon surface disturbance (Specific part of the Proposed Plan being protested: Section 2.4, MD SSS 27; MD SSS 29; MD SSS 30; Appendix C; Appendix E), travel and transportation management (roads) (Specific part of the 2015 Amendments being protested: Section 2.2.10: MD GRSG-RT-ST-069-Standard), application of lek buffers (Specific part of the 2015 Amendments being protested: Section 2.2: Objective SSS 4; MD SSS 10; MD SSS 35 Appendix B), seasonal timing restrictions (Specific part of the 2015 Plan being protested: 2015 Appendix C, MD LR 8, MD TTM 4), and mitigation (Specific part of the Proposed Plan being protested: MD MT 3, MD SSS 30, MD LR 14, MD SSS 44, MD SSS 29, Appendix F) is contrary to the rights granted by § 22 of the Mining Law, and therefore the Proposed Plan is in violation of the Mining Law and FLPMA, and cannot be implemented.

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the Mining Law of 1872.

**Response:** The BLM implements land use planning decisions differently with respect to uses related to or authorized under the Mining Law of 1872. The difference stems from the language of section 302(b) of FLPMA which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning. See 43 USC 1732(b). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws. 43 CFR 3809.420(a)(3).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law and BLM's regulations.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

## **FLPMA—Multiple Use**

### **American Exploration & Mining Association**

#### **Laura Skaer**

**Issue Excerpt Text:** As described in detail in our 2015 protest at VI.B. the 2015 Amendments fail to comply with FLPMA multiple-use and sustained yield requirements. The PRMPA/FEIS perpetuates many of the numerous and severe flaws in the 2015 Amendments, as BLM has failed to eliminate the problematic issues contained in the 2015 Amendments. As such, the PRMPA/FEIS unlawfully prefers conservation of sage-grouse habitat to the exclusion of other uses including grazing, agriculture and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and Mining and Minerals Policy Act) rather than

subordinate all other uses of public land and make sage-grouse conservation the dominant use of public lands. BLM must reconcile inconsistencies found in the 2015 Amendments and retained in the Proposed Plan and provide additional public review for substantial changes and/or prepare a Supplemental EIS and a Revised Proposed RMPA in order to comply with FLPMA Section 202(c)(1).

**Summary:** BLM’s Proposed Amendments fail to comply with FLPMA’s multiple-use and sustained yield requirements.

**Response:** 43 USC 1732 states that the BLM shall manage the public lands and sustained yield, in accordance with the land use plans developed by it under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

The term “multiple use” means 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; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. 43 USC 1702.

All alternatives considered in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, as described in Section 2.3 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, provide an appropriate balance of uses on the public lands. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

Table 2-1 of the Final EIS shows that grazing and locatable minerals development are open in all habitat types. FLPMA Section 103(c) allows for multiple use to include using some lands for less than all the uses.

The BLM has not violated FLPMA and has provided a clear justification and rationale for how it intends to balancing multiple resource uses on public lands. Therefore, the BLM denies this protest.

### **WildLands Defense**

#### **Katie Fite**

**Issue Excerpt Text:** We Protest BLM conducting a highly flawed and biased EIS process, where rapacious ranching, energy and mining interests seeking to enormously profit off public lands in occupied sage-grouse habitat have been elevated far above the sage-grouse’s habitat needs and the public interest. BLM has abandoned FLPMA protections for public land as BLM has failed to balance competing uses. Instead BLM gives overwhelming weight to livestock industry commodity interests, and extractive mining, and oil and gas development in weakening conservation measures, elevating industry-friendly local control and weakening mitigation measures (killing the requirement for a net conservation gain). This violates FLPMA.

**Summary:** BLM’s EIS process has failed to balance competing uses on the public lands in violation of FLPMA.

**Response:** 43 USC 1732 states that the BLM shall manage the public lands and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

The term “multiple use” means 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; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. 43 USC 1702.

The alternatives considered in the Proposed RMP Amendment/Final EIS, as described in Section 2.3 of the Draft RMPA/EIS (which is incorporated into the Proposed RMPA/Final EIS) 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. The BLM has placed restrictions on multiple uses within Greater Sage-Grouse habitat effectively shifting the balance in those areas away from other uses and towards Greater Sage-Grouse conservation. Even with the adjustments made in the Proposed RMP Amendment/Final EIS, the balance of management is shifted toward Greater Sage-Grouse conservation outcomes compared to areas outside of Greater Sage-Grouse habitat. Activities occurring in Greater Sage-Grouse habitat receive more scrutiny compared to non-Greater Sage-Grouse habitats (except where listed species are involved).

Since the BLM has not violated FLPMA’s multiple use mandate and has used its judgement in determining the best way to meet present and future land use needs, including by recognizing an appropriate balance of uses on the public lands, the BLM denies this protest.

## **FLPMA—Special Status Species**

### **P4 Production, L.L.C.**

#### **William Myers**

**Issue Excerpt Text:** The Proposed Plan Amendment injects confusion by referencing BLM’s Manual 6840 Special Status Species Management. The Proposed Plan Amendment states that it will result in BLM’s management of sage-grouse habitat in a manner that is consistent with the Manual’s goals and objectives to minimize or eliminate threats affecting sage-grouse or improve their condition across the planning area. BLM staff may misread this description of MD MT 3 as suggesting that actions within the planning area that are exempt from the Proposed Plan Amendment because, for instance, they are within KLP As, are then subject to BLM Manual 6840. P4 Production protests this lack of clarity and requests that the Record of Decision and the final Plan Amendment clarify that, within the planning area and all Habitat Management Areas, the Plan Amendment will fully control BLM’s management of sage-

grouse habitat and not BLM Manual 6840. BLM should also clarify that neither the Plan Amendment nor Manual 6840 applies other than on BLM-administered lands.

**Summary:** The BLM fails to provide a clear explanation of the relationship between the Proposed RMP Amendment/Final EIS and Manual 6840. The BLM needs to specify where and how the Proposed RMP Amendment/Final EIS and Manual 6840 apply to Greater Sage-Grouse habitat in and outside of Greater Sage-Grouse habitat, and in and outside of lands administered by the BLM.

**Response:** FLPMA and the supporting regulations ensure the proper management of public lands through land use planning. Public lands has a specific definition under Section 103(e) FLPMA: “The term “public lands” means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.”

Manual 6840 serves “to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands.” The manual further states, “When BLM engages in the planning process, it shall address Bureau sensitive species and their habitats in land use plans and associated NEPA documents.” Finally, it states, “In compliance with existing laws, including the BLM multiple use mission as specified in the FLPMA, the BLM shall designate Bureau sensitive species and implement measures to conserve these species and their habitats, including ESA proposed critical habitat, to promote their conservation and reduce the likelihood and need for such species to be listed pursuant to the ESA.”

BLM’s 6840 manual applies to all BLM-administered land and is not Greater Sage-Grouse specific. The Sage-grouse Plan Amendment represents BLM’s effort to comply with Manual 6840 as it applies to Greater Sage-Grouse habitat. Decisions made under the Idaho Proposed RMP Amendment/Final EIS only apply to BLM administered lands (Section 1.4). Both the Manual (Section .01, Purpose, Section 0.2, Administration of Bureau Sensitive Species, and Section 0.3, General Cooperation for BLM Special Status Species) and the Proposed RMP Amendment/Final EIS are clear about the geographic scope over which they apply, the species over which they preside, and the relationship between land use planning and BLM policy.

The BLM’s land use plan (LUP) decisions are limited to only BLM-administered lands, but as described above the agency looks to state law and state management plans to inform its efforts and to help it work with state and local partners to implement consistent land use management across boundaries and jurisdictions to protect the Greater Sage-Grouse, a state managed species. This allows the BLM to follow state protections developed specifically in that state for the Greater Sage-Grouse on BLM-administered lands. Further, the BLM recognizes that it is in the state’s best interest to protect these species through their established fish and wildlife agencies, which are charged with the responsibility and mandate to implement state statutes for effective, appropriate, and efficient conservation and management of fish and resident wildlife species. It is BLM’s perspective that it is not beneficial to have conflicting federal and state directives in the management of state managed species and that consistent management regimes is best across the largest possible range for the best protection of the Greater Sage-Grouse. Therefore, the BLM denies this protest since BLM has clarified how it is managing Greater Sage-Grouse on its lands in a manner guided by state authority and developed by the state wildlife agencies entrusted to safeguard its survival.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** The "wobble room" built into the implementation of the 2018 PRMPA means that none of the conservation measures to reduce or eliminate threats to Bureau sensitive species are assured, and, related BLM policy means that subsequent site-specific implementation plans may never even be developed. As noted above, the proposed revisions cut into sage-grouse habitat conservation from the bottom and the top, reducing protections in the most vital areas and gutting protections for the areas that could serve as buffers, connectivity corridors, or recovery space. All of the mechanisms in the plan were designed to ratchet back protections for the species (including the expanded waivers, exceptions, modifications and authority for issuance) rather than increase protections (by removing the "net 3 The new proposed plan inserts an "Excerpt" from the 2015 plans that is not accurate. Table 2.2 of the 2015 Idaho ARMPA listed a greater than or equal to 7 inches perennial grass and forb height in nesting/early brood rearing habitat. 2015 ARMPA at 2-5. In the 2018 proposed plan, what BLM claims is an excerpt inaccurately claims "adequate nesting cover." Idaho PRMP/FEIS at 2-9. This inaccuracy skews the analysis of what BLM's new plan actually does, which is to abandon quantitative objectives in favor of squishy and subjective definitions. 20 conservation gain" requirement, for example). By removing and providing for the removal of protections in this amendment, the agency is weakening the adequacy of these amendments as regulatory mechanisms that reduce the need for Endangered Species Act protection.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** The Idaho PRMP/FEIS claims that it is in conformance with BLM Manual 6840. Idaho PRMP/FEIS at ES-3. The Idaho PRMP/FEIS claims that the seasonal habitat descriptions in Table 2.2 of the 2015 plans provided measurable values that reflect ecological potential and help inform the 2 [https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual6840.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual6840.pdf) 19 special status species habitat land health standard. Idaho PRMP/FEIS at 2-3. But the proposed plan specifically changes the habitat objectives from a measurable value (= 7 inches) and replaces it with "adequate nesting cover." Idaho PRMP/FEIS at App-2-11;3 WWVP et al. 2018 at 82. (The documents then references new studies that were not provided in the DEIS, and others which are being misconstrued in this context, see above.) Thus, the proposed plan specifically removes one of the measure that 2015 plan proposed to ensure grazing allotments were meeting special status species land health standards. It has been replaced with something subjective.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** The height of a sage-grouse doesn't change based on ecological site condition, and by forsaking any measure of grass height, the BLM is relying on shrub cover to provide total concealment for the nests without accounting for forays beyond the nest that leave sage-grouse exposed to predators.

**Summary:** (1) BLM's failure to provide adequate protections for Greater Sage-Grouse (by reducing protections in vital areas and failing to provide buffers, connectivity corridors, or recovery space) is contrary to the agency's special status species policy as well as the finding that listing under the ESA is not warranted. (2) BLM's failure to provide adequate protections for Greater Sage-Grouse by removing specificity from habitat objectives is contrary to the agency's Special Status Species policy as well as the finding that listing under the ESA was not warranted.

**Response:** Section 302(a) of FLPMA directs the Secretary to "manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act" except as otherwise provided by law. 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. These vital resources include fish and wildlife species. Section 302(b) of FLPMA also requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent UUD of the lands.

According to Manual 6840, “The objectives of the BLM special status species policy are: (A) To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species, and (B) To initiate 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.” 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 BLM does not have the authority to determine if listing under the Endangered Species Act is warranted for a particular species, or if the management outlined in the Proposed RMP Amendment/Final EIS avoids the need for listing of Bureau sensitive species under ESA.

All alternatives described in Section 2.3 of the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands. Each alternative allows some of level of all uses in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Proposed RMP Amendment/Final EIS’s overall strategy for conserving Greater Sage-Grouse habitat, including its avoidance and minimization measures and its approach to compensatory mitigation, is consistent with the requirements and policy objectives of BLM Manual 6840.

The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. Past, present, and reasonably foreseeable impacts of planning decisions are evaluated in Sections 4.3, 4.4, and 4.6 of the Final EIS. The Proposed RMP Amendment/Final EIS does not authorize any use of the public lands, much less any that would result in UUD. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

As explained above, the BLM has fully complied with FLPMA planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The BLM denies this protest.

## **FLPMA—Unnecessary or Undue Degradation (UUD)**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The prioritization based on triggers being tripped (MD LG 15) is also problematic because the proposed RMP states, “MD SSS 15: The data from the lek counts and the key habitat update will be reviewed annually to determine if any hard or soft triggers have been met.” Idaho PRMP/FEIS at 2-14. But the triggers aren’t tripped until a period of 3-years has passed, and thus the decline of the population could be well underway by the time any management evaluation of livestock impacts is conducted. WWP et al. 2018 at 70. The PRMP/FEIS fails to acknowledge that NEPA processing of grazing permits can take multiple years as well, thus building in a time lag in addressing livestock grazing’s

impacts in sensitive habitats (like riparian areas) and perhaps allowing unnecessary degradation to occur in the interim. By prioritizing the protection of the most important habitats rather than responding to the decline of sage-grouse, the agency was engaging a proactive strategy instead of a reactive one. That shift -- and the time delays built into the new proposed process -- was not directly addressed in the FEIS and its impacts to sage-grouse are uncertain. The PRMP/FEIS also decreased the evaluation of hard and soft trigger data from twice annually (2015 MD SSS 15) to once annually (Idaho PRMP/FEIS at App-2-16). This means that the agency is literally half as likely to see a problem and be able to correct it or to be proactive about habitat impacts like fire; this change was not analyzed in the FEIS. This change weakens the already insufficient management of sage-grouse in Idaho. As noted in the Dear Reader letter at 1, two hard triggers were tripped in 2018, suggesting that the 2015 management has already been insufficient to protect the Mountain Valley PHMA and the Desert IHMA. Furthermore, by changing the mitigating or protective measures from "Required Design Features," (i.e. required ) and shifting these techniques to "Best Management Practices," ("a suite of techniques that guide or may be applied... but not considered a planning decision unless the plans specify that they are mandatory," Idaho PRMP/FEIS at Glossary-1), the proposed plans make a number of the provisions that apply to GHMA optional. For example, the Idaho PRMP/FEIS at App-2-9 retains GHMA as open to mineral development, but rather than enforce buffers and RDFs, the plan downgrades the protective measures to BMPs. WWP et al. 2018 at 53, 59. This complicates the analysis in ways that do not guarantee any protection will be applied in GHMA, ever.

**Summary:** The BLM's plan for the Greater Sage-Grouse fails to provide adequate protections for Greater Sage-Grouse since it has shifted away from proactive, hard-trigger management with mitigation objectives to a reactive, downgraded management system with soft triggers and best management practices that impermissibly introduce time delays in discovering problems (trend declines) with Greater Sage-Grouse management. Further, other areas are problematic to the Greater Sage-Grouse management as well like the static grazing renewals.

**Response:** 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".

All alternatives described in Section 2.3 of the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands. Each alternative allows some of level of all uses in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Proposed RMP Amendment/Final EIS's overall strategy for conserving Greater Sage-Grouse habitat, including its avoidance and minimization measures and its approach to compensatory mitigation, is consistent with the requirements and policy objectives of BLM Manual 6840.

The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. Past, present, and reasonably foreseeable impacts of planning decisions are evaluated in Sections 4.3, 4.4, and 4.6 of the Final EIS. The Proposed RMP Amendment/Final EIS does not authorize any use of the public lands, much less any that would result in UUD. Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public land.

In addition, adoption of the Proposed Final RMP Amendment/Final EIS would not violate FLPMA's requirement to prevent UUD because adoption of the Proposed RMP Amendment/Final EIS would not

authorize any public land uses, much less any that would result in UUD. The assertion under the protest about triggers states that triggers are assessed on a three-year is incorrect. Triggers are assessed annually, and averaged over a three-year window, and they do not force a hard delay, as the protest indicates. In addition, statements about new time delays is incorrect. No new time delays were included in the Proposed RMP Amendment/Final EIS.

Statements about the change in soft-trigger monitoring is evaluated in the Proposed RMP Amendment/Final EIS at page 4-16. Under the 2015 ARMPA habitat data was analyzed once a year and population data was analyzed once a year. The data was available as slightly different times resulting in two analyses of trigger data each year; however, the data is more effectively analyzed together after both the habitat and population data has been collected.

As explained above, the BLM has fully complied with FLPMA planning regulations (43 CFR 1610) and mandate to prevent UUD, the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The BLM denies this protest.

### ***WildLands Defense***

#### ***Katie Fite***

**Issue Excerpt Text:** We Protest the lack of any sound rationale or credible ecological science that supports the changes. Sage-grouse continue to decline (Garton et al. 2015, Crist et al. 2015 and 2016). The 2015 plans must be strengthened, not gutted if the bird is to be saved. The failure to analyze the irreparable harm and undue degradation the plan changes will cause violates FLPMA and NEPA.

**Summary:** BLM's failure to provide rationale or credible science that supports the changes in planning results in irreparable harm and undue degradation violates FLPMA and NEPA.

**Response:** Section 302(a) of FLPMA directs the Secretary to "manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act" except as otherwise provided by law. 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. These vital resources include fish and wildlife species.

All alternatives described in Section 2.3 of the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands. Each alternative allows some of level of all uses in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Proposed RMP Amendment/Final EIS's overall strategy for conserving Greater Sage-Grouse habitat, including its avoidance and minimization measures and its approach to compensatory mitigation, is consistent with the requirements and policy objectives of BLM Manual 6840.

The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Idaho Greater Sage-Grouse Proposed RMP Amendment, 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. Past, present, and reasonably foreseeable impacts of planning decisions are evaluated in Sections 4.3, 4.4, and 4.6 of the Final EIS. The Proposed RMP Amendment does not authorize any use of the public lands, much less any that would result in UUD. Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public land.

BLM staff, including scientists and NEPA specialists, reviewed both known and new studies, and each BLM State Office reviewed each study specific to how it informed its planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analyses in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Additional discussion of scientific rationale underlying BLM's analysis is described under protest responses under best available science.

In addition, adoption of the Proposed Final RMP Amendment/Final EIS would not violate FLPMA's requirement to prevent UUD because adoption of the Proposed Final RMP Amendment/Final EIS would not authorize any public land uses, much less that would result in UUD.

As explained above, the BLM has fully complied with FLPMA planning regulations (43 CFR 1610) and mandate to prevent UUD, the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The BLM also provided sufficient rationale for underlying decisions in the plan and interpretations of best available science. The BLM denies this protest.

### ***WildLands Defense***

#### ***Katie Fite***

**Issue Excerpt Text:** The amendments cannot be shown to prevent unnecessary and undue degradation of natural resources like wildlife habitat, sensitive species (ferruginous hawk, northern goshawk, pygmy rabbit, migratory birds, etc.), native juniper forests, lands with wilderness characteristics, wilderness study areas, ACECs, and quiet recreation. In allowing for widespread "treatment" manipulation of both sage and forested communities, BLM fails to comply with FLPMA's mandate. In failing to effectively control and provide certainty of standards, time periods of livestock use, necessary measurable vegetation levels, etc. BLM violates FLPMA's mandate.

### ***Western Watersheds Project***

#### ***Greta Anderson***

**Issue Excerpt Text:** It also fails to provide the protections needed under the agency's Sensitive Species Policy. The failure to provide adequate protections results in unnecessary and undue degradation [sic] of sage-grouse habitats.

### ***Western Watersheds Project***

#### ***Greta Anderson***

**Issue Excerpt Text:** The COT report went on to make conservation recommendations, an effective baseline of management actions that must be undertaken to conserve and protect the sage-grouse throughout its range, i.e. to prevent undue and unnecessary degradation to the species' habitat. The current plans do not comport with the COT report recommendations - which were themselves weakened due to political influence - but are the very minimum that is necessary for the agency to do. Since these proposed actions are inconsistent with that standard, the plans fail to comply with FLPMA's overarching mandate.

**Summary:** BLM's Proposed RMP Amendment/Final EIS does not comport with the Conservation Objectives Team (COT) report and removes minimum necessary protections for Greater Sage-Grouse. BLM's failure to provide adequate protections for Greater Sage-Grouse leks, results in an unnecessary or undue degradation of Greater Sage-Grouse habitat and, in turn, is contrary to the agency's special status species policy. In addition, in allowing for widespread "treatment" manipulation of both sage and forested communities and in failing to effectively control and provide certainty of standards, time

periods of livestock use, necessary measurable vegetation levels, etc., BLM fails to comply with FLPMA's mandate to prevent unnecessary or undue degradation.

**Response:** 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.” Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act” except as otherwise provided by law. 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. These vital resources include fish and wildlife species. BLM Manual 6840 describes how the BLM should address Bureau sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of “initiating 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” (6840.02(B)).

The COT report is a suite of suggested conservation objectives based on science. The BLM reviewed the science available, including the COT report to inform its management actions. Management actions that deviate from recommendations in the COT report do not invalidate the BLM’s decision-making authority.

The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Idaho Proposed RMP Amendment/Final EIS, 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 Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. It does not authorize any use of the public lands, much less any that would result in UUD. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

As explained above, the BLM has fully complied with FLPMA planning regulations (43 CFR 1610) and mandate to prevent UUD, the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The BLM denies this protest.

## **NEPA—Best Available Science**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** While the FEIS repeatedly touts the acreage of habitat “restoration” BLM has achieved, there is no scientific evidence that the conifer removal treatments, fuel breaks, non-native grass seedings, broadscale herbicide applications, and other actions BLM considers “restoration” provide any conservation benefit for sage-grouse. WWP et al. 2018 at 25-26. Likewise, while the new PRMPs focus on removing designated sage-grouse habitat, they do not explain when purportedly “restored” habitats will be protected as PHMA.

**Summary:** The acreages presented in the analysis for restored habitat are not substantiated by science as useable or equivalent habitat for the Greater Sage-Grouse. The analysis inaccurately portrays the amount of available habitat.

**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 developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS. The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and Draft EIS. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already.

Thus, the acres portrayed as habitat in the Proposed RMP Amendment/Final EIS have undergone review and analysis per the best information available. To clarify, much of the areas where restoration work is occurring is already managed as designated Greater Sage-Grouse habitat (PHMA, IHMA, or GHMA). Restored habitat that is outside of designated habitat would be evaluated on approximately a 5-year basis and managed as described in MD SSS 6 (pg. 2-3 of the Final EIS).

Accordingly, BLM has relied on the best available information in the development of the Idaho Proposed RMP Amendment/Final EIS such that acres portrayed as available habitat are substantiated by science.

BLM relied on high quality information and the best available data in preparation of the Idaho Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Similarly, the cumulative effects analysis concludes that changes to habitat in Utah would have “negligible to minimal impacts on Greater Sage-Grouse,” *Id.* at 4-14, even though the PRMP eliminates three quarters of a million acres of high quality sage-grouse habitats in Utah. It also concludes that removing disturbance caps and lek buffers required to protect sage-grouse from the effects of fluid mineral development in Idaho will have no effect, even though the NTT Report and other science explicitly recommended those measures. *Id.* at 4-16; WWP et al. 2018 at 4 et seq., and 64-65.

**Summary:** The 2018 Proposed RMP Amendment/Final EIS concludes that the roll-back of 750,000 acres of Greater Sage-Grouse habitat protection is a negligible impact at the scale of evaluated for cumulative effects. This conclusion conflicts with the National Technical Team (NTT) report.

**Response:** 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).

The protester misapprehends the plans. As described in Chapter 2, Table 2-2, both lek buffers and the BSU-scale disturbance cap remains in place. In PHMA, where the vast majority of occupied Greater Sage-Grouse leks are located, the lek buffer sizes were not modified from the 2015 Amendment. This misapprehension thereby fails to provide basis to evaluate the relationship of those decisions against the technical report. The impacts of plan components that change between 2015 and 2018 is included in Chapter 4.

In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS. The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and Draft EIS. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already.

Accordingly, science-based recommendations from the 2015 Plan remain in place, where appropriately supported by the best available information as reviewed by BLM and USGS in their report. In fact, per the information available, lek buffers remain in place and the BSU scale disturbance cap remains in place. In PHMA, where the vast majority of occupied Greater Sage-Grouse leks are located, the lek buffer sizes were not modified from the 2015 Approved RMP Amendment/ROD. Accordingly, BLM has relied on the best available information in the development of the Idaho Proposed RMP Amendment/Final EIS.

BLM has relied on the best available information in the development of the Idaho Proposed RMP Amendment/Final EIS; the BLM denies this protest.

### **Western Watersheds Project Greta Anderson**

**Issue Excerpt Text:** It is important to note that Wallestad and Schladweiler (1974) made no pretense of testing distances at which energy development has impacts on sage-grouse. Instead, they reported only on the distance from the lek where most locations occurred, and their study is silent on how far energy development would need to be sited to prevent major impacts on birds located in this area. Similarly, for IHMA, the 2-mile buffer proposed for energy development is likewise outside the "interpreted range" presented by Manier et al. (2014) and violates their rationale quoted above. BLM's reliance on the 0.6-mile lek buffer for energy development in GHMA and 2-mile buffer in IHMA are therefore arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse.

**Summary:** The BLM has failed to rely on best available science by not accounting for the impacts of energy development on Greater Sage-Grouse when determining lek buffer distances.

**Response:** 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).

The vast majority of occupied leks are protected within PHMA. Buffers selected for IHMA and GHMA were intended to pull activities out of PHMA into IHMA or GHMA. The Proposed RMP Amendment/Final EIS acknowledges that the amount of habitat protected around leks in IHMA and GHMA would be decreased.

In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM’s purpose and need. Many commenters highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report, and may have been missed by commenters in the initial review of the synthesis report and Draft EIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted below by whether they were review by the BLM by being cited in the USGS Report, being references in the bibliography of the USGS Report, or by the BLM considering them during the RMP Amendment development and review of comments. Articles not specifically addressed below were still reviewed during comment response development. The papers reviewed and determinations on their relevance to the analysis are discussed in the public comment report included in an appendix to the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans. Thus, the BLM denies this protest.

## **Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** The "literature minimum" for low structures of 400m (0.12) mile, derived from Manier et al. (2014:14), similarly suffers from a complete absence of factual basis. Manier et al. (2014) cites to Connelly et al. (2004) to establish this "interpreted range," yet a search of Connelly et al. (2004), itself a review article with no original hypothesis testing or findings of its own, contains no buffers or disturbance distances at all corresponding to 400m or 0.12 mile, and therefore the low end of the interpreted range presented in Manier et al. (2014) is without basis. Furthermore, the low end of the "interpreted range" for low structures in Manier et al. (2014) is 2 km (1.2 miles), not 400m (0.12 mi.). According to Manier et al. (2014:14), "Interpreted ranges indicate potential conservation buffer distances based on multiple sources." Manier et al. (2014: 1) explain that it is the "interpreted range," not literature minima and maxima, that are intended to be used for lek buffer distances: Minimum and maximum distances for observed effects found in the scientific literature, as well as a distance range for possible conservation buffers based on interpretation of multiple sources, expert knowledge of the authors regarding affected areas, and the distribution of birds around leks are provided for each of the six categories (table 1). These interpreted values for buffer distances are an attempt to balance the extent of protected areas with multiple land-use requirements using estimates of the distribution of sage-grouse habitat. Manier et al.'s (2014: 9) discussion of low structures also does not support the 0.12 mile buffer distance proposed for GHMA. Manier et al. (2014) do not suggest that literature minima are appropriate for lek buffer distances. BLM's reliance on the spurious and ill-founded "literature minimum" presented for low structures in Manier et al. (2014) is therefore arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse. Similarly, for tall structures, the low end of the "interpreted range" of Manier et al. (2014) for lek buffers is 3.3 km (2 miles), not 0.6 mile (the "literature minimum" in Manier et al. (2014), which BLM proposes as the lek buffer in GHMA. Similarly, for IHMA, the 1.2-mile buffer for tall structures in IHMA, and the 0.6-mile buffer for distribution lines, are likewise outside the "interpreted range" for 6 tall structures and therefore scientifically invalid. BLM's reliance on the spurious and ill-founded "literature minimum" presented for tall structures in Manier et al. (2014), rather than the interpreted range, is therefore arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse. For surface disturbance, the low end of the "interpreted range" of Manier et al. (2014) for lek buffers is 5 km (3.1 miles) to 8 km (5 miles). WWP et al. 2018 at 76. The 2-mile buffers proposed for surface disturbance near leks in both IHMA and GHMA are outside the "interpreted range" for surface disturbance and therefore scientifically invalid. BLM's reliance on the 2-mile buffers, rather than the interpreted range, is arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse. BLM proposes a 0.6-mile buffer for energy development in GHMA. Manier et al. (2014:2), the paper relied upon by BLM to generate buffer distances, themselves explain in detail why the 0.6-mile buffer distance is inappropriate:

## **Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** Manier et al.'s actual "interpreted range" for roads and other linear features is 3.1 to 5 miles, which comports with the best available science for the lek itself (but not the surrounding nesting habitats). WWP et al. 2018 at 75 et seq. The proposed GHMA buffer of 0.12 mile and the IHMA buffer of 0.8 mile are both well below this interpreted range, and therefore inappropriate for adoption as lek buffer distances. BLM's reliance on the spurious and ill-founded "literature minimum" presented for linear features in Manier et al. (2014) for GHMA, and simply made-up buffer distance of 0.8 mile for IHMA, are therefore arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse.

**Summary:** The BLM has failed to rely on the best available science by overlooking the actual interpreted range for lek buffer distances.

**Response:** 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).

Manier et al. 2014 states that the paper does not make specific management recommendations, but instead summarizes information and provides citations. The paper also states that because of the variability in Greater Sage-Grouse populations and habitats that no single distance would be appropriate for all habitats and populations. BLM considered the Manier et al. 2014 paper and used the information to assist in the development and the potential impacts of the proposed buffers.

In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM’s purpose and need. Many commenters highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report, and may have been missed by commenters in the initial review of the synthesis report and Draft EIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. Included in this review was the Manier et al. 2014 reference regarding lek buffering that was cited by the Protestors. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted below by whether they were review by the BLM by being cited in the USGS Report, being references in the bibliography of the USGS Report, or by the BLM considering them during the RMP Amendment development and review of comments. Articles not specifically addressed below were still reviewed during comment response development. The papers reviewed and determinations on their relevance to the analysis are discussed in the public comment report included in an appendix to the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

It is not necessary to incorporate Protestor’s suggested scientific reports and data into the 2018 Proposed RMP Amendment/Final EIS. As stated above, the BLM has already reviewed the referenced article to determine if the information is substantially different than the information considered and cited in the 2018 Proposed RMP Amendment/Final EIS, and it does not provide additional information that would result in effects outside the range of effects already discussed in the 2018 Proposed RMP Amendment/Final EIS.

The BLM relied on high quality information and the best available data in preparation of the 2018 Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The cumulative effects portion of the EIS nearly entirely lacks scientific citations and relies upon statements that are patently false. For example, the grazing portion of the cumulative effects analysis states, without citation, that the landscape is adapted to "withstand grazing disturbance" from cows because it was once grazed by wild bison—a statement that ignores science showing the bison affected the landscape in a completely different way than domestic cattle do. Idaho PRMP/FEIS at 4-12. It also assumes that relying on site-specific analysis conducted for grazing permit renewals would ensure BLM could adjust grazing to improve ecological conditions. *Id.* In reality, permit renewals are commonly done without any NEPA analysis at all because of a rider that modified FLPMA to allow grazing to continue even where no valid NEPA analysis exists. *WWP et al. 2018 at 29.* The analysis assumes that "proper" grazing can reduce the risk of wildfire and manage the spread of invasive grasses—propositions for which no scientific support is cited, and for which little if any scientific support exists. Idaho PRMP/FEIS at 4-16. Incredibly, the analysis claims the PRMP reinstates grazing in an Oregon Research Natural Area where grazing was previously suspended "in order to provide ungrazed controls" a concept that makes no sense at all. *Id. at 4-22.*

**Summary:** The BLM has failed to demonstrate its reliance on best available science by not providing adequate scientific citations. Additionally, the BLM has failed to rely on best available science by overlooking studies that evaluate the impacts of livestock grazing and to consider the fact that permit renewals are extended through a FLPMA rider that authorizes grazing to continue without updating or considering impacts and environmental analysis.

**Response:** 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 developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land

use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM’s purpose and need. Many commenters highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and Draft EIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted below by whether they were review by the BLM by being cited in the USGS Report, being references in the bibliography of the USGS Report, or by the BLM considering them during the RMP Amendment development and review of comments. Articles not specifically addressed below were still reviewed during comment response development. The papers reviewed and determinations on their relevance to the analysis are discussed in the public comment report included in an appendix to the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

Although the BLM uses the rider to extend permits provided by statute, the BLM reserves the ability to close grazing allotments on a temporary basis, in part or in full, as necessary to respond to drought, fire, or other natural events effecting the environmental conditions (43 CFR 4110.3-2).

BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans, and because the BLM reserves the ability to take action to temporarily suspend permitted grazing, where necessary, the BLM denies this protest.

### **WildLands Defense**

#### **Katie Fite**

**Issue Excerpt Text:** The EIS fails to consider recent science relevant to the risks of livestock grazing with large-scale flexibility/chaos in the face of climate change (Beschta et al. 2012, mining activity oil and gas development and possible strategies to mitigate such risks. Recent studies and reports have raised concerns about the full range of environmental impacts that may accompany.

**Summary:** The BLM has failed to rely on the best available science by not accounting for studies evaluating the range of environmental impacts associated with livestock grazing.

**Response:** 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).

Beschta et al. 2012 was considered in 2015, and by extension in 2018. The 2018 Idaho Proposed RMP Amendment/Final EIS do not propose changes to Idaho’s livestock allocations, rendering the premise of that aspect of the protest invalid. In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM’s purpose and need. Many commenters highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and DEIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted below by whether they were review by the BLM by being cited in the USGS Report, being references in the bibliography of the USGS Report, or by the BLM considering them during the RMP Amendment/Final EIS development and review of comments. Articles were reviewed during comment response development and incorporated into comment responses where appropriate.

Accordingly, BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans.

BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans. Thus, the BLM denies this protest.

### ***WildLands Defense***

#### ***Katie Fite***

**Issue Excerpt Text:** We Protest the failure of the BLM to conduct such analysis and consider a reasonable range of alternatives - and in order to develop reasonable alternatives - current ecological data and the status of habitats and populations must be collected.

### ***WildLands Defense***

#### ***Katie Fite***

**Issue Excerpt Text:** We Protest the lack of necessary current baseline data and analysis of current status and ecological conditions of habitats and local and regional populations

### ***WildLands Defense***

#### ***Katie Fite***

*See also NEPA—Supplemental EIS*

**Issue Excerpt Text:** We Protest the lack of scientific citations and sources and lack of adequate data to provide understanding of the scientific basis (if any) for the actions outlined in the Chapter 2 under

and in tables and analyses throughout the EIS. There is often no source attributed to info in tables, and the info in tables is presented in a biased fashion. This violates NEPA. A Supplemental EIS must be prepared

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** WWP et al. (2018) commented that the agency's reliance on the recent studies regarding grass height and nest success was flawed. See WWP et al. 2018 at 40. We provided more information for the agency to consider regarding the need for better analysis and to include Habitat Objectives for forbs, based on the scientific support for the sage-grouse's nutritional need for forbs. Id. And yet, the agency did not address this oversight as it revised its habitat objectives, despite NEPA's instructions to incorporate scientific analysis of impacts. Surely, adopting vague objectives for grass height and other habitat objectives in the place of explicit standards will affect land management and the sage-grouse-BLM cannot shirk its duty to analyze these impacts and disclose them to the public.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** BLM's reliance on the 0.25-mile lek buffer for temporary noise disturbance (including motorized recreational events) in GHMA and IHMA of 0.25 mile are therefore arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and nesting sage-grouse.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** But eliminating the prioritization requirement, or scaling it back, would not be in accord with the best available science. As mentioned above, the COT report recognized the need to provide for prioritization. The sage-grouse scientists in their letter to Secretary Zinke found that the prioritization guidance was an important way of dealing with indirect and cumulative effects. 42 Exhibit I at 3. The BLM's National Technical Team (NTT) Report supports the need for prioritization.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** In order to satisfy compatibility with the best available science, the 3% disturbance threshold must be applied for each square-mile section, thereby limiting development density to levels where some habitat use by sage-grouse will persist, as the NTT report recommended.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The PRMP proposes to use lek buffers in IHMA and GHMA that have no basis in science and are less than what the sage-grouse requires. Id. at 75, Idaho PRMP/FEIS App-B-1. The BLM responded, "Buffers were increased in IHMA and GHMA under the proposed plan to address stakeholder comments." Idaho PRMP/FEIS at App-4-24. The text of the FEIS contradicts this and states, "increased size of some buffers in IHMA." Idaho PRMP/FEIS at I-5. Indeed, the PRMP/FEIS proposed applying lek buffers of 0.8 miles for linear features in IHMA (PRMP/FEIS at App-B-1) instead of the 0.25 miles it proposed in the DRMP/DEIS at 2-16. But this is disingenuous, because BLM's response that "buffers were increased" is only in relation to the draft plan, not the 2015 plan, and not in accordance with science. None of the lek buffers are large enough to protect breeding grouse in prime nesting habitat, which extends 5.3 miles from the lek site. See WWP et al. (2018) at 75.

**Summary:** The BLM has failed to rely on the best available science by:

- Not including current ecological data or the current status of habitats and populations in order to develop a range of reasonable alternatives.
- Not including current ecological baseline data or an analysis of the current status and ecological conditions of habitats and local/regional populations and by not providing adequate scientific citations, sources, or data.
- Not considering habitat objectives for forbs, based upon scientific support for the Greater Sage-Grouse’s nutritional needs for forbs and by BLM’s adoption of vague objectives for grass height and habitat objectives for Greater Sage-Grouse.
- Relying on improper lek buffer distances for temporary noise disturbance in GHMA and IHMA.
- Eliminating prioritization of oil and gas leasing outside of Greater Sage-Grouse habitat, contrary to what the agency previously identified in the 2015 Approved RMP Amendment/ROD
- Overlooking the NTT report’s recommendations for application of disturbance thresholds.
- Failing to come to a valid conclusion based on the science appropriate to determining lek buffer distances in GHMA and IHMA. As a consequence, the lek buffers are not large enough to protect breeding grouse in prime nesting habitat.

**Response:** CEQ regulations, 40 CFR 1502.14, implementing NEPA require that agencies “rigorously explore and objectively identify all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss their reasons for being eliminated.” CEQ’s regulation at 40 CFR 1500.1(b) requires the Agencies to use “high quality information.” Further, 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).

All alternatives described in Section 2.3 of the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands. Each alternative allows some of level of all uses in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Proposed RMP Amendment/Final EIS’s overall strategy for conserving Greater Sage-Grouse habitat, including its avoidance and minimization measures and its approach to compensatory mitigation, is consistent with the requirements and policy objectives of BLM Manual 6840.

The data that is alleged to be lacking is included in Chapters 3 and 4 of the 2018 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Because this information has been considered and analyzed, the protester’s assertion does not provide a basis to develop a supplemental EIS, as might otherwise be required under CEQ NEPA regulations.

5-10 percent forb cover, or greater, is a desired condition in the 2018 Proposed RMP Amendment/Final EIS and is the same as it was in 2015 (2015 ARMPA Table 2-2).

The BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans. To that end, the NTT report planned for allowing some areas of habitat to exceed the 3 percent cap at the square mile scale as long as it didn't exceed the 3 percent cap and the landscape scale. This is essentially what BLM Idaho is proposing with the removal of the blanket project scale cap and the retention of the BSU scale cap.

Lek buffers, described in Appendix B of the 2018 Greater Sage-Grouse Plan Amendment, apply protections to activities that adversely effect Greater Sage-Grouse. The buffer distances detailed in that appendix are based on best available science and designed to provide adequate protection of leks. They are sufficiently robust to protect “prime nesting habitat,” as reasonably interpreted based upon the germane literature and technical summary reports.

In this case, the alleged “loopholes” in the Proposed Final RMP Amendment/Final EIS allow more discretion in the application of lek buffers. Further, these changes intend to provide clarification on the use and flexibility of lek buffers as a tool for analyzing impacts to leks. The BLM’s Proposed Final RMP Amendment/Final EIS balances the risk of uncertainty against the benefits of management flexibility when considering changes to the 2015 plan. Nonetheless, planning criteria identified for this amendment include consideration of how planning decisions may impact future listing determinations for the Greater Sage-Grouse under the ESA, which includes changes to application of lek buffers. Accordingly, the Proposed RMP Amendment/Final EIS has taken a hard look at the direct, indirect, and cumulative impacts that may occur as a result of changes made to the 2015 plans here in the Proposed RMP Amendment/Final EIS.

In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM’s purpose and need. Many commenters highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and Draft EIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted below by whether they were review by the BLM by being cited in the USGS Report, being references in the bibliography of the USGS Report, or by the BLM considering them during the RMP Amendment development and review of comments. Articles were reviewed during comment response development and incorporated in the comment response report, which is included as an appendix to the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

It is not necessary to incorporate Protestor’s interpretation of scientific reports and data into the 2018 Proposed RMP Amendment/Final EIS. As stated above, the BLM has already reviewed the information on which the assertions are based, and the conclusions reached by the protester do not provide additional information that would result in effects outside the range of effects already discussed in the 2018 Proposed RMP Amendment/Final EIS.

Land use planning-level decisions is broad in scope, and that analysis of impacts are therefore commensurately detailed. For this reason, analysis 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 to start drilling), the scope of the analysis was conducted at a regional, programmatic level. Thus, any assumptions that the planning level decisions described in the Proposed RMP Amendment/Final EIS would cause unaccounted-for impacts in certain areas is inaccurate.

Accordingly, BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans.

Since BLM relied upon high quality information to examine changes made between the 2015 and 2018 Plans and since the BLM had a reasonable range of alternatives, the BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** Prioritizing leasing and development outside of both GHMA and PHMA is strongly supported by the best available science, which BLM must base its plans on. For this reason, the 2015 Sagegrouse Plans commit the prioritizing leasing and development outside of sage-grouse habitat. As provided for in the Record of Decision (ROD) and Approved Resource Management Plan Amendments (ARMPA) for the Great Basin Region.

The ROD also identifies prioritizing oil and gas leasing and development outside habitat as a "key management response."

**Summary:** BLM's decision to eliminate prioritization of oil and gas leasing outside of Greater Sage-Grouse habitat is contrary to what the agency previously identified in the 2015 Approved RMP Amendment/ROD as the best available science.

**Response:** 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-I, 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).

At the outset, the issue identified here is not relevant for Idaho, as the prioritization of oil and gas leasing described in the 2015 Approved RMP Amendment/ROD was not limited to Idaho and included Montana, Nevada, Oregon, and Utah; Each approved plan contained management specific to each state; Idaho's approved plan did not include this issue.

In relation to the relevant issues for the Idaho Proposed RMP Amendment/Final EIS this issue was not included, therefore, the BLM denies this protest.

**WildLands Defense****Katie Fite**

**Issue Excerpt Text:** We also Protest that BLM also embraces so-called targeted grazing without ever taking a science-based hard look at its effectiveness - or if in fact actions - such as killing and pinyon-juniper thinning trees and sagebrush, too -and then allowing cheatgrass-causing grazing to take place - may actually make lands MORE fire prone especially in the face of hotter, drier conditions from climate change coupled with vegetation clearing.

**Summary:** The BLM has failed to take a hard look at evaluating the effectiveness of targeted grazing or whether targeted grazing may increase the risk of fire.

**Response:** 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).

The BLM took a hard look at targeted grazing in the 2015 Plans. Therefore, given that the BLM’s report with USGS examined any changed conditions that would impact their planning and analysis, the BLM has already examined these effects, based on the best information available. Given that overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already, no new analysis of targeted grazing was needed.

BLM has relied on high quality information to examine changes made between the 2015 and 2018 Plans. Thus, the BLM denies this protest.

**NEPA—Cumulative Effects****Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** As WWP previously explained on numerous occasions, e.g. , WWP et al. (2018) at 21, 86, an adequate cumulative impacts analysis must consider how the continued shrinking of sage-grouse range is affecting the bird's persistence. It must also consider how the many exceptions written into the plans to allow for threats to sage-grouse to persist will affect sage-grouse populations-vague statements like “[s]ome small, localized populations may be at continued risk due to reasonably foreseeable infrastructure and energy development projects over the next 20 years, when combined with unplanned events such as wildfires, drought, and associated decline in Greater Sage-Grouse habitat quality,” PRMP EIS 4-13, coupled with the assumption that any losses would be offset by “conservation efforts,” do not meaningfully inform the public about cumulative effects. The cumulative effects analysis also refers to Appendix 3, which basically consists of pie charts and lists of acreages open and closed to various industrial activities. Listing management restrictions in different habitat categories state by state does not amount to a discussion of synergistic effects from activities and exceptions in sage-grouse habitat to the amount of habitat available and the health of sage-grouse populations. The discussion in Appendix 3 also assumes that habitat treatments like fuel breaks, juniper removal, weed spraying, and

others "could" provide conservation benefit to sage-grouse, without acknowledging the possibility that the actions might not help sage-grouse and could actually degrade or destroy high-value sage-grouse habitats. Simply writing off potential adverse effects based on unsubstantiated assumptions does not pass muster under NEPA. Moreover, the PRMP does not and cannot analyze the proposed actions in context of the proposed changes to USFS management. The USFS is also revising the land use plan amendments for sage-grouse habitat and the implications of the proposed management in both agencies have a cumulative impact that has not yet been assessed. The failure to take a rangewide look at reasonably foreseeable changes is a violation of NEPA, and also violates the agency's policy on connected 16 actions. See IM 2018-023 ("Connected actions are those proposed Federal actions that are "closely related" and "should be discussed" in the same NEPA document (40 C.F.R. § 1508.25 (a)(1)).")

**Summary:** The BLM fails to include in its cumulative impacts analysis the trends of Greater Sage-Grouse habitat shrinkage which have contributed and will continue to contribute to the context of effects. The BLM also failed to take a rangewide look at cumulative impacts and take into account management decision about Greater Sage-Grouse on USFS lands, as required under NEPA.

**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).

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. However, the comment does not apply to Idaho. Management Zone I does not include Idaho. Additionally, the BLM Idaho is not proposing the removal of on the ground Greater Sage-Grouse habitat just the designation of PHMA from an area that is non habitat.

The BLM adequately analyzed cumulative effects in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS and this comment does not apply to Idaho's Management Zone I. The BLM denies this protest.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** BLM has also failed to account for and analyze the destruction of vital sage grouse habitat due to wildfires. In 2018, 2,034,318 acres of sage grouse habitat on federal land was damaged by fire. Of these 1,057,309 acres were on BLM land.<sup>4</sup> The loss of this habitat will have a significant impact on 4 See e.g. [https://www.nifc.gov/fireandsagegrouse/docs/SG\\_SMA\\_Jurisdictional.pdf](https://www.nifc.gov/fireandsagegrouse/docs/SG_SMA_Jurisdictional.pdf) 19 sage grouse survival, yet BLM simply states that these losses to fire are accounted for in the 2015 FEIS. See e.g., Utah FEIS at 4-44. 2018 was one of the worst wildfire seasons on record and it is clear that wildfires will become an increasing problem in the West. BLM must sufficiently analyze the threat of rapidly increasing fire to sage grouse.

**Summary:** The BLM fails to consider destruction of vital Greater Sage-Grouse habitat resulting from wildfire in its cumulative effects analysis.

**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).

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. 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. The cumulative impacts section (Section 4.4) 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 cumulative effects attributed to wildfire was considered in the EIS in Chapter 4 and Appendix 3 (Cumulative Effects Supporting Information).

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, including those attributable to wildfires. The BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** BLM must analyze the impacts that will result from the elimination of required vital conservation measures incorporated in the 2015 Sage-grouse Plans including: (1) net conservation gain and (2) compensatory mitigation. The 2015 NEPA analyses were conducted on the premise that these measures would be in place. The 2018 Plan Amendments have eliminated or created significant uncertainty regarding these requirements, and as a result the BLM must conduct a revised cumulative impacts analysis that accounts for the impacts that will result from the elimination of these measures across the range.

**Summary:** The BLM violates NEPA by relying on the 2015 Approved RMP Amendment/ROD cumulative impacts analysis, because it fails to account for changes in compensatory mitigation policy, and changes in mitigation requirements, between the 2015 and 2018 plans.

**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).

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. 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. The cumulative impacts section (Section 4.4) 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM's authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

The clarification to BLM's mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM's decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way BLM will include other state requirements as part of a proposed action in BLM's NEPA analysis.

In accordance with the State's goals for managing Greater Sage-Grouse, the Proposed RMP Amendment/Final EIS modifies the net conservation gain standard for compensatory mitigation to clarify that the BLM will pursue a no net loss conservation goal as a broader planning goal and objective. This means that the BLM will continue to require avoidance, minimization, and other onsite mitigation to adequately conserve Greater Sage-Grouse and its habitat, while remaining committed to implementing beneficial habitat management actions to reduce the threats of fire and invasive species. In fiscal year 2018, the BLM funded approximately \$29 million in Greater Sage-Grouse management actions resulting in approximately 500,000 acres of treated Greater Sage-Grouse habitat and expects to invest another \$17 million of habitat management projects in fiscal year 2019.

As shown above, the BLM adequately analyzed cumulative effects in the Idaho Proposed RMP Amendment/Final EIS. The BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Moreover, the so-called "cumulative effects analysis" in the PRMP EIS is woefully inadequate. As WWP et al. (2018) explained, the analysis must meaningfully inform the public about how further weakening the already-inadequate protections in the 2015 ARMPAs will have combined impacts that could harm or otherwise affect sage-grouse. WWP et al. 2018 at 21, 86. Rather than considering and disclosing likely impacts in a meaningful and informative way, the analysis makes vague statements and refers to previous discussions in the 2015 RMP EISs (which did not take a rangewide hard look).

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Without this rangewide hard look, BLM has not considered how its decisions to permit sage-grouse habitats to become degraded, or even destroyed, will contribute to species-level declines.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** BLM cannot take the hard look NEPA requires without considering the impacts of its actions on a rangewide basis. WWP et al. 2018 at 14. Operationally, this requires BLM to prepare a Programmatic EIS looking at how the many exceptions to enforceable protections written into the PRMPs could combine to affect the health of sage-grouse rangewide. Even if BLM does not prepare a

PEIS, however, it still must consider the health of sage-grouse populations on a rangewide basis to achieve the required hard look.

### **Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** WWP has raised these, and other, issues requiring a hard look throughout this process and BLM has nevertheless failed to review the impacts of its actions on a rangewide basis. See WWP et al. 2018.

**Summary:** The BLM failed to take a rangewide “hard look” at cumulative impacts, as required under NEPA. The cumulative impacts analysis relied on in the 2018 Proposed RMP Amendment/Final EIS fails to provide sufficient detail to adequately inform the public on the effects of the proposed regulatory changes and impacts to habitat and contribute to species-level decline.

**Response:** NEPA requires federal agencies to take a “hard look” at the environmental consequences of their proposed actions and to provide a full and fair discussion of the significant aspects of the probable environmental consequences in EISs. 40 CFR 1502.1 & 1502.16. In addition, 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).

As explained in Section 4.4.2 of the Proposed RMP Amendment/Final EIS, the WAFWA management zones are the appropriate unit of evaluating cumulative effects because they define habitat areas which share similar issues, threats, and vegetation communities. WAFWA management zones therefore provide a biologically meaningful unit against which to analyze broader impacts in a context that is analytically clear. Section 4.4 analyzes the effects of the proposed action on a zone-by-zone basis for all effected WAFWA zones.

The BLM has taken a hard look at the direct, indirect effects, possible conflicts between the proposed action and the objectives of the planning efforts, as well as taken a hard look at the environmental effects of alternatives by it complying fully with the requirements of 40 CFR 1502.1, 1502.16 & 1508.7 when it prepared its EIS and a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. 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. The cumulative impacts section (Section 4.4) 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately took a hard look at environmental consequences and appropriately analyzed cumulative effects in the Idaho Proposed RMP Amendment/Final EIS. The BLM denies this protest.

**The Wilderness Society****Nada Culver**

**Issue Excerpt Text:** The BLM has also failed to analyze the reasonably foreseeable cumulative impacts from oil and gas lease sales, which have significantly increased under the current administration. Issuing an oil and gas lease is an irretrievable commitment of resources. See e.g., *New Mexico ex rel. Richardson v. BLM*, 565 F.3d at 718; *Pennaco Energy, Inc. v. United States DOI*, 377 F.3d 1147, 1160 (10th Cir. 2004). Since 2017, BLM has put approximately 1.5 million acres of sage-grouse habitat up for lease, with more than 720,000 acres sold and in excess of 2 million potentially to be leased in February and March 2019. Notably, BLM can project the amount of wells associated with opening areas to leasing and with individual leases, but has failed to do so in connection with these FEISs. BLM must incorporate these details into a compliant cumulative impacts analysis for these plan amendments.

**Summary:** The BLM failed to analyze reasonably foreseeable cumulative impacts from oil and gas sales projected from increased oil and gas leasing since 2017.

**Response:** There are no operating oil or gas wells on designated Greater Sage-Grouse habitat on BLM land in Idaho. Because oil and gas leasing is so rare in Idaho it is not deemed a threat. Threats and challenges are not the same rangewide. However, 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).

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. 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. The cumulative impacts section (Section 4.4) 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Idaho Proposed RMP Amendment/Final EIS. Oil and gas development on BLM lands in the State of Idaho is not a material threat to the species. The BLM denies this protest.

**The Wilderness Society****Nada Culver**

**Issue Excerpt Text:** BLM fails to analyze the impacts of large-scale oil and gas projects that are occurring within all states. These projects will result in drilling and construction of wells and related infrastructure, including new roads and pipelines, all of which will have significant impacts on sage-grouse habitat. Although BLM claims the cumulative effects from these projects were considered in previous NEPA documents, changes to other BLM policies will affect their impacts.

**The Wilderness Society**  
**Nada Culver**

**Issue Excerpt Text:** This conclusion fails to account for a fundamental change in the purpose and need for the 2018 Proposed Amendments that has changed the regulatory landscape from one that prioritizes protection of the sage-grouse to one that prioritizes oil and gas leasing and consistency with state plans. This change underscores the inappropriateness of incorporating the 2015 cumulative impacts analysis.

**Summary:** The BLM violated NEPA because it relies on 2015 Approved RMP Amendment/ROD cumulative impacts analysis and changes in BLM policy since 2015 that affect the impacts of actions analyzed in the cumulative impacts analysis, making it inaccurate. In addition, the change in purpose and need between the 2015 and 2018 RMP Amendments change regulatory circumstances and have environmental effects which are not accounted for in the 2015 Approved RMP Amendment/ROD cumulative impact analysis.

**Response:** There are no operating oil or gas wells on designated Greater Sage-Grouse habitat on BLM land in Idaho. Because oil and gas leasing are so rare in Idaho it is not deemed a threat. Threats and challenges are not the same rangewide. However, 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).

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. 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. The cumulative impacts section (Section 4.4) 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 BLM proposed a purpose which builds upon the goals and objectives of the 2015 Approved RMP Amendment/ROD. The environmental impacts of the Proposed RMP Amendment/Final EIS are adequately analyzed in Section 4.3, 4.4, and 4.6. The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions on a rangewide basis. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives and discloses the impacts of oil and gas development under each of them.

As described above, the BLM adequately analyzed cumulative effects in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

## **NEPA—Impacts Analysis—Greater Sage-Grouse**

**Western Watersheds Project**  
**Greta Anderson**

**Issue Excerpt Text:** but the agency failed to acknowledge or analyze the potential for the current system of exemptions to undermine the rangewide protections the plans promised. Moreover, since

only large-scale disturbances will be reviewed by the state technical team, instead of all disturbances, the subjective application of this process is all but certain.

**Summary:** The uncertainties about discretionary protections (current system of exemptions) under the 2018 RMPA are unaccounted for in the cumulative effects analysis.

**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).

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. 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, in consideration of the degree of certainty of such protection. The cumulative impacts section (Section 4.4) 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 the reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

Exception criteria are defined in Appendix B of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, and as discussed on page 4-13, the requirement that exception criteria be met in order to qualify for waivers, exceptions, or modifications provides a measure of certainty that the resulting waivers, exceptions, or modification will not grant activities resulting in an appreciable increase in habitat loss or degradation.

The BLM adequately analyzed cumulative effects, accounting for uncertainties of discretionary element, in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Therefore, the BLM denies this protest.

## **NEPA—Impacts Analysis—General**

### **BlueRibbon Coalition**

#### **Paul Turcke**

**Issue Excerpt Text:** The RMPA fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions.

**Summary:** The BLM violates NEPA because it fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions.

**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 Idaho Greater Sage-Grouse RMP Amendment.

The Proposed Plan does not contemplate changing decisions from the 2015 Approved Plan; therefore, decisions related to recreation were not brought forward in this EIS. See Chapter 1 of the Proposed RMP/Final EIS for a discussion of issues and resource topics dismissed from detailed consideration.

Consideration of recreation is appropriately dismissed from detailed consideration. This protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** These loopholes essentially render lek buffers optional and discretionary. This undermining of lek buffers renders them meaningless and is arbitrary and capricious and an abuse of discretion, and signals a failure to take the legally required 'hard look' at impacts of low structures on breeding and 8 nesting sage-grouse.

**Summary:** The BLM violates NEPA in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS because it fails to take a “hard look” at the impacts of low structures on Greater Sage-Grouse and its habitat.

**Response:** NEPA directs that when an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency always make clear that such information is lacking, and provide context of its relevance, available information, and alternative approaches of obtaining information to obtain a decision in face of uncertainty (40 CFR 1502.22).

Land use planning-level decision is broad in scope. For this reason, analysis 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 to start drilling), the scope of the analysis was conducted at a regional, programmatic level. Thus, any assumptions that the planning level decisions described in the Proposed RMP Amendment/Final EIS would cause unaccounted-for impacts in certain areas is inaccurate.

In this case, the alleged “loopholes” in the Proposed Final RMP Amendment/Final EIS allow more discretion in the application of lek buffers. Further, these changes intend to provide clarification on the use and flexibility of lek buffers as a tool for analyzing impacts to leks. The BLM’s Proposed Final RMP Amendment/Final EIS balances the risk of uncertainty against the benefits of management flexibility when considering changes to the 2015 plan. Nonetheless, planning criteria identified for this amendment include consideration of how planning decisions may impact future listing determinations for the Greater Sage-Grouse under the ESA, which includes changes to application of lek buffers. Accordingly, the Proposed RMP Amendment/Final EIS has taken a hard look at the direct, indirect, and cumulative impacts that may occur as a result of changes made to the 2015 plan are in the Proposed RMP Amendment/Final EIS.

The BLM has sufficiently taken a hard look at the impacts of low structures to the Greater Sage-Grouse and its habitat in the Oregon Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

## ***NEPA—Impacts Analysis—Oil and Gas***

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** This decision to remove SFAs marks a significant retreat from environmental protections that have been recognized as needed for sage-grouse conservation by the U.S. Fish and Wildlife Service, yet the BLM has failed to conduct any meaningful analysis of this impact. A conclusory statement suggesting the removal of this designation will not result in significant environmental impacts woefully overlooks the protections, beyond withdrawing lands from mineral entry, afforded by the SFAs, and fails to meet BLM's "hard look" obligations under NEPA.

**Summary:** BLM failed to adequately examine the environmental impacts of removing SFAs (and, indirectly, opening such areas to mineral entry).

**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 Proposed RMP Amendment/Final EIS.

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.

Additionally, 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).

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. The cumulative impact analysis considered the relevant effects of the planning effort. SFAs were tied to a mineral material withdrawal that was part of the 2015 Plan Amendments that is no longer part of the 2018 Plan Amendments. The protections that stay in place for PHMA and IHMA will be materially similar to the protections afforded by SFAs under the 2015 plans, as discussed in Sections 4.3, 4.4, and 4.6 of the 2018 Idaho Proposed RMP Amendment/Final EIS.

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The Idaho Proposed RMP Amendment/Final EIS incorporates by reference the analysis in the 2015 Final EIS and the 2016 SFA Withdrawal Draft EIS, which comprehensively analyzed the cumulative impacts associated with these planning decisions under consideration in that process.

As described above, the BLM adequately analyzed cumulative effects in the Idaho Greater Sage-Grouse PRMA/Final EIS. The BLM denies this protest.

## NEPA—Impacts Analysis—Other

### **BlueRibbon Coalition**

#### **Paul Turcke**

**Issue Excerpt Text:** Lek buffering demands a more detailed and insightful analysis than attempted by the RMPA in order to properly restrict recreational access. BRC requests a more detailed analysis, which will evaluate not only different types of use, but site-specific factors.

**Summary:** BLM has failed to properly analyze certain impacts of the Proposed RMP Amendment/Final EIS on recreation management.

**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 Proposed RMP Amendment/Final EIS. 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 a special use permit for recreation), 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 future, site-specific analysis would be done during implementation-level NEPA. The context and effects on recreation are discussed Chapters 2 and 4 of the Proposed Plan Amendment/Final EIS, which rely in part on the 2015 analysis, as summarized in the analysis.

As described, the BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

## NEPA—Mitigation

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** At some point along the way, BLM would then ostensibly find a manner to make these and other state measures enforceable. Of course, to the extent states require or permit payment of funds, it is unclear how BLM will reconcile this with the prohibition on mandating compensatory mitigation on BLM lands or accepting a monetary contribution for implementing compensatory mitigation set out in IM 2019-18. Overall, in fact, it is unclear how if BLM cannot enforce compensatory mitigation under its own authority, it can then enforce compensatory mitigation that states require - and BLM does not provide an explanation.

**Summary:** BLM’s compensatory mitigation tool as outlined in the Proposed RMP Amendment/Final EIS is so uncertain and undefined that it is not enforceable/effective under the standards set out by NEPA and the related case law.

**Response:** IM 2019-18 states that, “Except where the law specifically requires or as described in this IM, the BLM must not require compensatory mitigation from public land users. While the BLM will consider voluntary proposals for compensatory mitigation, and state-mandated compensatory mitigation, the BLM will not accept any monetary payment to mitigate the impacts of a proposed action. In all instances, the BLM must refrain from authorizing any activity that causes unnecessary or undue degradation, pursuant to FLPMA Section 302(b).”

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

The clarification to BLM’s mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM’s decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way BLM will include other state requirements as part of a proposed action in BLM’s NEPA analysis.

In accordance with the State’s goals for managing Greater Sage-Grouse, the Proposed RMP Amendment/Final EIS modifies the net conservation gain standard for compensatory mitigation to clarify that the BLM will pursue a no net loss conservation goal as a broader planning goal and objective. This means that the BLM will continue to require avoidance, minimization, and other onsite mitigation to adequately conserve Greater Sage-Grouse and its habitat, while remaining committed to implementing beneficial habitat management actions to reduce the threats of fire and invasive species. The development activities that would qualify for compensatory mitigation in Idaho are also few in number and small in area. In fiscal year 2018, the BLM funded approximately \$29 million in Greater Sage-Grouse management actions resulting in approximately 500,000 acres of treated Greater Sage-Grouse habitat and expects to invest another \$17 million of habitat management projects in fiscal year 2019.

As described above, the BLM has considered mitigation as required by 40 CFR 1508.20. These mitigation measures will avoid, minimize, rectify, reduce or compensate for the adverse environmental impacts. The BLM denies this protest.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** Based on BLM’s lack of commitment to enforcing compensatory mitigation, the agency cannot rely on the effectiveness of this tool to address harm to habitat, under the standards set out by NEPA and related case law. By statute and regulation, an environmental impact statement must include a discussion of possible mitigation measures to avoid adverse environmental impacts. See 40 C.F.R. §§ 1502.14(f), 1502.16(h); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,

351-52 (1989); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

**Summary:** BLM’s compensatory mitigation tool as outlined in the Proposed RMP Amendment/Final EIS is not effective under the standards set out by NEPA and the related case law.

**Response:** NEPA 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)). 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).

The Proposed RMP Amendment/Final EIS includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-way. The three-tier habitat approach is designed to avoid and minimize effects to Greater Sage-Grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non-habitat, thus effectively mitigating the adverse effect. These types of actions and allowable uses are forms of effective mitigation per 40 CFR 1508.20.

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

As described above, the BLM has considered mitigation as required by 40 CFR 1508.20. These mitigation measures will avoid, minimize, rectify, reduce or compensate for the adverse environmental impacts. The BLM denies this protest.

### ***The Wilderness Society Nada Culver***

**Issue Excerpt Text:** As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover violates FLPMA’s requirement to avoid unnecessary or undue degradation (UUD). Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques. TRCP, 661 F.3d at 76-77; *Colo. Env. Coal*, 165 IBLA at 229.

**Summary:** BLM’s approach to compensatory mitigation violates FLPMA’s requirement to prevent UUD.

**Response:** 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.” Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act” except as otherwise provided by law.

M-37039 has been revoked by M-37046. Moreover, the Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Proposed RMP Amendment/Final EIS, the BLM fully complied with its planning regulations (40 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. It does not authorize any use of the public lands, much less any that would result in UUD.

The Proposed RMP Amendment/Final EIS includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. The three-tier habitat approach is designed to avoid and minimize effects to Greater Sage-Grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non-habitat thus effectively mitigating the adverse effect. These types of actions and allowable uses are forms of mitigation per 40 CFR 1508.20.

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

Since the BLM is not authorizing any use of the lands under the Proposed RMP Amendment/Final EIS, there is no UUD that will occur. The BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** Compensatory mitigation is a necessary part of the mitigation hierarchy. BLM’s abandonment of federally-mandated compensatory mitigation is limiting available tools in a way that undermines the likelihood of successful conservation and also makes it impossible for the agency to rely on the 2015 FEISs to assess the environmental impacts of the 2018 Proposed Amendments.

**Summary:** BLM’s approach to mandatory compensatory mitigation as a tool to prevent habitat degradation would violate NEPA, including by undermining the BLM’s ability to rely on the 2015 Approved RMP Amendment/ROD.

**Response:** NEPA 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)). 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).

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.”

Section 202 of FLPMA vests the Department with land use planning authority and provides that such planning shall “use and observe the principles of multiple use and sustained yield set forth in this and other applicable laws.” Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act” except as otherwise provided by law. Land management based on principles of multiple use and sustained yield involves balancing competing interests in public lands between current and future generations--“interests as diverse as the lands themselves,”--ranging from economic and industrial values, to recreational, aesthetic, and environmental values.

CEQ regulations direct that agencies incorporate material into an environmental impact statement where doing so will cut down on bulk without impeding agency and public review of the action, provided that such incorporation will be cited, and its content briefly described (40 CFR 1502.21). CEQ also directs agencies to incorporate existing NEPA analysis in order to focus subsequent analysis to only new issues (40 CFR 1508.28, 40 CFR 1502.20), provided that actions analyzed are “clearly consistent” between documents.

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

BLM is using incorporation by reference to streamline our analysis consistent with administrative priorities. Incorporation of the 2015 Approved RMP Amendment/ROD by reference is allowable under BLM regulations and is appropriate in this circumstance, because the purpose of this action builds upon the goals and objectives of the 2015 Approved RMP Amendment/ROD.

In addition, by incorporating the 2015 Approved RMP Amendment/ROD by reference, BLM avails itself of a larger range of management options previously analyzed in a broadly distributed EIS. While the purpose of the 2018 planning effort is different than that of the 2015 effort, the alternatives considered in the 2015 Approved RMP Amendment/ROD, which are incorporated by reference, have informed the range of alternatives analyzed in detail in the 2018 Draft EIS; thus, the two plans relate to one another by the 2015 one forming the foundation and most of the analysis for the 2018. Finally, the 2015 cumulative effects analysis has also been updated with quantitative analysis of the cumulative impacts from planning decisions for each management zone to the state-specific Final EIS to address rangewide issues and concerns.

As described above, the BLM has clarified that it will consider compensatory mitigation as a component when offered to comply with a state mitigation plan, program, authority or when offered voluntarily by a proponent. If appropriate, BLM will enforce the conditions. The BLM used appropriate mechanisms in its planning effort to use existing analysis, where appropriate, to evaluate the environmental effects of the Proposed RMP Amendment/Final EIS, and disclosed reliance on this analysis and the relationship of the two plans. The BLM denies this protest.

## NEPA—Public Participation

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** By changing the DRMP/DEIS's "management alignment alternative" to the proposed action based on IM 2018-093, the plans have changed from requiring compensatory mitigation to a strictly voluntary component of compliance. Idaho PRMP/FEIS at 2-3. The proposed plan eliminates the net conservation gain standard and commits to a "no net loss" standard. Ibid. This is a significant difference and changes the current conditions from a floor to a ceiling in terms of protected habitat. We protest this failure of NEPA.

### **Western Watersheds Project**

#### **Greta Anderson**

See also *FLPMA—General, NEPA—Supplemental EIS*

**Issue Excerpt Text:** Contrary to BLM's representation, the changes introduced between the Idaho DEIS and FEIS are highly significant. Major changes since the DEIS include BLM's (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental harm, as well as the previously-undisclosed delegation of lease stipulation exemption and modification determinations to counties.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** The lack of coherence in the Proposed Amendments frustrates the public's ability to understand what BLM intends to propose and to evaluate the likelihood of its effectiveness; further, because it is only just being presented in the FEISs, the public has yet to have an opportunity to provide meaningful comments. Courts have invalidated such "incomprehensible" agency plans and environmental analyses that contain conflicting and confusing information. See, e.g., *California ex rel. Lockyer v. U.S. Forest Service*, 465 F. Supp. 2d 917, 948-50 (N.D.Cal. 2006).

**Summary:** The BLM's Proposed Amendments are not clear enough for the public to understand the intended proposed action and its effectiveness. The BLM has also failed to provide the public an opportunity to comment on changes to the Proposed RMP Amendment/Final EIS between the draft and final document.

**Response:** 40 CFR 1500.2(b) states that "Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses."

Further, NEPA requires agencies to prepare supplemental EISs if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). "Substantial changes" in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects

analyzed in the draft or final EIS (BLM Handbook H-1790-I, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-I, p. 29).

See *NEPA—Supplemental EIS* section for a full discussion of this issue.

Regarding the coherence or lack thereof for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the BLM outlined its intent regarding management actions and the likelihood of effectiveness of these actions in a clear and concise manner in Chapter 1 (Purpose of and Need for Action) of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS as well as throughout the analyses in the Proposed RMP Amendment/Final EIS. Any incoherence or discrepancies in the Proposed RMP Amendment/Final EIS were addressed in Appendix 4: Responses to Substantive Public Comments on the Draft EIS. Consequently, the BLM has met its obligations under 40 CFR 1500.2(b) to produce a concise, clear, and scientifically-supported Proposed RMP Amendment/Final EIS.

As described above, the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS complies with the requirements of 40 CFR 1500.2(b). See *NEPA—Supplemental EIS* section for a full discussion of the supplemental EIS issue. The BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The new MD SSS 44 specifically cuts out the public from the planning process, relying on a team of agency personnel and an authorized official to approve removing acres from protection. There are no criteria for doing so, resulting in a decision that is arbitrary and capricious and in violation of NEPA.

**Summary:** The BLM failed to meet its obligations to involve the public in the planning process.

**Response:** 40 CFR 1506.6(a) states that federal agencies shall “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 43 CFR 1610 requires that the BLM “provide opportunities for meaningful participation and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities.”

In compliance with 40 CFR 1506.6(a) and BLM’s planning regulations and policy, the BLM involved the public to the extent required and necessary in preparing the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Chapter 5 of the Idaho Greater Sage-Grouse/Proposed RMP Amendment/Final EIS outlines the efforts undertaken by the BLM throughout the process of developing the Proposed RMP Amendment/Final EIS to ensure the process remained open and inclusive, to the extent possible. Future implementation actions under the plan will comply with applicable law and policy regarding public involvement. To the extent the protest claims that a *future* decision under MD SSS 44 violates NEPA, that protest is not ripe or properly the subject of a protest to the Proposed RMP Amendment/Final EIS.

The BLM met its obligations to involve the public in the planning process to the extent possible.

## **NEPA—Range of Alternatives**

### **WildLands Defense**

#### **Katie Fite**

See also *FLPMA—ACECs/RNAs*

**Issue Excerpt Text:** We Protest that BLM again failed to consider ACEC protections necessary protect sage-grouse from irreparable harm.

**Summary:** The BLM failed to consider including ACEC protections necessary to protect Greater Sage-Grouse from irreparable harm in its range of alternatives.

**Response:** 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 having been eliminated (40 CFR 1502.14(a)).

The BLM must identify and consider areas having potential for ACEC designation and protection management throughout the resource management planning process (43 CFR 1610.4-1 through 40 CFR 1610.4-9).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives, which are described in Section 2.3. The alternatives analyzed in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS 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. The BLM may choose to adopt one of the alternatives or a combination of the alternatives.

ACEC nomination would not meet the purpose and need of the Proposed Final RMP Amendment/Final EIS and is therefore an unreasonable alternative. Designation of Greater Sage-Grouse habitat as an ACEC would not provide, enable, or otherwise substantially effect management tools which enhance the alignment federal and state management. The 2015 Greater Sage-Grouse Approved RMP Amendment/ROD contemplated the appropriateness of ACEC designation for Greater Sage-Grouse habitat, and led to a decision not to designate, because it would not affect the management tools available. This applies equally to the 2018 plans, which build on 2015 management.

The BLM considered a range of reasonable alternatives in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** we 21 submitted a standalone proposed alternative and identified specific alternatives that should be evaluated, such as completing the supplemental NEPA required to maintain Sagebrush Focal Areas, considering an alternative that would both strengthen protections from oil and gas development while improving consistency with state plans or considering an alternative to maintain net conservation gain in all states. BLM did not evaluate any of these alternatives.

**Summary:** The BLM failed to evaluate alternatives proposed by TWS in violation of NEPA.

**Response:** 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 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).

The BLM must analyze a range of reasonable alternatives, but not every possible alternative to a proposed action: “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.’” BLM NEPA Handbook, H-1790-1, at 50 (citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); see also 40 CFR 1502.14.

The BLM established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, which is described at Section 1.2, to meet its land use planning mandate under FLPMA.

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives, which are described in Section 2.3. The alternatives analyzed in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS 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.

Alternatives that were suggested by the public in scoping and public comment on the draft failed to meet the purpose and need of the RMPA because they did not comply with Secretarial Order 3353 and the purpose and need for the proposed Plan Amendment, and therefore constitute unreasonable alternatives. The BLM's alternatives in the plan - the action and no-action - reflect a range of reasonable alternatives to be considered for a decision about the alignment of state and federal management.

In FLPMA, Congress provided the BLM with discretion and authority to manage public lands for multiple use and sustained yield and declared it the policy of the United States to, consistent with the laws governing the administration of the public lands, coordinate planning with the land use planning and management programs of other federal, state, and local governments.

The BLM's substantial discretion to establish the purpose and need of its proposed action in light of those laws and policies is informed in particular by the fact that BLM completed a programmatic planning effort to consider Greater Sage-Grouse conservation generally in 2015. The BLM's purpose in considering plan amendments was not to reconsider such conservation generally but rather to specifically consider the input of state governments, which have the primary responsibility for management of the species. In addition to FLPMA's directive to provide for enhanced cooperation and greater consistency with state, tribal, and local governments, since 2015, there have been additional Executive and Secretarial Orders that direct the Department of the Interior to prioritize energy independence and greater cooperation with the states specific to the management of Greater Sage-Grouse. In light of these more recent policies (summarized in Section 1.1), the purpose and need for this RMPA/EIS is to modify the approach to Greater Sage-Grouse management in existing land use plans through (1) enhancing cooperation and coordination with Idaho and tribes where applicable, (2) align with DOI and BLM policy directives that have been issued since 2015, and (3) incorporate appropriate

measures that conserve, enhance and restore habitat in a manner that better aligns with Idaho's conservation plan.

The purpose and need also provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a range of reasonable alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative. The BLM may choose to adopt one of these alternatives or a combination of alternatives

The BLM considered a range of reasonable alternatives in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA. The BLM denies this protest.

## **NEPA—Purpose and Need**

### ***The Wilderness Society Nada Culver***

**Issue Excerpt Text:** Also in violation of NEPA, BLM has improperly defined the "purpose and need" to reflect the narrow wishes of certain states and not broader objectives set forth in the ESA and other federal laws. NEPA prohibits BLM from "mandating" that the interests of project proponents "define the scope of the proposed project." NPCA, 606 F.3d at 1070. Instead, BLM must reference and incorporate broader, national objectives as enumerated in statutes and other congressional directives. *Id.* BLM failed to do so here, and instead developed the "purpose and need" to carry out the wishes of specific states.

**Summary:** BLM defined the purpose and need too narrowly so as to cater to the wishes of specific states.

**Response:** In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

The BLM established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, which is described at Section 1.2, to meet its land use planning mandate under FLPMA.

In FLPMA, Congress provided the BLM with discretion and authority to manage public lands for multiple use and sustained yield and declared it the policy of the United States to, consistent with the laws governing the administration of the public lands, coordinate planning with the land use planning and management programs of other federal, state, and local governments.

In addition to FLPMA's directive to provide for enhanced cooperation and greater consistency with state, tribal, and local governments, since 2015, there have been additional Executive and Secretarial Orders that direct the Department of the Interior to prioritize energy independence and greater cooperation with the states specific to the management of Greater Sage-Grouse. In light of these more recent policies (summarized in Section 1.1), the purpose and need for this Proposed RMP Amendment/Final EIS is to modify the approach to Greater Sage-Grouse management in existing land use plans through (1) enhancing cooperation and coordination with Idaho and tribes where applicable, (2) align with DOI and BLM policy directives that have been issued since 2015, and (3) incorporate appropriate measures that conserve, enhance and restore habitat in a manner that better aligns with Idaho's conservation plan.

The BLM’s substantial discretion to establish the purpose and need of its proposed action in light of those laws and policies is informed in particular by the fact that BLM completed a programmatic planning effort to consider Greater Sage-Grouse conservation generally in 2015. The BLM’s purpose in considering plan amendments was not to reconsider such conservation generally but rather to specifically consider the input of state governments, which have the primary responsibility for management of the species. The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a range of reasonable alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative.

The BLM properly established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** Further, it is self-evident that this "purpose and need" was defined not by BLM, as required by NEPA, but by certain states (i.e., project proponents).

**Summary:** The purpose and need was not defined by the BLM, but by the applicant(s).

**Response:** In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

According to the BLM NEPA Handbook H-1790-1, Section 6.2, “The purpose and need statement for an externally generated action must describe the BLM purpose and need, not an applicant’s or external proponent’s purpose and need (40 CFR 1502.13). The applicant’s purpose and need may provide useful background information, but this description must not be confused with the BLM purpose and need for action. The BLM action triggers the NEPA analysis.”

The BLM established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, which is described at Section 1.2, to meet its land use planning mandate under FLPMA.

In FLPMA, Congress provided the BLM with discretion and authority to manage public lands for multiple use and sustained yield and declared it the policy of the United States to, consistent with the laws governing the administration of the public lands, coordinate planning with the land use planning and management programs of other federal, state, and local governments.

The BLM’s substantial discretion to establish the purpose and need of its proposed action in light of those laws and policies is informed in particular by the fact that BLM completed a programmatic planning effort to consider Greater Sage-Grouse conservation generally in 2015. The BLM’s purpose in considering plan amendments was not to reconsider such conservation generally but rather to specifically consider the input of state governments, which have the primary responsibility for management of the species. In addition to FLPMA’s directive to provide for enhanced cooperation and greater consistency with state, tribal, and local governments, since 2015, there have been additional Executive and Secretarial Orders that direct the Department of the Interior to prioritize energy independence and greater cooperation with the states specific to the management of Greater Sage-Grouse. In light of these more recent policies (summarized in Section 1.1), the purpose and need for this RMPA/EIS is to modify the approach to Greater Sage-Grouse management in existing land use plans

through (1) enhancing cooperation and coordination with Idaho and tribes where applicable, (2) align with DOI and BLM policy directives that have been issued since 2015, and (3) incorporate appropriate measures that conserve, enhance and restore habitat in a manner that better aligns with Idaho's conservation plan.

The purpose and need provided the appropriate scope to allow the BLM to analyze a range of reasonable alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a reasonable range of alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative.

Finally, states are not “project proponents” who have applied to the BLM to use the public lands. Section 202(c)(9) of FLPMA 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.” 43 CFR 24.3, recognizes that the States generally “possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on federal lands within a State.”

The BLM properly established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** It has developed an unreasonably narrow "purpose and need" for the FEISs that forecloses consideration of any alternative that does not align with 12 state plans and recent DOI and BLM policies that "prioritize energy independence. . . .

**Summary:** The BLM has defined the purpose and need too narrowly so as to carry out the wishes of specific states.

**Response:** In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

The BLM established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, which is described at Section 1.2, to meet its land use planning mandate under FLPMA.

In FLPMA, Congress provided the BLM with discretion and authority to manage public lands for multiple use and sustained yield and declared it the policy of the United States to, consistent with the laws governing the administration of the public lands, coordinate planning with the land use planning and management programs of other federal, state, and local governments.

The BLM's substantial discretion to establish the purpose and need of its proposed action in light of those laws and policies is informed in particular by the fact that BLM completed a programmatic planning effort to consider Greater Sage-Grouse conservation generally in 2015. The BLM's purpose in considering plan amendments was not to reconsider such conservation generally but rather to specifically consider the input of state governments, which have the primary responsibility for management of the species. In addition to FLPMA's directive to provide for enhanced cooperation and greater consistency with state, tribal, and local governments, since 2015, there have been additional Executive and Secretarial Orders that direct the Department of the Interior to prioritize energy

independence and greater cooperation with the states specific to the management of Greater Sage-Grouse. In light of these more recent policies (summarized in Section 1.1), the purpose and need for this Proposed RMP Amendment/Final EIS is to modify the approach to Greater Sage-Grouse management in existing land use plans through (1) enhancing cooperation and coordination with Idaho and tribes where applicable, (2) align with DOI and BLM policy directives that have been issued since 2015, and (3) incorporate appropriate measures that conserve, enhance and restore habitat in a manner that better aligns with Idaho's conservation plan.

The purpose and need also provided the appropriate scope to allow the BLM to analyze a range of reasonable alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a reasonable range of alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative. The BLM may choose to adopt one of these alternatives or a combination of the alternatives.

The BLM properly established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:**...the recent report from the U.S. Geological Survey on new sage-grouse science, which BLM recognizes as valid and supports, states that “various protection measures have been developed and implemented... [which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands.” NV/CA Proposed RMPA/FEIS at B-1. These objectives need to be recognized as companions to the Purpose and Need Statement. Id. at ES-2 and I-3. And they make it clear that abandoning the commitment to prioritize leasing outside habitat is not in alignment with BLM policy goals.

**Summary:** The BLM's purpose and need is insufficient to protect Greater Sage-Grouse.

**Response:** In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

The BLM established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS, which is described at Section 1.2, to meet its land use planning mandate under FLPMA.

In FLPMA, Congress provided the BLM with discretion and authority to manage public lands for multiple use and sustained yield and declared it the policy of the United States to, consistent with the laws governing the administration of the public lands, coordinate planning with the land use planning and management programs of other federal, state, and local governments.

The BLM's substantial discretion to establish the purpose and need of its proposed action in light of those laws and policies is informed in particular by the fact that BLM completed a programmatic planning effort to consider Greater Sage-Grouse conservation generally in 2015. The BLM's purpose in considering plan amendments was not to reconsider such conservation generally but rather to specifically consider the input of state governments, which have the primary responsibility for management of the species. In addition to FLPMA's directive to provide for enhanced cooperation and greater consistency with state, tribal, and local governments, since 2015, there have been additional Executive and Secretarial Orders that direct the Department of the Interior to prioritize energy

independence and greater cooperation with the states specific to the management of Greater Sage-Grouse. In light of these more recent policies (summarized in Section 1.1), the purpose and need for this RMPA/EIS is to modify the approach to Greater Sage-Grouse management in existing land use plans through (1) enhancing cooperation and coordination with Idaho and tribes where applicable, (2) align with DOI and BLM policy directives that have been issued since 2015, and (3) incorporate appropriate measures that conserve, enhance and restore habitat in a manner that better aligns with Idaho's conservation plan.

The purpose and need also provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a range of reasonable alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative.

The BLM properly established the purpose and need for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

## NEPA—Response to Public Comments

### **WildLands Defense**

#### **Katie Fite**

**Issue Excerpt Text:** We Protest BLM's failure to apply the many alternative and mitigation measures we provided in scoping comments on these amendments.

**Summary:** The BLM failed to incorporate suggested mitigation measures and alternatives provided in scoping.

**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).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response.

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

As described above, the BLM adequately responded to public comments on the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** 40 C.F.R. § 1503.4(a) (emphasis added). In the Proposed Amendments and FEISs, BLM utterly failed to comply with this obligation. Each Proposed Amendment includes an Appendix that purports to set out both a rangewide response comments and a state-specific response to comments by first summarizing comments, then responding to those summaries and then setting out the "full text of parsed comments." However, the summaries of comments are so broad that they do not accurately represent the comments submitted

***BlueRibbon Coalition  
Paul Turcke***

**Issue Excerpt Text:** The method of responding to comments here does not comply with NEPA and its implementing regulations.

***BlueRibbon Coalition  
Paul Turcke***

**Issue Excerpt Text:** The approach chosen fails to identify individual comments and the response to them. The agency's method of responding to comments here does not comply with governing regulations or other applicable law.

**Summary:** The BLM failed to meet its obligations in responding to public comments because its summary and response to those comments are so broad that they do not accurately represent the comments submitted. The method of responding to comments here does not comply with NEPA and its implementing regulations, or other applicable law.

**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). When the comments are especially voluminous, the CEQ regulations allow for similar comments to be grouped together or summarized and addressed in a single response (40 CFR 1503.4(a)).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

In compliance with 40 CFR 1503.4(a), the BLM grouped together and summarized similar comments and addressed these comments in a single, meaningful response. The BLM's response identified any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explained why certain public comments did not warrant further agency response. The BLM ensured that each of these comment summaries adequately captured the detailed issues raised by each individual comment, and that the responses were reasonable and proportionate to the comments submitted.

Additionally, 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 when preparing the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

As described above, the BLM adequately responded to public comments on the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** In regard to grazing, the changes from RDFs to BMPs is substantial. Rather than require design features including avoidance of new wire fences within 2 km of occupied leks, new livestock facilities at least 1 km from occupied leks, etc. (See RDFs 105-113 in 2015 plans), the proposed plan (in the final EIS) moves these to BMPs which "can be utilized, singly or in combination." Idaho PRMP/FEIS at App-2-28. This is a significant change and means that previous requirements for livestock infrastructure in sage-grouse habitat are now optional. Additionally, the new BMPs, without any evidence, adopt the idea that grazing exclosures at riparian and wetland areas may benefit from being 13 grazed periodically. Idaho PRMP/FEIS at App-2-29. This is unsupported in the analysis and is contrary to the prior direction of fencing wetlands to achieve Proper Functioning Condition. Table 2-1's title is inaccurate, as the table does not provide a comparison among the alternatives, but among the habitat types. Idaho PRMP at 2-2. This is a significant error because the PRMP relies on this Table to describe the allocation changes between alternatives. Idaho PRMP at ES-3. It does not compare alternatives, and the type of chart that was provided in the Draft RMP (Table 2.2 in Idaho DRMP/DEIS) is nowhere to be found. This makes understanding the modified alternative more difficult and insufficiently informs the decision-maker of the alternatives. Finally, as WWP mentioned in comments, the BLM has failed to take a hard look at the issues of vegetation treatments (including the adverse impacts of fire, chaining, mowing, crushing, and herbicide application); the exemption of vegetation treatments from lek buffers; the effectiveness of vegetation treatments and fuel breaks (Shinneman et al. 2018); the stress responses of sage-grouse to the presence of livestock; the direct effects of trampling, forage competition and nest abandonment; the management paradigm that allows NEPA and land health evaluations to be indefinitely deferred; the lack of response to WWP's study showing that it is possible to meet the habitat objectives in grazing exclosures; the wishy-washy and uncertain structure of "outcome-based grazing"; and the increase of predators in places with livestock grazing. We protest that the BLM did not respond to our substantive comments on all of these issues and that the final FEIS is inadequate to address the real and immediate impacts of livestock grazing on sage-grouse habitat.

**Summary:** The BLM did not respond to substantive comments submitted on the Draft RMP Amendment/EIS by WWP on a number of issues, among them, Table 2-1's title being inaccurate and misleading; BLM failing to take a hard look at vegetation treatments; lek buffer exemptions; the management paradigm that allows deferral of NEPA and rangeland health evaluations, outcome based grazing, and the failure to address real impacts of livestock grazing on Greater Sage-Grouse.

**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).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response.

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

Also, Required Design Features (RDFs) are treated as Best Management Practices (BMPs) in GHMA, and BMPs must still be considered and applied as applicable unless it can be shown that the BMP is technically and or economically impractical (Final EIS Appendix C). Thus, the assertion that these changes are substantial is a mischaracterization.

As described, the BLM adequately responded to public comments on the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Consistent with those responses, the BLM adequately considered the effects of decisions about livestock on Greater Sage-Grouse. The BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** We also commented in August 2018 that the BLM needed to address the limited number of Land Health Assessments that are completed in the project area and the relatively few that are processed each year. WWP et al. 2018 at 38-39, 42; Idaho PRMP at App-4-19. This was a critical component of revealing to the public the likelihood of protective measures being actually implemented in Idaho. The BLM's response was simply, "LHAs are conducted as part of rangeland monitoring and considered for adaptive management for livestock grazing." Idaho PRMP at App-4-19. This does not provide a "hard look" at the environmental impacts of the alternative, and nor does it sufficiently support the public's understanding of how grazing will be managed in reality. WWP et al. raised this; BLM ignored it; the FEIS overlooks it; we protest on this basis. The issue of accurate and current Land Health Evaluations is of obvious significance where the BLM's new amendment proposes to re-prioritize based on land health standards rather than significance of the habitat. Idaho PRMP/FEIS at App-2-12, MD LG 15. The FEIS claims that this would not have a measurable impact on Greater sage-grouse management (Idaho PRMP/FEIS at 4-15) but this is wildly speculative in the absence of data. No information is provided about the number of acres in SFA and PHMA (priorities in the 2015 plans) versus the number of acres that aren't meeting land health standards or even the number of land health evaluations in sage-grouse habitat that the agency is able to conduct every year.

**Summary:** The BLM failed to address comments submitted by WWP regarding Land Health Assessments given the significance attributed to them over habitat in the Proposed RMP Amendment/Final EIS.

**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).

Land Health Evaluations are a critical part of managing rangeland health and a metric for determining sensitive species habitat (including Greater Sage-Grouse habitat). In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impacts

analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

As described above, the BLM adequately responded to public comments on the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

**P4 Production, L.L.C.**

**William Myers**

**Issue Excerpt Text:** P4 Production commented on the Draft RMP AIDEIS that BLM should continuously update their sage-grouse habitat maps to properly characterize sage-grouse habitat. P4 Production protests that its comment was not addressed in the Proposed Plan Amendment.

**Summary:** The BLM failed to address comments submitted by P4 Production regarding updating Greater Sage-Grouse habitat maps to properly characterize Greater Sage-Grouse habitat.

**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-I, p. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM’s responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

The BLM provided the following response to the commenter’s request to the request to continuously update their Greater Sage-Grouse habitat maps to properly characterize Greater Sage-Grouse habitat:

“The thresholds for amending plans are defined in BLM’s planning handbook and often depend on specific context. The BLM is committed to streamlined and effective processes using plan maintenance and other measures when appropriate. Habitat boundaries are adjusted according to specific criteria and whether modified via plan maintenance or amendment will be determined at the appropriate time. Public participation will be commensurate with the level of planning and BLM policy.”

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

The BLM adequately responded to public comments that BLM update Greater Sage-Grouse maps for the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

**Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** The agency's response to comments is disingenuous given that the original requirement of Table 2-2 was, "greater than or equal to 7 inches of perennial grass height," to simply, in

the current PRMP, "Adequate residual cover." We provided a link to a copy of scientific support for retaining this objective, an issue that the BLM did not address in the response to comments. WWP et al. 2018 at 42; Idaho PRMP at App-4-19.

**Summary:** The BLM failed to address comments submitted by WWP regarding perennial grass height objectives.

**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).

Adequate residual cover was identified as a plan feature in order to provide the BLM greater flexibility in managing perennial grass height as the science changes. In compliance with NEPA, the BLM considered all public comments submitted on the Draft Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 4 of the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response.

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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS.

As described above, the BLM adequately responded to public comments concerning perennial grass height in the Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM denies this protest.

## [NEPA—Supplemental EIS](#)

### **Western Watersheds Project**

**Greta Anderson**

#### **Issue Excerpt Text:**

s introduced between the Idaho DEIS and FEIS are highly significant. Major changes since the DEIS include BLM's (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental harm, as well as the previously-undisclosed delegation of lease stipulation exemption and modification determinations to counties.

**Summary:** BLM has made significant changes between the draft and final document without public notice or review.

**Response:** NEPA requires agencies to prepare supplemental EISs if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). "Substantial changes" in the proposed action relevant to

environmental concerns are changes that would result in significant effects outside the range of effects previously analyzed in the draft or final EIS (BLM Handbook H-1790-I, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-I, p. 29).

The clarification to BLM's mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM's decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way it will include other state requirements as part of a proposed action in the BLM's NEPA analysis.

The Idaho Greater Sage-Grouse RMPA/Final EIS includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM's authorization as appropriate. In addition to project-specific mitigation, the BLM, the State of Idaho, and other federal agencies have treated extensive acreages. In Fiscal Year 2018 approximately 530,000 acres were treated and BLM is currently working on more detailed metrics and data for these acres treated. Also, in Fiscal Year 2017 the BLM treated approximately 480,000 acres, for an increase of almost 100,000 acres over 2016 accomplishments. The Fiscal Year 2017 treatments included 185,000 acres of conifer removal; 65,000 acres of fuel breaks; 125,000 acres with invasive species treatments; 10,000 acres of habitat protection; and restored habitat on 94,000 acres of uplands and another 600 acres of riparian habitat.

After accounting for state mitigation policies, voluntary mitigation by project proponents, federal and state investment into habitat enhancement and restoration, and environmental contributions to Greater Sage-Grouse habitat changes such as fire, differences in the environmental impacts resulting from mitigation approach between the 2015 and 2018 plans will not be significant. The BLM did not delegate or otherwise cede authority to the State of Idaho. Consequently, neither supplementation nor additional public review and input is warranted in this planning process. The BLM denies this protest.

### **Wildlands Defense**

#### **Katie Fite**

*See also NEPA—Best Available Science*

**Issue Excerpt Text:** We Protest the lack of scientific citations and sources and lack of adequate data to provide understanding of the scientific basis (if any) for the actions outlined in the Chapter 2 under and in tables and analyses throughout the EIS. There is often no source attributed to info in tables, and the info in tables is presented in a biased fashion. This violates NEPA. A Supplemental EIS must be prepared.

### **Western Watersheds Project**

#### **Greta Anderson**

*See also NEPA—Public Participation*

**Issue Excerpt Text:** By changing the DRMP/DEIS's "management alignment alternative" to the proposed action based on IM 2018-093, the plans have changed from requiring compensatory mitigation

to a strictly voluntary component of compliance. Idaho PRMP/FEIS at 2-3. The Proposed Final RMP Amendment/Final EIS eliminates the net conservation gain standard and commits to a "no net loss" standard. *Ibid.* This is a significant difference and changes the current conditions from a floor to a ceiling in terms of protected habitat. We protest this failure of NEPA.

**Summary:** Changes made regarding compensatory mitigation and the net conservation standard between the Draft EIS and Final EIS warrant preparation of a supplemental EIS.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). "Substantial changes" in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

The clarification to BLM's mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM's decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way it will include other state requirements as part of a proposed action in the BLM's NEPA analysis.

Further, 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. 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 nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, on range- and zone-wide bases and including the in-progress Forest Service plans. It provides a basis for the cumulative impacts analysis for each affected resource.

The Idaho Greater Sage-Grouse RMP Amendment/Final EIS includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM's authorization as appropriate. In addition to project-specific mitigation, the BLM, the State of Idaho, and other federal agencies have treated extensive acreages. In Fiscal Year 2018 approximately 530,000 acres were treated, and BLM is currently working on more detailed metrics and data for these acres treated. Also, in Fiscal Year 2017 the BLM treated approximately 480,000 acres, for an increase of almost 100,000 acres over 2016 accomplishments. The Fiscal Year 2017 treatments included 185,000 acres of conifer removal; 65,000 acres of fuel breaks; 125,000 acres with invasive species treatments; 10,000 acres of habitat protection; and restored habitat on 94,000 acres of uplands and another 600 acres of riparian habitat.

As described above, between the draft DEIS and Final EIS, since the BLM has neither made substantial nor significant changes that rise to the level of requiring additional NEPA supplementation, further the BLM also does not find that any changes necessitate additional public input for consideration for the same reasons. The BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

*See also FLPMA—General, NEPA—Public Participation*

**Issue Excerpt Text:** Contrary to BLM's representation, the changes introduced between the Idaho DEIS and FEIS are highly significant. Major changes since the DEIS include BLM's (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental harm, as well as the previously-undisclosed delegation of lease stipulation exemption and modification determinations to counties.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** Additionally, BLM's new legal interpretation and guidance (set out in Instruction Memorandum 2019-018) represents the very sort of "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" that demand further analysis.

**Summary:** The change in the legal interpretation and guidance for mitigation (set out in IM 2019-018) is a significant new circumstance and/or information relevant to environmental concerns and bearing on the proposed action or its impacts. Changes in mitigation direction, lease stipulation exemption, and modification determinations between the draft and Proposed RMP Amendment/Final EIS warrant preparation of a supplemental EIS.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). "Substantial changes" in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-I, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-I, p. 29).

After accounting for state mitigation policies, voluntary mitigation by project proponents, federal and state investment into habitat enhancement and restoration, and environmental contributions to Greater Sage-Grouse habitat changes such as fire, differences in the environmental impacts resulting from mitigation, the approach between the 2015 and 2018 plans will not be substantial.

The clarification to BLM's mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM's decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way it will include other state requirements as part of a proposed action in the BLM's NEPA analysis.

Further, 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. 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 nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, on range- and zone-wide bases and including the in-progress Forest Service plans. It provides a basis for the cumulative impacts analysis for each affected resource.

As described above, between the Draft DEIS and Final EIS, since the BLM has neither made substantial nor significant changes that rise to the level of requiring additional NEPA supplementation, further the BLM also does not find that any changes necessitate additional public input for consideration for the same reasons. The BLM denies this protest.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** In addition, the change in circumstances due to ongoing fires in sage-grouse habitat over the last three years, burning millions of acres, should be evaluated in supplemental analysis. See, Information Bulletin No. FAIB2017-009, Greater Sage-grouse Habitat Data for Wildland Fire Management Decision Making and Reporting of Acres Burned (updated October 23, 2018), attached as Exhibit 2.

**Summary:** Fire has changed habitat conditions since 2015, and an analysis of habitat therefore warrants preparation of a supplemental EIS. The BLM has erred by relying on the 2015 analysis concerning habitat availability, which fails to account for recent changes and fails to reflect existing conditions.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

The 2018 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzes the past, present, and reasonably foreseeable future effects of wildfire on Greater Sage-Grouse habitat in Idaho in Section 4.4. Both the BLM and the state of Idaho continue to commit substantial funds to wildfire prevention, suppression, and restoration. And the Idaho Proposed RMP Amendment/Final EIS includes safety mechanisms (triggers) to account for the effect of large wildfires on sage-grouse habitat. Accordingly, the effects of large wildfires are accounted for in the Proposed Plan Amendment/Final EIS and do not merit supplemental analysis.

As described above, the BLM denies this protest.

### ***Western Watersheds Project***

#### ***Greta Anderson***

**Issue Excerpt Text:** What the Idaho PRMP describes as “[E]ditorial changes to the livestock grazing management decisions,” are clearly more than simply wordsmithing. Idaho PRMP at 1-5. By removing the requirement to achieve the desired conditions of Table 2.2 from grazing management in PHMA and IHMA, the BLM is substantively changing the enforceability and applicability of the science-based parameters it had agreed to implement in 2015. The proposed plan also removes the requirement of the agency to focus on allotments that contain riparian areas and wet meadows (Idaho PRMP/FEIS at App-2-

12) and instead prioritizes existing permits and leases that are not meeting Land Health 12 Standards and that have declining sage-grouse populations, defined by soft or hard management triggers being engaged. Livestock and sage-grouse conflict intensifies near water sources due to the importance of these areas to sage-grouse during early brood-rearing. WWP et al. 2018 at 35. The lack of prioritization of these places fails to meet the recommendations of the NTT report as well. This change was made between the DEIS and the FEIS and is clearly more than an editorial revision.

**Summary:** Grazing management changes made regarding desired conditions and prioritization requirements between the Draft EIS and Final EIS warrant preparation of a supplemental EIS.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

As described on page 4-4 of the Proposed RMP Amendment/Final EIS, the changes to livestock grazing management decisions are not substantive and largely focus on clarifying the need to rely on the 4100 grazing regulations and the Idaho Standards for Rangeland Health. Additionally, the changes clarify that the BLM needs to consider Greater Sage-Grouse population trends and adaptive management triggers when prioritizing grazing permit renewals, monitoring, and compliance checks. These changes do not vary the expected impacts from what was described in the Draft EIS.

The change to Table 2.2 is not a substantive change, but a modification for clarity.

While the 2018 Proposed RMP Amendment/Final EIS changes the 2015 Proposed Plan, the science-based parameters agreed to in 2015 have not changed substantially. The BLM updated the plan with the most recent scientific literature.

As described above, the grazing management changes are largely focused on clarifying the need to rely on grazing regulations and the Idaho Standards for Rangeland Health. The focus for BLM in managing rangeland health will be on Greater Sage-Grouse population trends and adaptive management triggers. These are not significant differences from the prior plan. The BLM denies this protest.

### **WildLands Defense**

#### **Katie Fite**

**Issue Excerpt Text:** States like Idaho are even more captured by the livestock and industries that harm, degrade and fragment sage-grouse habitats than the federal government is. For example, the state of Idaho recently signed an agreement with the Forest service based on "good neighbor" authority that will accelerate degradation and disturbance to Forest lands, including areas occupied by sage-grouse. The full cumulative adverse effects of this and other changes (more fire loss, population changes, cheatgrass expansion, harms caused by treatment collateral damage, etc.) must be fully examined in a greatly revised supplemental EIS for any proposed plan amendments.

**Summary:** The BLM’s failure to fully analyze the cumulative adverse effects of livestock grazing warrants the preparation of a supplemental EIS.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

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. 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. The cumulative impacts section (Section 4.4) 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 Idaho Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives. There has not been a significant change in actions, circumstances, or information to necessitate a supplemental EIS.

As described above, there is no need for the BLM to prepare a supplemental EIS. The BLM denies this protest.

## **NEPA—Tiering/Incorporation by Reference**

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** In essence these Proposed RMP Amendments have changed the central tenets of the 2015 Sagegrouse Plans. As a result, BLM cannot rely on the analysis and alternatives that were developed to support the landscape level, conservation-focused 2015 Sage-grouse Plans to support the case-by-case, development-focused 2018 RMP Amendments.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** The modification and/or elimination of major components of the 2015 Sage-grouse Plans result in a new set of conditions by the 2018 Proposed Amendments preclude BLM from relying on the environmental analysis in the 2015 environmental impact statements; new NEPA analysis is required.

### ***The Wilderness Society***

#### ***Nada Culver***

**Issue Excerpt Text:** The resulting decisions in these Proposed Amendments are in direct conflict with the commitments made in the 2015 Sage-grouse Plans and, as a result, cannot justify incorporate of the 2015 EISs' cumulative impact analysis or range of alternatives.

**Summary:** The BLM erred in relying on the analysis and alternative in the 2015 plan in the analysis of the 2018 plan because there are major differences in plan components between the plans.

**Response:** CEQ regulations direct that agencies incorporate material into an environmental impact statement where doing so will cut down on bulk without impeding agency and public review of the action, provided that such incorporation will be cited, and its content briefly described (40 CFR 1502.21). CEQ also directs agencies to incorporate existing NEPA analysis in order to focus subsequent analysis to only new issues (40 CFR 1508.28, 40 CFR 1502.20), provided that actions analyzed are “clearly consistent” between documents.

BLM is using incorporation by reference to streamline our analysis consistent with Administrative priorities. Incorporation of the 2015 EIS by reference is allowable under BLM regulations and is appropriate in this circumstance, because the purpose of this action builds upon the goals and objectives of the 2015 EIS.

In addition, by incorporating the 2015 plans by reference, BLM avails itself of a larger range of management options previously analyzed in a broadly distributed EIS. While the purpose of the 2018 planning effort is different than that of the 2015 effort, the alternatives considered in the 2015 Final EIS, which are incorporated by reference, have informed the range of alternatives analyzed in detail in the 2018 Draft EIS; thus, the two plans relate to one another by the 2015 one forming the foundation and most of the analysis for the 2018. Finally, the 2015 cumulative effects analysis has also been updated with quantitative analysis of the cumulative impacts from planning decisions for each management zone to the state-specific Final EIS to address rangewide issues and concerns.

For the reasons stated above, the BLM denies this protest.

## Other Laws

### ***American Exploration & Mining Association***

#### ***Laura Skaer***

**Issue Excerpt Text:** AEMA's members are harmed because the 2015 Amendments retained in the Proposed Plan contain provisions including several restrictions on mineral exploration and development, that violate, inter alia, the Mining Law, Mining and Minerals Policy Act, FLPMA, NEPA, and DQA discussed in detail in our 2015 protest letter (incorporated by reference). Many of these unlawful provisions and restrictions were also promulgated in violation of the notice and comment requirements of NEPA and the Administrative Procedure Act (hereinafter "APA"). These unlawful and unnecessary provisions include but are not limited to the requirement of compensatory mitigation, imposition of a net conservation gain or benefit mitigation standard, uniform lek buffer distances, disturbance caps, seasonal timing restrictions, and travel restrictions. These unlawful and unnecessary provisions must be removed from the Proposed Plan Amendment regardless of whether or not a state requested amendments or changes to the 2015 Plans.

**Summary:** Elements of the 2015 amendment retained in the Proposed RMP Amendment/Final EIS contain provisions that restrict mining exploration and development in violation of the Mining Law, (30 USC 21a et seq), the Mining and Minerals Policy Act (30 USC 21a), NEPA, and the DQA.

**Response:** The Mining Law authorizes and governs the exploration, discovery and development of valuable minerals, and allows citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits (30 USC 22). Except as otherwise provided, all valuable mineral deposits in lands belonging to the United

States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase... (Id.). 30 USC 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development.

All proposed actions contained in the Proposed RMP Amendment/Final EIS will be subject to valid existing rights, including those associated with leases issued under the Mineral Leasing Act of 1920. Accordingly, the BLM will ensure that its implementation of the management actions in the RMPA is consistent with the terms and conditions in existing leases or existing contracts. For example, if the BLM previously issued an oil and gas lease with standard lease terms and conditions, and the lessee submits an application for permit to drill, the BLM will ensure that any management actions from the Proposed RMP Amendment/Final EIS will be applied in a manner that is consistent with the terms and conditions of the underlying oil and gas lease.

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the Proposed RMP Amendment/Final EIS only to the extent that they are consistent with the Mining Law and BLM's regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a "valid existing right," including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the proposed RMP Amendment/Final EIS, or any other time.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, the BLM denies this protest.

#### ***American Exploration & Mining Association***

***Laura Skaer***

*See also FLPMA—Locatable Minerals*

**Issue Excerpt Text:** Throughout the PRMPA/FEIS, BLM refers to "Valid Existing Rights" (hereinafter "VERs") with the implication that the impact of certain restrictions, guidelines, and objectives would be mitigated because the VER would be protected. For locatable minerals the term "valid existing right," is a specific term that is reserved for those claims after a "discovery" of a valuable mineral deposit has been made. Therefore, the proposal to honor VERs does not clearly encompass and protect the Mining Law Section 22 rights associated with claims prior to a discovery of a valuable mineral deposit. In the context of the PRMPA, VERs must clearly mean all mining claims in good standing - with or without a discovery.

#### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** BLM's Anthropogenic Screening Criteria (MD SSS 29) and Anthropogenic Disturbance Development Criteria (MD SSS 30) violate section 22 of the Mining Law which allows citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits, including the rights of ingress and egress.

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the Mining Law of 1872.

**Response:** The BLM can regulate certain mining activities governed by the Mining Law of 1872 to prevent UUD, as defined at 43 CFR 3809.5, including when necessary to meet the performance standards in 43 CFR 3809.420(b)(7). Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the Mining Law of 1872 (BLM Handbook H-1601-I,

Appendix C, p. 25). However, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws. 43 CFR 3809.420(a)(3).

The BLM implements land use planning decisions differently with respect to uses related to or authorized under the Mining Law of 1872, whether or not such uses occur on mining claims and sites. This difference is how land use planning applies to authorizations under the Mining Law in no way tied to “valid existing rights” in a particular mining claim or site, but rather stems from the language of section 302(b) of FLPMA which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning. See 43 USC 1732(b). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws. 43 CFR 3809.420(a)(3).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the Proposed RMP Amendment/Final EIS only to the extent that they are consistent with the Mining Law and BLM’s regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a “valid existing right,” including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the Proposed RMP Amendment/Final EIS, or any other time.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

### ***American Exploration & Mining Association***

***Laura Skaer***

*See also FLPMA—Locatable Minerals*

**Issue Excerpt Text:** The Proposed Plan directly conflict with FLPMA's and MMPRDA's requirement that the Secretary must manage public lands to respond to the Nation's needs for minerals. Specifically, the restrictions that are contrary to FLPMA's directive include, but are not limited to: AEMA Protest of the Idaho Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 24 of 29 ? Sections 2.2 and 2.4; Objective SSS 4; MD SSS 10; MD SSS 20; MD SSS 27; MD SSS 29; MD SSS 30; MD SSS 32; MD SSS 35; MD SSS 44; MD GRSG-RT-ST-069-Standard; MD MT 3; MD LR 2; MD LR 8; MD LR 14; MD TTM 4; Appendix B; Appendix C; Appendix E; Appendix F; and Appendix K.

**Summary:** The Proposed RMP Amendment/Final EIS directly conflict with FLPMA's and MMPRDA's requirement that the Secretary must manage public lands to respond to the Nation's needs for minerals because it restricts the opportunity for entry, use, and occupancy to develop minerals on public lands.

**Response:** Section 102(a)(11) of FLPMA and Chapter 2 of the MMPRDA both acknowledge the nation’s need for minerals.

Notwithstanding that the “requirements” of FLPMA and MMPRDA identified by the protestor are in fact policy directives and thus are not mandatory obligations for the BLM to follow in its planning decisions, the purpose and need of the Proposed RMP Amendment/Final EIS identifies a need to align with DOI and BLM policy directives that have been issued since 2015 (SO 3353). These directives support the policies identified in the MMPRDA and FLPMA regarding the nation’s need for a domestic source of natural resources. The BLM squarely addresses this consideration on page 1-2 of the Idaho Greater Sage-Grouse Proposed RMPA/Final EIS, where it referenced Secretarial Order 3349, American Energy Independence. This Secretarial Order ordered agencies in the DOI to reexamine practices “to better

balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families.” Accordingly, the Proposed RMP Amendment/Final EIS clearly aligns those policies found in FLPMA and MMPDA.

For the reasons stated above, the BLM denies this protest.

***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** BLM's mitigation protocol/standard is in violation of § 22 of the General Mining Law

**Summary:** BLM's mitigation protocol/standard is in violation of 22 of the General Mining Law.

**Response:** The BLM can regulate certain mining activities governed by the Mining Law of 1872 to prevent UUD, as defined at 43 CFR 3809.5, including when necessary to meet the performance standards in 43 CFR 3809.420. Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the Mining Law of 1872 (BLM Handbook H-1601-1, Appendix C, p. 25). However, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws. 43 CFR 3809.420(a)(3).

The actions in the Proposed RMP Amendment/Final EIS would only be implemented to the extent that they are consistent with the Mining Law of 1872, including the associated regulations at 43 CFR subpart 3809, and other applicable laws.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

***American Exploration & Mining Association***

***Laura Skaer***

*See also FLPMA—Locatable Minerals*

**Issue Excerpt Text:** Despite, and in direct conflict with this legal obligation, BLM nevertheless has retained severe restrictions and prohibitions from the 2015 Amendments such seasonal and year-round travel and transportation restrictions, lek buffers, disturbance caps, seasonal timing restrictions, among others that, if applied to locatable mineral activities, would violate rights granted by the Mining Law (30 U.S.C. § 22) and FLMPA, including rights of ingress and egress.

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the Mining Law of 1872.

**Response:** The BLM implements land use planning decisions differently with respect to uses related to or authorized under the Mining Law of 1872, whether or not such uses occur on mining claims and sites. This difference is how land use planning applies to authorizations under the Mining Law in no way tied to “valid existing rights” in a particular mining claim or site, but rather stems from the language of section 302(b) of FLPMA which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning. See 43 USC 1732(b). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws (43 CFR 3809.420(a)(3)).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the Proposed RMP Amendment/Final EIS only to the extent that they are consistent with the Mining Law and BLM's regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a "valid existing right," including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the Proposed RMP Amendment/Final EIS, or any other time.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

### **American Exploration & Mining Association**

**Laura Skaer**

*See also FLPMA—Locatable Minerals*

**Issue Excerpt Text:** Prohibiting or restricting mineral exploration and development on lands co-located with sage-grouse habitat, by way of limits placed upon surface disturbance,<sup>6</sup> travel and transportation management (roads),<sup>7</sup> application of lek buffers,<sup>8</sup> seasonal 5 See AEMA June 29, 2015 Protest; and July 31, 2018 Comment Letter. 6 Specific part of the Proposed Plan being protested: Section 2.4, MD SSS 27; MD SSS 29; MD SSS 30; Appendix C; Appendix E. 7 Specific part of the 2015 Amendments being protested: Section 2.2.10: MD GRSG-RT-ST-069-Standard. 8 Specific part of the 2015 Amendments being protested: Section 2.2: Objective SSS 4; MD SSS 10; MD SSS 35 Appendix B. AEMA Protest of the Idaho Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 14 of 29 timing restrictions,<sup>9</sup> and mitigation is contrary to the rights granted by § 22 of the Mining Law, and therefore the Proposed Plan is in violation of the Mining Law and FLPMA, and cannot be implemented.

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the Mining Law of 1872.

**Response:** The BLM implements land use planning decisions differently with respect to uses related to or authorized under the Mining Law of 1872, whether or not such uses occur on mining claims and sites. This difference is how land use planning applies to authorizations under the Mining Law in no way tied to "valid existing rights" in a particular mining claim or site, but rather stems from the language of section 302(b) of FLPMA which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning. See 43 USC 1732(b). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws (43 CFR 3809.420(a)(3)).

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law and BLM's regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a "valid existing right," including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the Proposed RMP Amendment/Final EIS, or any other time.

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR subpart 3809, the BLM denies this protest.

**American Exploration & Mining Association****Laura Skaer**

**Issue Excerpt Text:** The Proposed Plan fails to comply with § 21(a) Mining and Mineral Policy Act The 2015 restrictions incorporated by reference and retained in the Proposed Plan and the restrictions that have only been slightly modified in the Proposed Plan that place an overly restrictive burden on locatable mineral operations conflict with the mandate that it is the continuing policy of the United States to recognize our Nation's need for domestic mineral resources.

**Summary:** Elements of the 2015 amendment retained in the Proposed RMP Amendment/Final EIS contain provisions that restrict mining exploration and development in violation of the Mining and Mineral Policy Act.

**Response:** The Mining Law authorizes and governs the exploration, discovery and development of valuable minerals, and allows citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits (30 USC 22). Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase...(Id.). 30 USC 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development.

The BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the BLM will apply management actions in the Proposed RMP Amendment/Final EIS only to the extent that they are consistent with the Mining Law and BLM's regulations. This does not require BLM to first make a determination of whether a mining claim constitutes a "valid existing right," including whether the mining claimant has made a discovery of a valuable mineral deposit as of the date of the Proposed RMP Amendment/Final EIS, or any other time.

Notwithstanding that the "requirements" of FLPMA and MMPRDA identified by the protestor are in fact policy directives and thus are not mandatory obligations for the BLM to follow in its planning decisions, the purpose and need of the Proposed RMP Amendment/Final EIS identifies a need to align with DOI and BLM policy directives that have been issued since 2015. These directives support the policies identified in the MMPRDA and FLPMA regarding the nation's need for a domestic source of natural resources. The BLM squarely addresses this consideration in Section I.1, where it referenced Secretarial Order 3349, American Energy Independence. This Secretarial Order ordered agencies in the DOI to reexamine practices "to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families." Accordingly, the Proposed RMP Amendment/Final EIS clearly aligns those policies found in FLPMA and MMPRDA.

For the reasons stated above, the BLM denies this protest.