

*BLM Director's Protest Resolution
Report*

**Lewistown (Montana)
Greater Sage-Grouse
Resource Management Plan
Amendment / Final
Environmental Impact
Statement**

September 15, 2015



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-MT-LEWISTOWN-GRSG-15
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

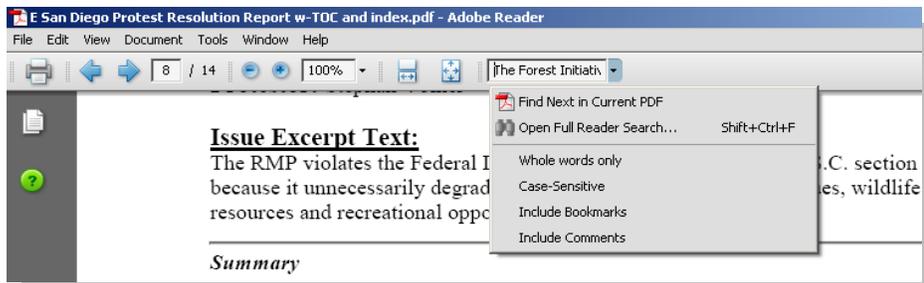
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

Summary
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission(s) Number	Determination
Erik Molvar	WildEarth Guardians, Prairie Hills Audubon Society, Western Watersheds Project, Sierra Club, and Center for Biological Diversity	PP-MT-LEWISTOWN-GRSG-15-01	Denied – Issues and Comments
Bret Sumner	Beatty and Wozniak on behalf of Exxon Mobil Corporation, and XTO Energy Inc.	PP-MT-LEWISTOWN-GRSG-15-02	Denied – Issues and Comments
Dave Galt	Montana Petroleum Association, American Petroleum Institute, and Western Energy Alliance	PP-MT-LEWISTOWN-GRSG-15-03	Denied – Issues and Comments
Travis Bruner	Western Watersheds Project, on behalf of WildEarth Guardians, Center for Biological Diversity, and Prairie Hills Audubon Society	PP-MT-LEWISTOWN-GRSG-15-04	Denied – Issues and Comments
<i>Unknown, no name</i>	Public Lands Council, National Cattlemen’s Beef Association, and Montana Public Lands Council	PP-MT-LEWISTOWN-GRSG-15-05	Denied – Issues and Comments
Mark Salvo	Defenders of Wildlife and Sierra Club	PP-MT-LEWISTOWN-GRSG-15-06	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-MT-LEWISTOWN-GRSG-15-07	Dismissed – Comments Only

Issue Topics and Responses

FLPMA - General

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-10

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM does not propose to seek withdrawal of important sage grouse habitats from locatable mineral entry in PHMAs; only Focal Areas will be recommended for withdrawal from locatable mineral entry. FEIS at 2-2. Given that the Wyoming BLM's position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to sage grouse (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to sage grouse habitats and populations in the areas where that threat is most extreme. In effect, BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The ability to adopt post-leasing mitigation measures – see 43 C.F.R. § 3101.1-2 – is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by BLM. This is particularly true given that BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation. 43 U.S.C. §

1732(b). Put simply, the failure of BLM to study and adopt these types of mitigation measures – especially when feasible and economic – means that the agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-8

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-9

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: ESA Section 7 consultation is not applicable to species like the greater sage grouse that are not listed under the ESA. Even under Section 7 consultation of the ESA, while a jeopardy analysis looks to whether affects may jeopardize the existence of an entire species, or appreciably affect the recovery of a species, there are significant legal limitations of this analytic framework. While operators must mitigate impacts, and can commit to conservation measures that would result in a benefit to the species, FWS and BLM cannot impose requirements that require species recovery. This holds even

more so for species where Section 7 consultation of the ESA is not applicable, and holds true within the context of BLM's statutory requirements, and limitations, pursuant to FLPMA. Moreover, FWS has not developed a recovery plan pursuant to the ESA, and BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery plan in violation of FLPMA.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-5

Organization: Montana Petroleum Association

Protestor: Dave Galt

Summary:

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

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

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

Response:

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

The Lewistown GRSG PRMPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve greater sage-grouse and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore

Issue Excerpt Text: The Proposed RMP confirms that a “net conservation gain” is beyond BLM’s authority under FLPMA. BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the “net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore [greater sage-grouse] and its habitat.” Proposed RMP at 1-27. BLM’s stated goal of “enhance, conserve, and restore” is beyond BLM’s authority under FLPMA.

GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM developed the Lewistown GRSG PRMPA/FEIS with involvement from cooperating agencies, including Federal agencies, state agencies, and local governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

The first Special Status Species goal of the Lewistown GRSG PRMPA/FEIS, detailed on Page 2-11, is to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend, in collaboration with other conservation partners.”

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

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Lewistown GRSG PRMPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Lewistown GRSG PRMPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Lewistown GRSG PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that, among other things, prevent the unnecessary or undue degradation of public lands.

In Section 2.4, the Lewistown GRSG PRMPA/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 345,000 acres from mineral entry. BLM’s decision to tailor the recommended withdrawal to existing withdrawals is detailed on page 2-65.

For the development of fluid minerals under existing leases, the Lewistown GRSG PRMPA/FEIS describes on pages 2-25 through 2-26 the Conditions of Approval the BLM would consider at the implementation review and approval stage of leases in PHMA or GHMA.

As detailed above, the Lewistown GRSG PRMPA/FEIS will not result in “unnecessary or undue degradation” of public lands.

Valid Existing Rights

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-2

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: Here, the Lewistown RMPA proposes to impose new lease stipulations through permit COAs on valid existing leases, action that vastly exceeds XTO’s original lease contract terms. For example, the RMPA proposes requiring NSO requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a net conservation gain standard; and imposing disturbance and density caps on development. These management prescriptions would unduly and unreasonably restrict XTO’s right and ability to develop its leases.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-3

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: ...specific and seemingly arbitrary restrictions based on disturbance thresholds are inconsistent with BLM’s own regulations that authorize lessees to use as much of the surface as is reasonable necessary to develop its minerals. 43 C.F.R. § 3101.1-2.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-4

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the BLM’s net conservation gain standard,

added after release of the Draft RMPA. The Lewistown RMPA’s mandate for compensatory mitigation for any disturbance within GRSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO’s ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM’s authority under FLPMA.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-21

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM’s decision to impose new restrictions on existing federal oil and gas leases.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-22

Organization: Montana Petroleum Association

Protestor: Dave Galt

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-23

Organization: Montana Petroleum Association

Protestor: Dave Galt

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-24

Organization: Montana Petroleum Association
Protestor: Dave Galt

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-25

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: With respect to the Proposed RMP, BLM’s attempt to impose new conditions and measures on existing leases is inconsistent with valid existing

rights. In particular, the Proposed RMP’s provisions requiring application of lek buffer distances and evaluation of impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances “only if” a lek buffer distance other than the distance identified in the Proposed RMP offers the same or greater level of conservation. Proposed RMP at M-3. In GHMA, BLM may approve actions within the lek buffer distances under a broader set of circumstances—but “only if” those circumstances apply. See Proposed RMP at M-2. The Proposed RMP does not leave BLM room to consider valid existing rights granted under a lease if development cannot occur under the circumstances identified in the Proposed RMP. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection to greater sage-grouse and its habitat than the distance identified in the Proposed RMP, the Proposed RMP does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights. See Proposed RMP at M1 – M3.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-26

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental

standards and information current at the time of the lease issuance.” Thus, judicial and administrative authorities recognize that a federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-27

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Section 3101.1-2, 43 C.F.R., states that BLM may impose “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted.” BLM, however, has expressly recognized that this regulation does not allow it to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 C.F.R. § 3101.1- 2, BLM unequivocally stated that this regulation “will not be used to increase the level of protection of resource values that are addressed in lease stipulations.” 53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988). BLM further explained that “the intent of the proposed rulemaking” was not to impose measures that, for example, “might result in an unstipulated additional buffer around an area already stipulated to have a buffer.” *Id.* (emphasis added). Any attempt by BLM to impose measures that expand express stipulations attached to leases are inconsistent with the leases’ contractual terms.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-29

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Moreover, the requirement that compensatory mitigation result in an improvement to greater sage-grouse or its habitat by producing a “net conservation gain” is not contemplated anywhere within a federal oil and gas lease. Because compensatory mitigation that yields a net conservation gain is inconsistent with the terms of existing oil and gas leases, BLM cannot require such mitigation without breaching or repudiating its oil and gas leases. See *Mobil Oil Exploration & Producing Se., Inc. v. United States*, 530 U.S. 604 (2000); *Amber Res. Co v. United States*, 538 F.3d 1358 (Fed. Cir. 2008).

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-31

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM lacks authority to impose the new lek buffer distance requirement on leases with stipulations that prescribe buffer distances under 43 C.F.R. § 3101.1-2. Furthermore, the lek buffer distance is inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO and CSU stipulations.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-36

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM has not adequately explained or justified the proposal to designate all PHMA as right-of-way avoidance areas. Lessees’ ability to develop their leases could be significantly impacted if BLM inappropriately limits access to these leases. BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects.

If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of an oil and gas lease does not

guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2006).

Summary:

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

Response:

The Lewistown GRSG PRMPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)).

The Lewistown GRSG PRMPA/FEIS is subject to valid, existing rights (FLPMA, Section 701(h)). Indeed the purpose of the RMP revision “ is to ensure that public lands are managed according to the principles of multiple use identified in FLPMA while maintaining valid existing rights” (Lewistown GRSG PRMPA/FEIS, p. ES-4). For example, the Lewistown GRSG PRMPA/FEIS states in Chapter 1 (p. 1-17) that “the RMPA will recognize valid existing rights”. An additional example is in Chapter 2 (p. 2-19): “Action TM-1.7—In PHMA, during site-specific travel and transportation management planning, use existing routes or realignments, as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing routes, then build any new route to the absolute minimum standard necessary.”

Additionally, the following direction would be applied regarding the disturbance cap: “Action SS-1.2—Disturbance: If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) within GRSG PHMA in any given Biologically Significant Unit (BSU), then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 hard rock mining law, valid existing rights, etc.)” (p. 2-17).

With respect to oil and gas leasing specifically, the BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, BLM has the authority to impose reasonable measures [e.g. COA] to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Lewistown GRSG PRMPA/FEIS provides management direction for conditions of approval on valid existing leases (see pages 2-25 and 2-26) it does so only consistent with lessees’ valid existing rights.

Multiple Use Mandate

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-9

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The Lewistown RMP amendment as proposed also violates FLPMA's requirement to manage public lands and wildlife resources in a manner that will avoid "permanent impairment of . . . the quality of the environment." Under FLPMA, BLM is obligated to manage the public lands under the principles of multiple use, and FLPMA defines this concept as:

[T]he 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; . . . 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 lands 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 U.S.C. § 1702(c) (emphasis added). See also 43 C.F.R. § 1601.0-5(i).

While BLM enjoys some discretion in balancing the competing uses of federal

public lands, this discretion is not unbounded. Indeed, BLM's discretion is specifically cabined by the substantive requirement that BLM avoid approving any action that will "permanently impair[] . . . the quality of the environment. Id. The proposed Lewistown RMP amendment at issue here fails to adhere to this substantive requirement, because it fails to implement protective measures for sage grouse habitats called for by NTT (2011) (which will impact the resource but not permanently impair sage grouse habitats or populations) while the protections proposed by the BLM as outlined in the sections that follow individually and taken together risk the permanent loss of sage grouse across the planning area.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-12

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-05-2

Organization: : Public Lands Council / National Cattlemen's Beef Association

Protestor: No name

Issue Excerpt Text: Reducing grazing for the sole benefit of the GRSG is inconsistent with the multi-use mandate of NFMA, FLPMA and the balanced grazing program

outlined in the Taylor Grazing Act, as it uses.
prioritizes wildlife use over other productive

Summary:

The Lewistown GRSG PRMPA/FEIS violates the Taylor Grazing Act (TGA) and the multiple use provisions of FLPMA and NFMA by:

- Failing to implement protective measures for GRSG habitats called for by NTT, so as to avoid permanent impairment of GRSG habitats or populations.
- Imposing a “no significant impact” standard for oil and gas operations.
- Prioritizing wildlife over other uses (e.g., livestock grazing).

Response:

Unlike other RMPAs or revisions that are part of the National Greater Sage-Grouse Planning Strategy, the Lewistown GRSG PRMPA/FEIS does not address a range of alternatives for Forest Service-managed surface/federal minerals (p. 1-6), so the provisions of NFMA do not apply.

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

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

The Regional Mitigation Strategy (Appendix G) explains that, “...the BLM will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. If impacts from BLM management actions and authorized third party actions that result in habitat loss and degradation remain after applying avoidance and minimization measures (i.e. residual impacts), then compensatory mitigation projects will be used to provide a net conservation gain to the species.” These actions will ensure that authorized activities do not permanently impair the productivity of the lands and the quality of the environment, in conformance with FLPMA.

All alternatives considered in the Lewistown GRSG PRMPA/FEIS, as described in Chapter 2 (Vol. 1, p. 2-1 through 2-111), 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.

Consistency with State and Local Plans

Issue Number PP-MT-LEWISTOWN-GRSG-15-02-1

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: Importantly, the Lewistown RMPA is inconsistent with the Montana Greater Sage- Grouse Habitat Conservation Strategy despite its similarities to and consistency with the Wyoming Plan, which the BLM mirrored in three Wyoming land use plans. See Montana Executive Order 10-2014.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-1

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the significant inconsistencies between the Proposed RMP and the Montana Greater Sage-Grouse Habitat Conservation Strategy.

See Montana Executive Order 10- 2014 (“Montana Plan”). These inconsistencies are the result of BLM’s choice to impose a national, one-size-fits-all approach to sage-grouse conservation in violation of FLPMA’s requirement for BLM to coordinate land use planning with state and local governments. The Proposed RMP diverges from the Montana Plan in many important respects. For example, the Montana Plan imposes a five percent disturbance cap within core areas. Montana Plan at 14, 17. The Proposed RMP, on the other hand, requires a three percent disturbance cap. Proposed RMP at 2-17. The Montana Plan imposes a 0.25 mile buffer around active leks in general habitat and 0.6 miles around leks in core habitat, Montana Plan at 14, 19, while the Proposed RMP discourages oil and gas infrastructure as far as 3.1 miles from leks, Proposed RMP at 2-17.

Summary:

The BLM is in violation of FLPMA because the Lewistown GRSG PRMPA/FEIS is inconsistent with the Montana Greater Sage-Grouse Habitat Conservation Strategy (Montana Executive Order 10-2014), which is similar to the Wyoming Plan that BLM mirrored in three Wyoming land use plans.

Response:

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

In accordance with these requirements, the BLM has given consideration to state, local and

Tribal plans that are germane to the development of the Lewistown GRSG PRMPA/FEIS, including the Montana Greater Sage-Grouse Habitat Conservation Strategy (Montana Executive Order 10-2014). The BLM has worked closely with state and local governments during preparation of the Lewistown GRSG PRMPA/FEIS. Chapter 5 describes coordination that has occurred throughout the development of the Lewistown PRMPA/FEIS. A list of the local and state plans that the BLM considered can be found in Chapter 1, Section 1.8. The BLM conducted an internal review process to compare the plan with state and local plans for potential inconsistencies.

BLM acknowledges some similarities between the Montana Greater Sage-Grouse Habitat Conservation Strategy and the Wyoming Plan, but there are several reasons why BLM was not able to achieve complete consistency with the Montana Strategy (see Chapter 2, page 2-18). If the BLM determines that the State of Montana has adopted a Greater Sage-Grouse Habitat Conservation Program that contains comparable components to those found in the State of Wyoming's Core Area Strategy including an all lands approach for calculating anthropogenic disturbances, a clear methodology for measuring the density of operations, and a fully operational Density Disturbance Calculation Tool, then the potential for further consistency would increase.

The agency will discuss why any remaining inconsistencies between the Lewistown GRSG PRMPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Range of Alternatives

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-12

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed RMP. First, the Final EIS does not analyze an alternative to the Proposed RMP's mitigation standard of a "net conservation gain" for the greater sage-grouse. Second, the Final EIS does not analyze any alternative to the Proposed RMP's monitoring framework, including alternatives that BLM has the resources to implement. Third, the Final EIS does not analyze alternatives to the adaptive management triggers and responses. Fourth, BLM did not analyze alternatives to the lek buffer distances. Finally, the Final EIS did not analyze the alternative of the Montana

Plan.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-20

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, BLM cannot implement the “responses” to the soft triggers because it did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS accompanying the Proposed RMP. See Proposed RMP at Table 2-5, Ch. 4. FLPMA and NEPA require BLM to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 40 C.F.R. §§ 1502.14, 1502.16; 43 C.F.R. §§ 1610.4-5, 1610.4-6.

Therefore, BLM must consider alternatives to the soft trigger responses and analyze their potential environmental impacts before it may implement them. Because BLM has neither analyzed alternatives to the soft trigger responses nor analyzed their potential impacts, BLM may not implement the soft trigger responses without amending the Proposed RMP.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-04-7

Summary:

The Lewistown GRSG PRMPA/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail alternatives relating to:

- adaptive management triggers and responses;
- “net conservation gain” goal of protecting GRSG habitat;
- the proposed plan’s monitoring framework;
- livestock seasonal restrictions;
- the State of Montana Plan; and
- a submitted GRSG recovery alternative.

Response:

Organization: Western Watersheds Project

Protestor: Travis Bruner

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

General

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate reasonable alternatives, and, for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Lewistown GRSG PRMPA /FEIS, Section 1.6.4 Issues Considered but Not Furthered Analyzed (p. 1-10)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a range of reasonable alternatives that meet the purpose and need (Lewistown GRSG PRMPA/FEIS, p. 1-4) and that address resource issues identified during the scoping period. There are four distinct alternatives described in Section 2.8 Draft RMP/EIS Alternatives (p. 2-33). The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Net Conservation Gain - Monitoring Framework

Net conservation gain is described in the Lewistown GRSG PRMPA /FEIS glossary (p. GLOSSARY-1) as “the actual benefit or gain above baseline conditions.” and is addressed again in Section 1.10 Changes Between The Draft RMPA/EIS to the Proposed RMPA/FINAL EIS (1-27). The net conservation gain requirement responds to the landscape-scale goal to enhance, conserve, and restore Greater sage-grouse and its habitat. The PRMPA provides management direction to meet this landscape-scale requirement (p. 2-39). In addition, net conservation gain is derived from the purpose and need which calls for agencies to incorporate measures to “conserve, enhance and/or restore GRSG habitat”; and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework is described in Section 2.7.2 Monitoring for the Greater Sage-Grouse Planning Strategy (p. 2-35) of the Lewistown GRSG PRMPA /FEIS and describes a methodology to ensure the agencies are able to make consistent assessments about GRSG habitats across the species range. This framework describes the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of actions to conserve the species and its habitat (Appendix B). Being a methodology for monitoring implementation of the PRMPA does not require it to be varied between the action alternatives.

Adaptive Management and Triggers

The identification of hard and soft triggers is a strategy to address localized GRSG population and habitat changes by providing the framework in which management would change if monitoring identifies negative population and habitat anomalies. These triggers are essential for identifying when potential management changes are needed in order to continue meeting GRSG conservation objectives (Lewistown GRSG PRMPA /FEIS, Section 2.7.1 Adaptive Management Plan, p. 2-31). These adaptive management strategies would be developed in partnership with the State of Montana, project proponents, partners, and stakeholders, incorporating the best available

science. Being a strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require triggers to be varied between the action alternatives. Should a hard trigger be reached a more restrictive alternative, or an appropriate component of a more restrictive alternative analyzed in the EIS would be implemented without further action by the BLM. Specific “hard-wired” changes in management are identified in Table 2-3. (p. 2-34).

Montana Plan (State Executive Order No.10-2014)

The Lewistown GRSG PRMPA/FEIS references language from the Montana State Executive Order No.10-2014 in the Adaptive Management and Monitoring (p. 2-32) section in reference to adaptive management and monitoring. In addition, the PRMPA/FEIS states that “the State conservation efforts are complimentary to the conservation measures proposed in the BLM land use plans and when combined would provide conservation efforts across land ownership boundaries.” Consideration of and inclusion of the executive order did not warrant development of a stand-alone alternative.

Conservation Groups Alternative

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, the Lewistown GRSG PRMPA/FEIS acknowledged individual and conservation groups recommendations for the management and conservation of GRSG. Alternative C (Section 2.8.4, p. 2-42) states, “. . . individuals and conservation groups submitted management direction recommendations for protecting and conserving GRSG and habitat at the range-wide level.” These recommendations, in conjunction with resource allocation and management options and internal sub-regional BLM input, were reviewed in order to develop BLM management direction for GRSG under Alternative C. Conservation measures under Alternative B are focused on PHMA (areas that have the highest conservation value to maintaining or increasing GRSG populations) and under Alternative C are focused on both PHMA and GHMA (seasonal or year-round habitat outside of PHMA).

Purpose and Need

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of BLM’s own experts regarding necessary measures to protect sage grouse habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and restore GRSG habitat.”

Issue Number: PP-MT-LEWISTOWN-GRSG-15-05-1

Organization: Public Lands Council / National Cattlemen's Beef Association

Protestor: No name

Issue Excerpt Text: As addressed in our comments, we reiterate that the purpose and need of the Proposed LUPA/FEIS is misleading and arbitrary and capricious in the context of livestock grazing and range management. The purpose and need given to augment grazing regulation is “Loss of habitat components due to livestock and large wildlife use.” (FEIS at ES.2) However,

there appears insufficient evidence that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRS habitat or populations that would justify changes to grazing management. Therefore, imposing

regulatory change on the grazing livestock industry is arbitrary and capricious and without factual basis.

Summary:

The Purpose and Need to conserve, enhance, and restore GRS habitats for the Lewistown GRS PRMPA/FEIS has not been met because:

- the best available science has not been used; and
- protecting GRS habitat from the effects of livestock grazing is without factual basis.

Response:

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

For detailed discussion related to the need to use the best available science and use of the COT and NTT reports, please refer to the Best Available Science section of this report. The management actions developed and analyzed in the alternatives for PRMPA/FEIS included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

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

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

While grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the PRMPA/FEIS that address these impacts. The livestock grazing measures are supported by the best available science, are within the range of alternatives, and meet the Purpose and Need for this PRMPA/FEIS.

The BLM applied the best information available when it developed the Lewistown GRS PRMPA/FEIS and alternatives as they include recommendations from the NTT and COT reports. Therefore these management actions meet the purpose and need and are within the range of alternatives that addresses such.

Cumulative Effects

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-10

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The release of the Montana Plan constitutes significant new information that BLM must consider in a Draft RMP because it affects the analysis of the cumulative impacts of BLM's management strategy on sage-grouse habitat and populations.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-17

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the Proposed RMP/FEIS does not adequately analyze the cumulative impacts of the Proposed RMP because it does not consider the impacts of the Proposed RMP together with the impacts of the at least 13 other greater sage-grouse RMPs. See 80 Fed. Reg. 30,676 (May 29, 2015). The CEQ regulations require agencies to analyze the "incremental impact of the action" together with "other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. In this case, BLM should have analyzed the cumulative impacts of the Proposed RMP with the other 13 RMPs. Clearly, development of the EISs

was a coordinated national effort by BLM and the Forest Service. BLM and the Forest Service announced the RMPs and made them available on the same day. See 80 Fed. Reg. 30,718 (May 29, 2015); 80 Fed. Reg. 30,716 (May 29, 2015); 80 Fed. Reg. 30,714 (May 29, 2015); 80 Fed. Reg. 30,711 (May 29, 2015); 80 Fed. Reg. 30,709 (May 29, 2015); 80 Fed. Reg. 30,707 (May 29, 2015); 80 Fed. Reg. 30,705 (May 29, 2015); 80 Fed. Reg. 30,703 (May 29, 2015); see also Dept. of the Interior Press Release, BLM, USFS Plans for Western Public Lands Provide for Greater Sage-Grouse Protection, Balanced Development (May 28, 2015). Nationwide, BLM and the Forest Service propose to designate an addition 31 million mineral acres as subject to NSO stipulations. Moreover, many of the Proposed RMPs contain consistent—if not standardized—provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of them require that compensatory mitigation yield a "net conservation gain." BLM had not analyzed the cumulative impacts of these nation-wide management actions on the greater sage-grouse and, in particular, the cumulative impacts on mineral leasing and development.

Summary:

BLM did not adequately address cumulative impacts because the Lewistown GRSG PRMPA/FEIS did not include new information from the Montana Plan and the cumulative effects analysis did not include the proposed RMP amendments and revisions nationwide.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define

cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 5 on meaningful impacts.

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 geographic scope for the cumulative impact analysis extends to the planning area boundary. For Chapter 5, Section 5.3, Greater Sage-Grouse, the cumulative impact analysis includes an analysis at the WAFWA Management Zone 1 (Great Plains) and Management Zone IV (Snake River Plains) levels, in addition to the planning area analysis. This delineation of the impact area is the reason why the other Greater Sage-Grouse plan amendments were not included in this analysis.

The Governor of the State of Montana issued Executive Order 10-2014 which created the MSGOT and the Montana Sage Grouse Habitat Conservation Program. The executive order outlines a number of conservation strategies for state agencies to follow for land uses and activities in GRSG habitat in addition to establishing the MSGOT and habitat conservation program. The State conservation efforts are complementary to the conservation measures proposed in the BLM land use plans and when combined would provide conservation efforts across land ownership boundaries.

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 (Chapter 5) 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 Lewistown GRSG PRMPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Lewistown GRSG PRMPA/FEIS.

Public Comments

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-13

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: With respect to the Proposed RMP, the Trades submitted extensive and detailed comments on the RDFs (called BMPs in the Draft RMP)

listed in the Required Design Features Appendix. See Trade Comments at 23 – 29. BLM, however, did not make any substantive changes to the RDFs between draft and final. Compare Proposed RMP, App.D with Draft RMP, Apps. C, D.

Additionally, BLM did not acknowledge the Trades’ comments on the RDFs and did not “[e]xplain[] why the comments do not warrant further response.” See 40 C.F.R. § 1503.4(a); Proposed RMP at O-32 – O-34. BLM also did not make any substantive changes to the RDF Appendix. Compare Proposed RMP, App. D, with Draft RMP, Best Apps. C, D.

Therefore, BLM has not provided the response to comments as required by the CEQ regulation.

Summary:

The BLM did not adequately respond to or address comments received.

Response:

The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments. During the Draft RMPA/EIS 90-day public comment period, the BLM received written comments by mail, e-mail, and submissions at the public meetings. Comments covered a wide spectrum of thoughts, opinions, ideas, and concerns. Upon receipt, the BLM reviewed the comments, grouped similar substantive comments under an appropriate topic heading, and evaluated and wrote summary responses addressing the comment topics. The response indicated whether the commenters’ points would result in new information or change being included in the Lewistown GRSG PRMPA/FEIS. As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft RMPA/EIS the BLM made modifications to the Preferred Alternative identified in the Draft RMPA/EIS. The Proposed RMP Amendment focuses on addressing public comments, while continuing to meet the BLM’s legal and regulatory mandates. The process and methodology used for reviewing and responding to the public comments is found in Volume 2, Section 6.5.3.

Commenters requested additional alternatives or clarification to the existing alternatives on RDFs, BMPs, well pad density, and valid existing rights. They also requested that mitigation for prospecting permits for nonenergy mineral development be described or defined. Please refer to Appendix O. 2.10 for details involving comments regarding Best Management Practices and Required Design Features.

As stated in Section 1.7 of the Proposed RMPA/Final EIS, the RMPA would recognize valid existing rights. Valid existing rights would be honored, which include any leases, claims, or

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-35

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the RDFs listed in the Greater Sage-Grouse Required Design Features Appendix of the Proposed RMP. Although the Trades extensively commented on the RDFs in the Draft RMP, BLM did not any of the RDFs in response to the Trades’ comments. Furthermore, as explained in section V.C, supra, BLM did not respond to the Trades’ comments as required by 40 C.F.R. § 1503.4(a).

other authorizations established before a new or modified authorization, change in land designation, or new or modified regulation is approved.

When an oil and gas lease is issued, it constitutes a valid existing right; the BLM cannot unilaterally change the terms and conditions of the lease or place additional stipulations on a lease. Existing leases would not be terminated until the lease expires. However, based on site- or project-specific environmental analysis, RDFs could be applied as COAs at the application for permit to drill (APD) and Sundry Notice stage and at subsequent development stages to mitigate potential impacts from oil and gas operations within existing lease areas, providing the leaseholder's right to develop the lease remains intact (Section 2.6.2 of the Proposed RMPA/Final EIS).

Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce, and mitigate adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources. The BLM will work with the lessee, operator, or project proponent in developing an APD for the lease to avoid and minimize impacts on GRSG or its habitat and will ensure that the best information about the GRSG and its habitat informs and helps to guide development of such federal leases. Appendix C and Appendix D of the Proposed RMPA/Final EIS contain RDFs designed to protect GRSG habitat that could be applied to nonenergy leasables.

The use and application of specific RDFs would be made during the environmental analysis process for individual proposals on a case-by-case basis. See the response in Section O.2.1 as well as the GRSG-Mitigation section of this report for more details on mitigation measures proposed.

The BLM complied with NEPA and the CEQ implementing regulations at 40 CFR, Part 1500 in the development of alternatives for the Lewistown GRSG PRMPA/FEIS, including seeking public input and analyzing reasonable alternatives (see also response in Section O.2.1 as well as the NEPA-Range of Alternatives section in this report). Also as previously noted, the relative emphasis given to particular resources and resource uses differs as well, including allowable uses, restoration measures, and specific direction pertaining to individual resource programs. When resources or resource uses are mandated by law or are not tied to planning issues, there are typically few or no distinctions between alternatives. Meaningful differences among the draft alternatives and Proposed Plan Amendment are described in Table 2-3 of the PRMPA/FEIS.

Suggested revisions have been reviewed and incorporated as appropriate to clarify alternatives (see Chapter 2 of the PRMPA/FEIS). Changes implemented in the PRMPA/FEIS include the addition of SFAs, guidance for incorporating GRSG RMP decisions into grazing authorizations, vegetation objectives guidance, density and disturbance caps, mitigation guidance, and guidance for applying lek buffers when approving actions (see the description of Changes from Draft RMPA to the Proposed RMPA in Section 1.9 of the PRMPA/FEIS). As discussed in Sections 1.3 and 1.6.4 in PRMPA/FEIS, there is an existing protest resolution decision affecting lands managed within the Lewistown Field Office that does not allow oil and gas leasing of nominated

parcels that would require a special stipulation to protect important wildlife values, which includes PHMA and GHMA. New leasing of areas with important wildlife values cannot occur until the BLM completes a plan amendment/EIS or a new/revised RMP/EIS, including oil and gas leasing decisions identified in a ROD. Because this RMPA only considers management actions for GRSG and does not address oil and gas leasing options for other wildlife resource values, this RMPA/EIS would not satisfy the requirements of the protest stipulation. The Lewistown Field Office RMP revision process, which began in 2013, will address oil and gas leasing for the entire Lewistown Field Office planning area boundary.

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 Lewistown GRSG PRMPA/FEIS.

The BLM has provided adequate opportunity for comments, has considered all comments and responded adequately comments received for the Lewistown GRSG PRMPA/FEIS.

Supplemental EIS

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-11

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Additionally, the management proposed under the Montana Plan presents another management alternative that BLM should consider adopting. Because the Montana Plan constitutes "significant new circumstances," BLM must prepare a Supplemental Draft EIS.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-18

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM's own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when "substantial changes to the proposed action, or significant new information/circumstances collected during the comment period" are presented. BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05).

Because the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses unquestionably are a "substantial change" when compared to the alternatives included in the Draft RMP, BLM should have prepared and released for comment a supplement to the Draft RMP.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-8

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the lek buffer distances, the revised mitigation and monitoring plans, and the adaptive management triggers and responses. BLM first presented the public with these components when it released the Proposed RMP.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-9

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text:

Most troubling is the fact that the net conservation gain requirement, revised monitoring plan, revised mitigation plan, lek buffer distances, and adaptive management triggers and responses were not incorporated into the Proposed RMP and Final EIS in response to public comment on the Draft RMP/Draft EIS or in response to environmental impacts disclosed in the Draft EIS. See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, BLM appears to have incorporated the net conservation gain requirement, revised mitigation plan, and revised monitoring plan to respond to

national policies by BLM and FWS that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Serv., Greater Sage-Grouse Range-Wide Mitigation Framework (2014); BLM, The Greater Sage-Grouse Monitoring Framework (2014). Similarly, the lek buffer distances and adaptive management triggers and responses appear to have been added to make the Proposed RMP consistent with the greater sage-grouse provisions in other land use plans. See Fact Sheet: BLM/USFS Greater Sage-Grouse Conservation Effort (noting that land use plans to conserve the greater sage-grouse are based on three objectives for conserving and protecting habitat). The public never had the opportunity to review and comment on these new components.

Summary:

BLM must provide a Supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations.

None of the alternatives presented in the Draft RMPA included the requirements that mitigation produce a net conservation gain, the lek buffer distances, the revised mitigation and monitoring plans, and the adaptive management triggers and responses.

Response:

The BLM NEPA Handbook, 5.3.1 When Supplementation is Appropriate, page 30:

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

The BLM NEPA Handbook, 5.3.2 When Supplementation is Not Appropriate, page 30

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

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

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

40 CFR 1502.9: Draft, Final, and Supplemental Statements

(c) Agencies:

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

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

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

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

Please see section 1.10 Changes between the Draft RMPA/EIS to the Proposed RMPA/Final EIS. The Proposed Plan Amendment is a variation of the preferred alternative (D) and is within the range of alternatives analyzed in the Draft RMPA/EIS. Chapter 1, page 1-24

The USGS buffer study report titled “Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review” (Manier et. al.2014) included a management action to incorporate the lek buffer-distances during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft RMPA/EIS release, applying buffers was addressed in the Draft RMPA/EIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, Alternatives B and C identified and analyzed allocation restrictions such as recommendation for withdrawal, exclusion of ROWs, etc. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. For example, Alternatives B and C in the Draft RMPA/EIS analyzed four-mile buffers around leks when constructing roads (Chapter 1, page 1-26).

Chapter 2 of the Draft RMPA/EIS identified that the BLM would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive

management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed Plan Amendment, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternative C in the Draft RMPA/EIS. Chapter 1, page 1-26

The Purpose and Need of the PRMPA/FEIS: “The purpose for the RMPAs and revisions is to identify and incorporate appropriate conservation measures to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat.” The net conservation gain requirement is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives in the Draft RMPA/EIS provided management actions to meet the landscape-scale goal (see Table 2-4 in the Draft RMPA/EIS). Chapter 1, page 1-27.

The Montana Plan was released after the Draft RMPA/DEIS. Conservation of the GRSG is a large-scale challenge that requires a landscape scale solution that spans 11 western states. The Lewistown GRSG RMPA/FEIS achieves consistent, range-wide conservation objectives, as outlined below. Additionally, the Lewistown GRSG RMPA/FEIS aligns with the State of Montana’s priorities and land management approaches consistent with conservation of GRSG.

The monitoring framework was further refined in the Proposed RMPA/Final EIS, and further clarification as to how disturbance cap calculations would be measured were developed for the Proposed RMPA/Final EIS. During the public comment period, BLM received comments on how monitoring and disturbance cap calculations would occur at implementation. The Draft RMPA/EIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced the two Appendices (Appendix B, The Greater Sage-Grouse Monitoring Framework, and Appendix N, Greater Sage-Grouse Disturbance Caps) in the Final EIS.

The Proposed RMPA includes components of the alternatives analyzed in the Draft RMPA/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMPA/EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed Plan Amendment is a minor variation and that the impacts of the Proposed Plan Amendment would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. Therefore, the Lewistown GRSG PRMPA/FEIS does not require a supplement. The impacts disclosed in the PRMPA/FEIS are similar or identical to those described Draft RMP/EIS (page 1-27).

A Supplemental EIS is not necessary. Changes in the proposed action are not substantial. The effects of the changed proposed action are still within the range of effects analyzed in the Draft EIS.

Best Available Science

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-11

Organization: Beatty & Wozniak

Protestor: Bret Sumner

Issue Excerpt Text:

XTO also protests the BLM's failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Lewistown RMPA.

The Lewistown RMPA does not meet BLM's science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA. BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 C.F.R. § 1500.1(b); 40 C.F.R. § 1502.8. In developing a land use plan amendment, BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-37

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

The stipulations, restrictions, and conservation measures in the Proposed RMP are largely based on the U.S. Fish and Wildlife Service's (FWS) Greater Sage-Grouse (*Centrocercus urophasianus*) Conservation Objections: Final Report (Feb. 2013) ("COT Report") and the BLM's Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team (Dec. 2011) ("NTT Report"). Reliance on these reports is arbitrary and capricious under the Administrative Procedure Act

(APA). 5 U.S.C. § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act ("DQA"), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-38

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the "Literature Cited" section. Megan Maxwell, BLM's NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?, p. 13-14 (May 20, 2013) ("NWMA Review"), Attachment 6. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34 percent of the citations had no corresponding source available to review. Id. at 14. Additionally, there are articles listed in the "Literature Cited" section that are not directly referenced and do not appear to have been used within the NTT Report itself. Id. These technical errors limit the ability of outside reviewers or the public to verify claims in the NTT Report and reduce the report's scientific credibility.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-39

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-40

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the three percent disturbance cap, which has been proposed in the Proposed RMP. Rather, the disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion, not fact. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”). Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a “viable” population of any species, much less greater sage- grouse. Curtis H. Flather, et. al, Minimum Viable Populations: Is There a “Magic Number” for Conservation Practitioners?, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 8. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and BLM should not have relied upon these studies or the NTT Report in the Proposed RMP.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-41

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created. See NTT

DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Ramey, Brown, & Blackgoat. As explained by Ramey, Brown, and Blackgoat, studies prior to the NTT Report's publication were based upon older, more invasive forms of development:

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

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-42

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-43

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

various rankings to greater sage-grouse threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks. See COT Report at 16 – 29, tbl. 2. Absent a quantifiable methodology, these rankings are subjective and BLM should not rely upon any conservation measures derived from them.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-44

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

rate that is deemed acceptable from 30 percent in 1981 to 20 to 25 percent in 1987 to five to 10 percent in 2000. Reese & Connelly at 110 – 11. High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone:

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-45

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-46

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-47

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding sage-grouse leks. A recent review of this data showed that regional

climatic variations, rather than anthropogenic threats such as oil and gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of Greater Sage-grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014), Attachment 12. Because current data demonstrates that the impacts of anthropogenic disturbances on sage-grouse populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-48

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by sage-grouse to industrial development contains serious flaws. D.E. Naugle, et al., Energy Development & Greater Sage-Grouse, in Greater Sage-Grouse: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38 (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding sage-grouse responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, A Comprehensive Review of Greater Sage-Grouse: Ecology &

Conservation of a Landscape Species & its Habitat at 115 (Feb. 2012), Attachment 13. Naugle et al. 2011 also misrepresented the results of another study to support their claim that sage-grouse abandon leks due to noise and human activity. Id. at 116. Further, of the seven studies reviewed, four focused on impacts to sage-grouse in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin. Id. Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies’ results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-49

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, Spatial Heterogeneity in Response of Male Greater Sage-Grouse Lek Attendance to Energy Development, PLoS One, June 2014). This study, like many similar studies, was based on peak male lek count data. Id. at 2; see also D.H. Johnson, et al., Influences of Env’t’l & Anthropogenic Features on Greater Sage-Grouse Populations, 1997 – 2007, in Greater Sage-Grouse: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No.

38, at 407 (S.T. Knick & J.W. Connelly eds., 2011). Peak male lek count data tends to bias lek attendance estimates and therefore leads to inaccurate population trend estimates. Rob R. Ramey, et al., *Hierarchical Bayesian Analyses of Greater Sage-Grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997 – 2012*, at 2 – 3 (Dec. 2014). Mean average lek counts provide a more accurate picture of population trends. See, e.g., id.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-50

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study's conclusions are based on well density data and lek counts from 1991 through 2011. Gregory & Beck at 4. The period in which sage-grouse reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011. Id. However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004. Id. at 7. Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in the coming years. Id. This prediction assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country. See, e.g., Applegate & Owens at

287. As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time period. Applegate & Owens at 287. As Applegate and Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity. Id. at 288. Gregory and Beck's study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across greater sage-grouse range.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-51

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Other papers important to the USGS Buffer Report's energy buffers, see USGS Buffer Report at 7, also relied on well density data from the height of Wyoming's CBNG boom. See, e.g., B.C. Fedy et al., *Habitat Prioritization Across Large Landscapes, Multiple Seasons, & Novel Areas: An Example Using Greater Sage-Grouse in Wyoming*, 190 *Wildlife Monographs* 1, 12 (Mar. 2014) (relying on Wyoming well data from 1998 through 2008 to determine effects of various well densities on greater sage-grouse); D.H. Johnson, et al., *Influences of Env't'l & Anthropogenic Features on Greater Sage-Grouse Populations, 1997 – 2007*, in *Greater Sage- Grouse: Ecology of a Landscape Species & its Habitats*, *Studies in Avian Biology* No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011) (relying on data from 1997 through 2007); Kevin E. Doherty, *Greater Sage-Grouse Winter Habitat*

Selection & Energy Development, 72 J. of Wildlife Mgmt. 187, 187 (relying on data from CBNG development in the Powder River Basin).

Current development is less intensive than the CBNG development that took place from 1998 through 2008. In effect, the USGS Buffer Report reviewed data from some of the most intensive developments in the country and extrapolated from these results range wide buffers applicable to future development with significantly different impacts. This data is a weak basis from which to regulate current and future oil and gas development. See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-1

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

Setting lek buffer-distances at the minimum (lower) end of the range recommended by the best available scientific information and other sources limits options for future management in sage-grouse habitat. Allowing land uses and development to within minimum distances of sage-grouse breeding areas would have a greater negative impact on sage-grouse than if the agency required larger lek buffers. Managing to the minimum not only increases the risk of harming sage-grouse, but also maximizes the potential for land uses and development activities to inadvertently breach buffer boundaries. Offering exceptions to minimum buffers would almost certainly affect sage-grouse populations that depend on those leks and associated nesting and brood-rearing habitat. Requiring larger lek buffers would both conserve sage-grouse and preserve agency options for managing sage-grouse and

other values in breeding, nesting and brood-rearing habitat.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-12

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as BLM's responsibility to prevent undue degradation to sage grouse habitats under FLPMA and the agency's duty to uphold the responsibilities outlined in its Sensitive Species policy. BLM's failure to apply adequate lek buffers to conserve sage grouse, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-17

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

The record establishes that met towers can result in sage grouse population declines (see Cotterel Mountain data reviewed in 'Wind Power in Wyoming,' attached to Guardians' DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by grouse. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied.

Summary

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

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

Response

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

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

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

Both the NTT report and the COT report draw from the WAFWA Greater Sage-grouse Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangewide Conservation of Greater Sage-Grouse (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) then provides complementary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and

cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service’s “warranted but precluded” finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and Montana Department of Fish, Wildlife, and Parks, and relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Chapter 3) and impact analysis (PRMP/FEIS, Chapters 4 and 5). A list of information and literature used is contained in Chapter 7.

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/EIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapters 4 and 5). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/EIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze all available data.

On November 21, 2014 the US Geological Survey (USGS) published “Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review” (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The BLM has reviewed this information and examined how lek buffer-distances were addressed through land use allocations and other management actions in the Lewistown GRSG Draft RMP/EIS. Based on this review, in undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third party actions, the BLM would apply the lek buffer-distances in the USGS Report “Conservation Buffer Distance Estimates for Greater Sage Grouse-A Review (Open File Report 2014-1239)” in both GHMA and PHMA as detailed in Appendix M, Applying Lek Buffer Distances When Approving Actions.

As stated in Appendix M, “Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized ‘that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the sage-grouse range.’ The USGS report also 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.’ All variations

in lek buffer distances would require appropriate analysis and disclosure as part of activity authorization.” (p. M-2). As such, the BLM has considered appropriate science when determining lek buffers and has incorporated a mechanism to consider additional science as it becomes available.

Public Participation

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-5

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-6

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: Under NEPA, BLM is required to supplement existing NEPA documents when, as it has done for the RMPA, it makes substantial changes to the proposed action. 40 C.F.R. § 1502.9(c)(1)(i); Pennaco Energy, Inc. v. U.S. Dep’t of the Interior, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the RMPA reflects an entirely new management structure, premised primarily upon the GrSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the RMPA, as significantly revised, was issued without supplemental NEPA analysis, and

without additional public review or comment. This failure by BLM is a plain violation of NEPA.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-7

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including BLM, to exercise regulatory authority “on the open exchange of information and perspectives among State, local and tribal officials” in a manner to promote “economic growth, innovation, competitiveness and job creation.” BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different RMPA which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-7

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest substantial changes made between the Draft RMP and Proposed RMP without notice and an opportunity for public comment. The Proposed RMP contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that

mitigation produce a net conservation gain, the lek buffer distances, and the adaptive management triggers and responses, as well as extensively revised monitoring and mitigation plans. See Proposed RMP at I-25

– I-27. These proposed changes violate NEPA because they were not included in the Draft RMP and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

Summary:

The BLM did not allow the public an opportunity to comment on new provisions found in the Lewistown GRSG PRMPA/FEIS or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, the adaptive management triggers and responses, the mitigation and monitoring plans.

The Lewistown GRSG PRMPA/FEIS reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected. Public involvement entails “the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings . . . or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive Orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

As stated at 43 CFR 1610.2 :

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

(1) General notice at the outset of the process inviting participation in the identification of issues

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

During the Draft RMPA/EIS 90-day public comment period, the BLM received written comments by mail, e-mail, and submissions at the public meetings. Comments covered a wide spectrum of thoughts, opinions, ideas, and concerns. Upon receipt, the BLM reviewed the comments, grouped similar substantive comments under an appropriate topic heading, and evaluated and wrote summary responses addressing the comment topics. The response indicated whether the commenters' points would result in new information or changes being included in the PRMP/FEIS. Section 6.5.3, Summary of Comments Received on the Draft RMPA/EIS, provides a detailed description of the comment analysis methodology and an overview of the public comments received on the Draft RMPA/EIS. Complete comment summaries and responses, including rationale and any associated changes made in the Proposed RMPA/Final EIS, can be found in Appendix O, Response to Comments on the Draft Resource Management Plan Amendment/Environmental Impact Statement.

As a result of public comments, the agencies published a full text PRMPA/FEIS, as required, given there were changes from the Draft RMPA/EIS. Section 1.10 gives an overview of these changes and also provides reference to the Draft RMPA/EIS documents where these new provisions were analyzed.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft RMPA/EIS, the BLM has developed the PRMPA/FEIS for managing BLM-administered lands in the Lewistown Field Office GRSG sub-region. The PRMPA/FEIS focuses on addressing public comments, while continuing to meet the BLM's legal and regulatory mandates. The Proposed Plan Amendment is a variation of the preferred alternative (D) and is within the range of alternatives analyzed in the Draft RMPA/EIS.

The agencies have fulfilled the requirements of providing opportunity for public involvement during the planning and NEPA process.

Impacts - Greater Sage-Grouse

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-20

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result

in an increase, maintenance, or further decrease of sage grouse populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-MT-LEWISTOWN-GRSG-15-04-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage grouse populations, or

describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et al. 2013, Taylor et al. 2012).

Summary:

The Lewistown GRSG PRMPA/FEIS fails to adequately analyze the impacts to GRSG because the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations.

Response:

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

Instructional Memorandum 2012-044 provided direction for the National Greater Sage-grouse Conservation Measures (NTT report). Conservation measures included in the NTT based alternative focus primarily on priority habitats and includes percent disturbance caps as a conservation measure to maintain or increase sage-grouse populations. The data for this report were gathered from BLM, Forest Service, and other sources and were the "best available" at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

Impacts - Oil and Gas

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-14

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed RMP's leasing and development restrictions on oil and gas development. The Proposed RMP discourages development on existing leases

within buffer distances, discourages issuance of rights-of-way across 366,000 acres of lands, and imposes new compensatory mitigation requirements, new lek buffers, new density and disturbance caps, and new RDFs on existing leases. The measures will cumulatively stymie oil and gas development on federal lands within the planning area. The Final EIS does not adequately recognize the cumulative impacts

of leasing and development restrictions on federal lands.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-16

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, BLM has not adequately analyzed the impacts right-of-way avoidance and exclusion areas will have upon existing oil and gas leases. The Proposed RMP would designate 366,000 acres as right-of-way avoidance areas. Proposed RMP, Table 2-4 at 2-47. At the

same time, the Proposed RMP states that 55,880 acres of federal minerals in the planning area are currently under lease for oil and gas. Id. at 2-48. To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. BLM must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area. Accordingly, BLM must analyze the impacts of the right-of-way avoidance and exclusion areas in the Proposed RMP.

Summary:

The Lewistown GRSG PRMPA/FEIS does not adequately analyze the impacts of the Proposed RMPA on oil and gas development, particularly with regards to the impacts of ROW restrictions on oil and gas development.

Response:

The CEQ regulations require an environmental impact statement to "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues" (40 CFR 1502.15). The BLM complied with these regulations in writing its environmental consequences section. The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The analysis of impacts provided in Chapter 4 of the Lewistown GRSG PRMPA/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the Lewistown GRSG PRMPA/FEIS.

In regards to the impacts of the Proposed Plan on fluid mineral development, "implementing management for the following resources would have negligible or no impact on fluid minerals and are therefore not discussed in detail: travel and transportation management, recreation, lands and realty, range management, solid minerals, fire and fuels management, habitat restoration and vegetation management, and ACECs" (p. 4-97). Additionally, Chapter 4 discusses the application of protections such as the density and disturbance caps in PHMA and lek buffers in PHMA and GHMA, acknowledging that such protections could impact oil and gas activities by preventing new surface development (p. 4-100). This section further describes the application of these protections.

Oil and gas leases, locatable minerals claims, renewable energy, rights of way, and other permitted projects are valid, existing rights, which cannot be modified through the land use planning process (FLPMA, Section 701(h)).

The BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). However, the application of COAs is outside the scope of the land use planning process; rather, the BLM analyzes and develops COAs at a site-specific level once a project is proposed. When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, BLM has the authority to impose reasonable measures, such as COAs, to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24).

For example, the PRMPA/FEIS states in Chapter 1 (p. 1-17) that “the RMPA will recognize valid existing rights.” Additionally, Action TM-1.7 states that “in PHMA, during site-specific travel and transportation management planning, use existing routes or realignments, as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing routes, then build any new route to the absolute minimum standard necessary,” (p. 2-19). As specific actions come under consideration, the BLM will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as the issuance of ROWs. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts - Other

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in

determining patterns of rangeland fire.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-21

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This method fails NEPA’s scientific integrity and ‘hard look’ requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Summary:

The Lewistown GRSG PRMPA/FEIS violated NEPA by failing to take a hard look at the effectiveness of proposed mitigation measures and fails to analyze cheatgrass invasion in

determining patterns of rangeland fire and in planning for livestock grazing.

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 Lewistown GRSG PRMPA/FEIS.

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

In the Lewistown GRSG PRMPA/FEIS, Chapter 3, page 3-32, it states that “although cheatgrass and several nonnative brome species are present in the planning area, their spread is restricted by climatic conditions. They are found in isolated, non-contiguous patches and do not currently pose a threat of invading vast areas of PH or GH”.

In the Lewistown GRSG PRMPA/FEIS, Chapter 4, page 4-85, it states that “vegetation and weed treatments that decrease standing vegetation could decrease the intensity of wildland fires and allow fires to be more easily controlled. For example, efforts to reduce incursion of nonnative annual grasses (primarily cheatgrass), and proliferation of other noxious and invasive weeds, would promote healthy plant communities and an associated lower risk of high intensity wildfire (USGS 2006). Used appropriately, prescribed fire would be compatible with noxious weed control; however, the presence of noxious weeds and the potential of weeds to spread after a prescribed fire would need to be monitored on a site-specific basis. Conversely, management actions that retain shrub and cover may result in increased fuel loading and increase the likelihood and intensity of wildland fire. Management actions that are intended to improve, create, or re-establish healthy ecological conditions in various vegetation types benefit the fire and fuels program in the long term by promoting the most efficient use of fire and fuels fire management program resources. Conversely, prioritizing fire suppression can limit management options and increase costs for fire management programs.”

Chapter 4, page 4-10, the Lewistown GRSG PRMPA/FEIS also states and considers that “fire suppression may be used to maintain habitat for GRSG (NTT 2011, pp. 25- 27). Fire suppression may preserve the condition of some vegetation communities, as well as habitat connectivity. This is particularly important in areas where fire frequency has increased as a result of weed invasion or where landscapes are highly fragmented. Fire also increases opportunities for invasive species, such as cheatgrass (*Bromus tectorum*), to expand (Balch et al. 2012); fire suppression may limit this expansion. In the LFO, cheatgrass is not widespread and dominant, though isolated patches may be found. The chance of large wildfire in sagebrush is less in the LFO planning area than in the Great Basin, due to the planning area’s vegetation (less cheatgrass) and cooler, wetter climate. Controlled burning may be prescribed to treat fuel buildup and can help sagebrush habitat recover in some vegetation types, especially when silver sagebrush is undergoing conifer

encroachment. Reseeding with native plants and long-term monitoring to ensure the production of GRSG cover and forage plants, would assist vegetation recovery (NTT 2011, pp. 26-27). In the LFO, controlled burning is used primarily in ponderosa pine areas to limit conifer spread and is not used in GRSG habitat.”

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts to vegetation and wildland fire management in the Lewistown GRSG PRMPA/FEIS.

GRSG- General

Issue Number PP-MT-LEWISTOWN-GRSG-15-01-22

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM has not made a showing through its collective NEPA analyses that sage grouse respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern Montana and 18 cm across the remaining range of the sage grouse based on scientific studies. Indeed, the science shows that responses of sage grouse to human-induced habitat alternations are remarkably similar across the species’ range. Given that the science does not differ significantly across the species’ range regarding the impacts of human activities on sage grouse, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to sage grouse conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to

the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-04-10

Organization: Western Watersheds Project

Protestor: Travis Bruner

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Some claim that the five percent cap incorporated from the Wyoming state "core area" sage-grouse conservation strategy in federal sage-grouse plans in the state is equivalent to the three

percent cap recommended in the NTT report and other references (see, e.g., Wyoming FEIS: 4-339) because the Wyoming strategy also counts other types of disturbance against its cap, including temporary habitat loss from fire and vegetation removal (e.g., Wyoming DEIS: 2-118, Table 2-1, Action 115; 2-181, Table 2.5), that are not typically counted in the three percent cap. But this rationale is flawed.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-3

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Lewistown FEIS should follow the example set by the South Dakota plan .

The Proposed Plan in the South Dakota FEIS depicts sage-grouse wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4)- the Lewistown plan should avoid doing the same); prohibit renewable energy development, and require managers to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/around winter range to preserve the areas by reducing future fire risk (SD FEIS: 48)

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

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

Issue Number: MT-LEWISTOWN-GRSG-15-06-9

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Lewiston RMPA should follow the example set by the Nevada and Oregon plans.

Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [sage-grouse] habitat due to climate stress" as a threat to sage-grouse; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on sage-grouse and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species.

The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas," generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the

best habitat for sage-grouse over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current sage-grouse range. The purpose of

these areas is to benefit sage-grouse over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Summary:

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

Response:

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM has used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences (see Section 2.4 of the PRMPA/FEIS). Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG - Density and Disturbance Cap

Issue Number PP-MT-LEWISTOWN-GRSG-15-01-13

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: There is no scientific evidence at all indicating that sage grouse can tolerate a greater percentage of surface disturbance. BLM proposes a 3% cumulative limit of human-caused surface disturbance, and an additional limit of 5% combined disturbance between surface disturbance and agricultural tillage and fire.

FEIS at 2-17. The 3% surface disturbance limit is the key conservation threshold based on the best available science, and the existence of the 5% threshold is beneficial only because the 3% limit on cumulative surface disturbance also applies. We have concerns that the appropriateness of the Biologically Significant Unit is not a biologically appropriate calculation area for both surface disturbance and siute density, and will outline these concerns in a subsequent section.

However, the Lewistown plan amendment includes a poison-pill provision that would convert scientifically adequate disturbance and site density criteria to scientifically unsupported conservation measures that would in fact allow an excessive level of surface disturbance:

If the BLM determines that the State of Montana has adopted a GRSG Habitat Conservation Program that contains comparable components to those found in the State of Wyoming's Core Area Strategy including an all lands approach for calculating anthropogenic disturbances, a clear methodology for measuring the density of operations, and a fully operational density and disturbance calculation tool (DDCT), the 3% disturbance cap would be converted to a 5% cap for all sources of habitat alteration within a project analysis area.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-15

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Importantly, the NTT (2011) recommended that disturbance density be calculated per square-mile section, based on their review of the best available science. This is supported by subsequent scientific study by Knick et al.

Summary:

The density and disturbance caps are insufficient to protect GRSG and do not consider disturbance as a result of livestock grazing.

Response:

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011,p. 8):

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

(2013), who found a limit of 3% development based on a 3-mile buffer around leks was the threshold beyond which sage grouse populations were rarely able to sustain themselves.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-04-9

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan does not include grazing as a surface disturbance subject to the disturbance cap. PRMPA/FEIS at Appendix N. In fact, livestock grazing is not mentioned at all in terms of disturbance. The plan completely disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupts vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns to other uses.

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Lewistown GRSG PRMPA/FEIS that address these impacts (see Sections 2.9 and 2.10).

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

GRSG – Data and Inventories

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-4

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

Identifying winter habitat in the planning area is critical to conserving sage-grouse, as well as establishing baseline conditions for understanding the Proposed RMPA's impacts on the species. The BLM should immediately complete mapping of winter habitat, as it is uncertain, and perhaps unlikely, that these areas will be protected from disturbance in the meantime. Winter habitat "could be difficult to restore to original conditions [once disturbed] . . . due to the composition and size of sagebrush in these areas" (Bighorn Basin FEIS: 4-315).

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

The plan also should not assume that designated priority habitat includes all winter habitat. Priority habitat areas, based on Doherty et al. (2010) and similar data and mapping, are generally established around sage-grouse leks. Connelly et. al. (2004: 4-19) (unpublished) noted that females migrate an average of 9.9 km between summer and winter habitat. Fedy (2012: 1066) reported average summer- to-winter

migration of 21.18 km and average nest-to-winter migration of 12.55 km in north-central Wyoming. Manier et al. (2013: 26) summarized that a majority of sage-grouse move 10 km from summer to winter locations with movements of up to 90 mi (145 km) documented.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-7

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

The planning area is within the Northwestern Plains Rapid Ecological Assessment, which has produced downscaled climate projections for the area, and the State of Montana, which has also developed and published relevant, local climate change projections [www.climatechangeMT.org]. The plan fails to incorporate this available information, relying instead on general regional projections (3-81 - 3-82, Section 3.17).

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-8

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

This policy required BLM to complete an Ecoregional Assessments. Id. at 11. The Northwestern Plains Ecoregional Assessment publication ("NPEA") was

completed in 2012, and BLM should reference the findings of this report as they apply to the Lewistown amendment, which falls within the NPEA area, in order for the

BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy.

Summary

The Lewistown PRMPA/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by:

- failing to identify winter habitat; and
- not incorporating climate projections from the Northwestern Plains Rapid Ecological Assessment.

Response

Instruction Memorandum No. 2012-044 (BLM 2011a) directed the BLM to collaborate with state wildlife agencies to identify and map two categories of GRSG habitat (BLM 2012, IM No. 2012-043)—Priority Habitat (PH) and General Habitat (GH). Winter habitat was included in the PH (p. 3-11). The BLM developed the PH based on Montana Fish, Wildlife, and Park’s prior modeling of GRSG Core areas using a lek-centric model based on male lek attendance and refined with seasonal habitat, telemetry, connectivity information, and field review (p. 3-11). Documentation for the Montana Core area analysis has been moved since the publication of the Lewistown PRMP/FEIS and is now available at is summarized at: <http://fwp.mt.gov/gisData/metadata/sgcore.htm>.

The Northwestern Plains Rapid Ecological Assessment was not available for use until it was made available through Montana Information Bulletin No. MT-2014-021 on August 6, 2014. As such, it was not available for incorporation into the Lewistown PRMP/FEIS. Data used regarding climate can be found in Sections 3.17 and 4.16. The information used was relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives for the Lewistown PRMP/FEIS.

GRSG - Adaptive Management

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-19

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Second, BLM cannot implement the “responses” to the soft triggers because there is nothing to implement. The Proposed RMP does not define any concrete actions that BLM will implement in response to the soft triggers. See Proposed RMP at 2-33. The planning regulations do not permit BLM to change the management prescriptions in an RMP

via an open-ended placeholder.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-33

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the soft and hard adaptive management triggers and responses set forth in the Proposed RMP as arbitrary because the adaptive management strategy does not describe the factors BLM will consider

when assessing the “causal” factors of

triggers being reached.

Summary:

The Adaptive Management Plan associated with the Lewistown GRSG PRMPA/FEIS is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist.

Response:

Applying specific responses at a Land Use Plan Level would not be appropriate as such may not address the site-specific issues or “causal factors” that initiated the tripped soft trigger. The Lewistown GRSG PRMPA/FEIS provides for various implementation-level responses that will more appropriately address the causal factors in these situations (for specifics, see Section 2.7 and Appendix B of the FEIS).

BLM is within its authority and appropriately applies and adaptive management plan to conserve GRSG habitat.

GRSG - Livestock Grazing

Issue Number PP-MT-LEWISTOWN-GRSG-15-04-6

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated.

In order to conserve, protect, and enhance sage-grouse populations, the plan must include restrictions on spring grazing in all sage-grouse breeding habitat. In addition to the needs for hiding cover and concealment of nests and young broods, sage-grouse eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting sage-grouse. See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting season is crucial for the species’ survival because its reproductive rates are so low;

failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are shortcomings of the plan.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-04-8

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMPA/FEIS doesn’t analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations. Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year,⁴⁸ the PRMPA/FEIS has not considered limiting grazing in this way within the planning area. The PRMPA/FEIS also doesn’t specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how

to best conserve, enhance, and recover sage-grouse, the PRMPA/FEIS does not reconsider the stocking rates within the

planning area or set utilization criteria, a serious oversight.

Summary:

Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the PRMP/FEIS.

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 their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

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

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Lewistown GRSB PRMPA/FEIS and that address resource issues identified during the scoping period. The Lewistown GRSB PRMPA/FEIS analyzed five alternatives (four action alternatives), which are described in Chapter 2, Proposed Action and Alternatives (p. 2-1 through 2-111). Two alternatives were also considered but not carried forward for detailed analysis (Section 2.11 Alternatives Eliminated from Detailed Analysis).

No issues or conflicts have been identified during this land use planning effort that require the complete elimination of livestock grazing within the planning area for their resolution (BLM Washington Office IM 2012-169) (BLM 2012c). Livestock removal and use adjustment where appropriate have been incorporated in this planning effort. Because the BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the BLM-administered lands in RMPs, the analysis of an alternative to entirely eliminate grazing is not needed (p. 2-73).

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

and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental reviews. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the Standards for Rangeland Health.

All alternatives would allow the reduction or elimination of livestock grazing, or changes in season of use, in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, site-specific NEPA, and compliance with 43 CFR Subpart 1460, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives.

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

GRSG - Mitigation

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-15

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Additionally, the Final EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a “net conservation gain.” Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework. BLM must examine whether adequate mitigation opportunities exist in the planning area, such as through conservation easements or restoration activities. This analysis is particularly important because FWS has not endorsed any mitigation banks or exchanges in Colorado, Utah, Montana, and California; accordingly, land users may have a difficult time securing mitigation opportunities. BLM cannot condition permits on a requirement

that land users cannot fulfill due to lack of mitigation. Accordingly, BLM must analyze the availability of compensatory mitigation in the Final EIS.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-28

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The terms of federal leases do not authorize BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See e.g., BLM Form 3110-11, Offer to Lease and Lease for Oil and Gas (Oct. 2008). Although lease rights are subject to “applicable laws, the terms, conditions, and attached stipulations of [the] lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance,” see BLM Form 3110-11, neither BLM’s planning regulations nor its leasing regulations contain any requirement

to provide compensatory mitigation and do not authorize BLM to require compensatory mitigation. See 43 C.F.R. pts. 1600, 3100. Moreover, no BLM or Department of the Interior order requires compensatory mitigation of oil and gas lessees. In fact, for nearly two decades, BLM has consistently taken the position that it would not require compensatory mitigation of lessees. See BLM Instruction Memorandum No. 2008-204, Offsite Mitigation (Oct. 3, 2008); BLM Instruction Memorandum No. 2005-069, Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal, and Energy Rights-of-Way Authorizations (Feb. 20, 2005);

Wyoming BLM Instruction Memorandum No. WY-96-21, Statement of Policy Regarding Compensation Mitigation (Dec. 14, 1995). Additionally, the requirement that compensatory mitigation result in an improvement to greater sage-grouse or its habitat by producing a “net conservation gain” is not contemplated in any regulations or formal departmental policy. Accordingly, the terms of federal oil and gas leases do not contemplate the Proposed RMP’s requirement that lessees provide compensatory mitigation to provide a net conservation gain.

Summary:

The Lewistown GRSG PRMPA/FEIS violates existing regulations at 43 CFR 1600 and 3100 by requiring compensatory mitigation, including to achieve a “net conservation gain” of GRSG habitat, and fails to adequately analyze:

- the requirement that land users provide compensatory mitigation to obtain a “net conservation gain.”; and
- whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework.

Response:

FLPMA and other applicable law authorize the BLM to provide for reasonable mitigation of impacts caused by development on public lands. In FLPMA, Congress declared it to be the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values....” FLPMA §102(a)(8).

FLPMA also directs the BLM to manage the public lands in accordance with the principles of multiple use and sustained yield. FLPMA § 302(a). In defining multiple use and sustained yield, Congress called for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” and for “achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” FLPMA § 103(c) & (h). The multiple use and sustained yield principles guide the BLM through its land use planning process, FLPMA § 202(c)(1), and its land use planning regulations contemplate that the BLM will monitor and evaluate the effectiveness of mitigation measures (43 CFR § 1610.4-9). Moreover, through land use planning, the BLM identifies desired outcomes in the form of goals and objectives for resource management (43 CFR § 1601.0-5(n)(3)). “Goals” are broad

statements of desired outcomes that are not usually quantifiable, such as maintain ecosystem health and productivity, promote community stability, ensure sustainable development, or meet Land Health Standards. “Objectives” identify specific desired outcomes for resources, are usually quantifiable and measurable, and may have established timeframes for achievement (BLM Land Use Planning Handbook, H-1601-1, p. 12). Mitigation is one tool that the BLM can use to achieve the goals and objectives it establishes in land use plans.

BLM Instruction Memorandum No. 2008-204 outlines policy for the use of offsite mitigation for BLM land use authorizations. In making decisions that are within its discretion (taking into account statutes, regulations, and contractual/property rights of the requester), the BLM has an obligation to approve only land use authorizations that are consistent with its mission and objectives. This may mean that the BLM may be unable to permit certain land use authorizations without appropriate mitigation measures. Onsite mitigation alone may not always be possible or sufficient, though often resources are present offsite that can offer suitable compensation for remaining onsite impacts. Consequently, offsite mitigation may be an effective management tool to ensure appropriate land use authorizations.

In accordance with the preceding law, regulation, and policy, the requirement for a net conservation gain derives from the Purpose and Need of the Lewistown GRSG PRMPA/FEIS, which is to identify and incorporate appropriate conservation measures to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (p. 1-4) and the requirement for a net conservation gain accounts for uncertainty associated with the effectiveness of mitigation.

Chapter 4, Section 4.2 Introduction (Vol. 1, p. 4-3) describes the environmental consequences associated with the impacts on GRSG and its habitat from activities carried out in conformance with this plan, in addition to BLM management actions. In undertaking BLM management actions, and consistent with valid existing rights and applicable law, including 43 CFR 3100, in authorizing third party actions that result in habitat loss and degradation, the BLM would require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This would be achieved by avoiding, minimizing, and compensatory mitigation for impacts by applying beneficial mitigation actions.

Net conservation gain is the actual benefit or gain above baseline conditions. Baseline conditions are defined as the pre-existing conditions of a defined area and/or resource that can be quantified by an appropriate metric(s). For purposes of a NEPA analysis, the baseline is considered the affected environment that exists at the time NEPA analysis is initiated, and is used to compare predictions of the effects of the proposed action and the effects of a reasonable range of action alternatives (Vol.2, Section 5.3.2, p. 5-11). To this end, and given that impacts would vary by project, more detailed consideration and analysis of appropriate GRSG mitigation measures would occur on a project-specific basis.

As to the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework, land use plans (LUP) do not typically analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the

approval of an LUP does not directly result in any on-the-ground impacts. The BLM will analyze appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area.

The Lewistown GRSG PRMPA/FEIS complies with FLPMA and other applicable law, including 43 CFR 1600 and 3100 by identifying appropriate compensatory mitigation measures, including to achieve a “net conservation gain” of GRSG habitat. The Lewistown GRSG PRMPA/FEIS provides an appropriate level of analysis for the requirement that land users provide compensatory mitigation to obtain a “net conservation gain,” and the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework would be appropriately analyzed on a project-specific basis.

Administrative Procedure Act

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-2

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM’s refusal to adopt the Montana Plan is arbitrary and capricious under the Administrative Procedure Act (APA). 25 U.S.C. § 706. The Montana Plan is nearly identical in its sage-grouse restrictions to a similar plan adopted by the State of Wyoming, which the BLM in Wyoming adopted in its sage-grouse management plan revisions.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-3

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The APA requires that agencies explain their decisions sufficiently that “the agency’s path may reasonably be discerned.” *Alaska Dep’t of Env’tl Conservation v. Environmental*

Protection Agency, 540 U.S. 461, 496 – 97 (2004). Given that the Montana Plan and the Wyoming Plan contain many identical restrictions and that the Montana Plan was available prior to release of the Proposed RMP, BLM was required to provide a reasoned explanation of its choice to adopt the plan in Wyoming but not in Montana.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-4

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM’s adoption of several elements of the Proposed RMP— specifically, the compensatory mitigation requirement, the “net conservation gain” standard, and conservation measures that include lek buffer distances, RDFs, and density and disturbance caps—because each constitutes a substantive rule that BLM cannot apply before it completes the formal rulemaking procedures required by the APA.

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedure Act, when it:

- failed to fully analyze and consider existing state plans to address GRSG management; and

- implemented a number of changes to management practices, including a net conservation gain standard, required design features, lek buffer distances, and density and disturbance caps, without first completing a formal rulemaking process.

Response:

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

The Lewistown GRSG PRMPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

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

The introduction to this RMP Amendment, Section 1.1.1, details how Director-approved guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national Greater Sage-Grouse strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

Therefore, the elements of the Lewistown GRSG PRMPA/FEIS do not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by Section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally -- and the process followed for this planning effort specifically -- provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA. The proposed plan describes the basis for its proposed actions and the science upon which it is based; it is not arbitrary or capricious. Additional rationale regarding GRSG conservation measures will also be provided in the Record of Decision.

For a discussion of consistency with state and local plans, please see Consistency with State and Local Plans section of this protest response report.

Energy Policy Act of 2005

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-30

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill... The Proposed RMP should clarify that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed RMP. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of NEPA “and other applicable law” have been completed. 30 U.S.C. § 226(p)(2). Thus, BLM can only defer decisions on permits when the requirements of NEPA “and other applicable law” have not been met. See *id.* BLM’s planning authority conferred through FLPMA is not “other applicable law” that allows BLM to defer development due to the density and disturbance limitations on existing federal leases because RMPs developed pursuant to FLPMA are subject to valid existing rights. See *Colo. Env’tl Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. BLM should revise the Proposed RMP to clearly state that BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed RMP.

Summary:

The Lewistown GRSG PRMPA/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing by:

- deferring APDs;
- implementing lek buffer distances; and
- providing for a “net conservation gain” of GRSG habitat.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-32

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The requirement that lessees mitigate impacts to greater sage-grouse to provide a “net conservation gain” is more restrictive than necessary. BLM could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 U.S.C. § 1732(b). Though inconsistent with FLPMA, BLM did not even consider requiring that mitigation achieve “no net loss” of greater sage-grouse habitat in PHMA and GHMA. Because the requirement that mitigation achieve a “net conservation gain” is inconsistent with EPAct, BLM must revise the Proposed RMP to remove the “net conservation gain” requirement.

Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in section X.B, *infra*. Furthermore, in the Final EIS, BLM did not analyze whether alternative buffer distances would offer substantially similar protection to the greater sage-grouse. See Proposed RMP at 2-17, App. B. Because the lek buffer distances are unnecessarily restrictive, BLM must revise the Proposed RMP to identify measures that comply with the directives of EPAct.

Response:

The Lewistown GRSG PRMPA/FEIS does not propose deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6.2 of the PRMP/FEIS beginning on page 2-25. There is an existing protest resolution decision that does not allow the Lewistown Field Office to lease nominated oil and gas parcels that would require a special stipulation to protect important wildlife values, which includes GHMA and PHMA, until a future RMP amendment or revision is completed (Lewistown GRSG PRMPA/FEIS, p. 1-5).

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 U.S.C. section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval, and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing. (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Lewistown GRSG PRMPA/FEIS presents a set of oil and gas conditions of approval and best management practices necessary to meet the goals and objectives for each resource and resource use in the planning area.

The Lewistown GRSG PRMPA/FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (Lewistown GRSG PRMPA/FEIS, Chapters 4 and 5). By comparing impacts across the alternatives, the BLM determined which management actions in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Lewistown GRSG PRMPA/FEIS.

On November 21, 2014 the US Geological Survey (USGS) published “Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review” (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The BLM has reviewed this information and examined how lek buffer-distances were addressed through land use allocations and other management actions in the Lewistown Field Office Draft Resource Management Plan Amendment (RMPA)/EIS. Based on this review, in undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third party actions, the BLM would apply the lek buffer-distances in the USGS Report “Conservation Buffer Distance Estimates for Greater Sage Grouse-A Review (Open File Report 2014- 1239)” in both GHMA and PHMA as detailed in Appendix M, Applying Lek Buffer Distances When Approving Actions. The impacts of the lek buffers is disclosed in Section 4.3 of the Lewistown GRSG PRMPA/FEIS. Based on the impacts analysis performed, the BLM determined that the stipulations, conditions of approval, and best management practices considered are not overly restrictive, are necessary to meet the goals and objectives of the Lewistown PRMPA/FEIS, and do not violate the Energy Policy Act.

The guidance in the Lewistown GRSG PRMPA/FEIS to provide for a net conservation gain is not a stipulation, condition of approval, or best management practice that will be applied to leases or Applications for Permit to Drill. Instead, it is part of the mitigation strategy in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. As it relates to mitigation, page 2-37 of the Lewistown GRSG PRMPA/FEIS states that “consistent with the proposed plan’s goal outlined in Section 2.6.2, the intent of the Proposed Plan Amendment is to provide a net conservation gain to the species. To do so, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM would require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This would be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840 – Special Status Species Management, Section .02B, which states “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA.”

Because it is not a stipulation, condition of approval, or best management action applied to a lease or application for permit to drill, this mitigation requirement does not violate the Energy Policy Act of 2005.

Air Quality / Climate Change / Noise

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-16

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan revision by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a sage-grouse lek could have indirect (noise disturbance) or direct (mortality) negative effects on sage-grouse populations.” WBEA at 131.

BLM proposes a limit of 10 dBA above ambient as measured at the lek perimeter, at sunrise only, with no ambient noise level defined in the plan. FEIS at D-5. The ambient level needs to be set at 15 dBA and

maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-10

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Properly addressing climate change in sage-grouse planning would require the BLM to analyze the effectiveness of their proposed conservation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis of climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate

as their baseline for analysis. For example, the impacts of habitat disturbance may be more pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

Issue Number: PP-MT-LEWISTOWN-GRSG-15-06-8

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The plan includes contradictory statements about the effect of climate change on the spread of nonnative plants, stating that "[h]otter, drier, conditions as a result of potential climate change would be expected to exacerbate the spread of cheatgrass by increasing the risk

of wildland fire, as well as reducing the ability of native species to compete with non-native species. Invasion by non-native grasses can result in increased fire frequency, which typically results in removal of sagebrush canopy in affected areas with replacement by annual species that provide little, to no, habitat value (Baker 2011)" (3-41, 3-82), while also asserting that "Climate Change research also suggests there would not be a cheatgrass invasion into the Northern Great Plains. Modeling illustrates the median precipitation change scenario (used to identify the most likely future climate change) depicts no increase in cheatgrass climatic habitat within the planning area (Bradley 2009)" (5-46). The "Environmental Consequences" section also refers to future crop yields, which is irrelevant to BLM land management planning (4-9).

Summary:

Climate Change

In order to properly address impacts of climate change with regard to GRSG, BLM needs to do the following:

- evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
 - examine cumulative environmental consequences in a changed climate as the baseline; and
 - examine impacts such as habitat disturbance in concert with climate change.
- BLM also needs to revise contradictory statements about the effect of climate change on the spread of nonnative plants.

Noise

Additionally, the Lewistown GRSG PRMPA/FEIS violates NEPA by failing to adequately evaluate the effects of the Required Design Feature of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB, thus failing to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Response:

Climate Change

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The BLM applies this requirement to the preparation of RMP revisions and amendments, as indicated in Chapter 1, Table 1-2 (Drought/Climate Change) as a Range-Wide Planning Issue for the Lewistown Field Office.

The Lewistown GRSG PRMPA/FEIS discusses climate in Section 3.17 and Section 4.16 as well as within Chapter 5. For example on page 5-83, “Cumulative impacts on GRSG habitat and, consequently, on soil resources from climate change could include vegetation regime changes (e.g., from sagebrush to grasslands), increased wildfire potential due to drought, and increased sedimentation and erosion (Connelly et al. 2004).”

It would be highly speculative to analyze a future climate change scenario as a baseline for the cumulative impacts assessment. In the future, as tools for predicting climate change in a management area improve and changes in climate affect resources and necessitate changes in how resources are managed, the BLM may be required to reevaluate decisions made as part of this planning process and to adjust management accordingly.

With regard to conflicting statements, BLM has attempted to avoid conflicting information in the Lewistown GRSG PRMPA/FEIS to the best of its ability. The difference between the statements in Chapter 3 compared to Chapter 5 is that Chapter 5 includes more information on sub-regional modelling, which results in the conclusion that the fire/cheatgrass/climate change relationship is not as strong in this region, even though the relationship holds true in general.

The BLM complied with Secretarial Order 3289 in developing the Lewistown GRSG PRMPA/FEIS.

Noise

The Lewistown GRSG PRMPA/FEIS used the best available information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB. Information from the documents, “Incorporating the impacts of noise pollution into greater sage-grouse conservation planning” presented at the 27th Meeting of the Western Agencies Sage and Columbian Sharp-tailed Grouse Technical Committee Workshop in Twin Falls, Idaho, and the document currently under preparation, “Experimental evidence for avoidance of chronic anthropogenic noise by greater sage-grouse” were reviewed by the BLM and used for analysis in developing the Lewistown GRSG PRMPA/FEIS planning effort.

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Lewistown GRSG PRMPA/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Lewistown GRSG

PRMPA/FEIS planning effort.

ACECs

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-23

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, BLM determined not to designate them. Instead, BLM created a completely new, less-restrictive designation

called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs—yet has instead developed a new, less-restrictive designation for them—BLM has failed to put designation of ACECs first, in violation of FLPMA.

Summary:

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

Response:

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

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

The Lewistown GRSG PRMPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Lewistown GRSG PRMPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one

alternative. Section 3.15 discusses the current condition and management approach for existing ACECs, and Section 4.14 analyzes the various alternatives for ACEC designations, including Alternative C, which would designate over 96,000 acres of ACECs in GHMAs. Additionally, Section 2.6.1, Development of the Proposed Plan for Greater Sage-Grouse Management, describes how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat. So while Alternative C was not selected for ACECs, land use allocations in the Proposed Plan Amendment would limit or eliminate new surface disturbance in PHMA, while minimizing disturbance in GHMA. In addition to establishing protective land use allocations, the Proposed Plan Amendment would implement a suite of management tools such as disturbance limits, GRSG habitat objectives and monitoring (see Section 2.7.2), mitigation approaches (see Section 2.7.3), adaptive management triggers and responses (see Section 2.7.1), and lek buffer distances (see Appendix M) throughout the range. These overlapping and reinforcing conservation measures would work in concert to improve GRSG habitat condition and provide clarity and consistency on how the BLM would manage activities in GRSG habitat.

The BLM adequately considered the protection of relevant and important values in the Lewistown GRSG PRMPA/FEIS.

Fluid Minerals

Issue Number: PP-MT-LEWISTOWN-GRSG-15-02-10

Organization: Beatty & Wozniak, PC

Protestor: Bret Sumner

Issue Excerpt Text: By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Montana Fish,

Wildlife and Parks Department (MFWP) and FWS, BLM is ceding its authority over oil and gas development to the FWS – in other words, providing FWS a de facto veto authority over BLM. BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency. See 43 C.F.R. § 3101.1-4.

Summary:

The Lewistown GRSG PRMPA/FEIS violates FLPMA by providing the FWS with decision-making authority in the approval of exceptions to oil and gas lease stipulations.

Response:

Oil and gas leasing is not addressed in the Lewistown GRSG PRMPA/FEIS; therefore, the protestor's assertion is not applicable to the Lewistown GRSG PRMPA/FEIS.

However, for the information of the public, there is a well-established process for the consideration of exceptions, modifications and waivers for oil and gas stipulations in other

proposed RMPs, such as the Billings and Pompeys Pillar National Monument Proposed RMP/FEIS.

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

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

Special Status Species

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

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

Issue Number: PP-MT-LEWISTOWN-GRSG-15-01-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The Objectives of BLM’s sensitive species policy includes the following: “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.” BLM Manual 6840.02. Under this policy, District Managers and Field Managers are tasked with “Ensuring that land use and implementation plans fully address appropriate conservation of BLM special status species.” BLM Manual 6840.04(E)(6).

Issue Number: : PP-MT-LEWISTOWN-GRSG-15-01-7

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not

work, and continuing to drive the sage grouse toward ESA listing in violation of

BLM Sensitive Species policy.

Summary:

Application of ineffective stipulations and continuing to drive the sage grouse toward ESA listing is a violation of BLM Sensitive Species Policy.

In the Lewistown GRSB PRMPA/FEIS, BLM fails to apply its preferred alternative D in violation of BLM Sensitive Species Policy.

Response:

Contrary to the protest issues raised, the Lewistown Greater Sage-Grouse PRMPA/FEIS does satisfy the BLM's Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM's Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM's multiple-use and sustained yield mission as specified in the FLPMA (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans" (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the GRSB as contemplated in the policies (See Section 2.4.1 on page 2-6).

As described and analyzed in the Lewistown GRSB PRMPA/FEIS, the BLM considered relevant baseline information and studies about GRSB, including the NTT report and proposed conservation measures to address Greater-Sage Grouse and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of Greater-Sage Grouse and the information it relied on in such analysis (See FEIS at 2-11). Specifically, the BLM incorporated conservation measures identified in the NTT Report and COT Report. Conservation measures included in the NTT report based alternative focus primarily on greater sage-grouse PPH. The data for this report were gathered from BLM, Forest Service, and other sources and were the "best available" at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the FEIS. For example, page 4-76 states that “RDFs and conservation measures would be applied as COAs to existing leases within PHMA in order to protect GRSG habitat from loss of sagebrush acreage and fragmentation of habitat.” Also, there is an existing protest resolution decision that does not allow the Lewistown Field Office to lease nominated oil and gas parcels that would require a special stipulation to protect important wildlife values, which includes GHMA and PHMA, until a future RMP amendment or revision is completed (Lewistown GRSG PRMPA/FEIS, p. 1-5).

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

Clarifications and Clerical Errors

Issue Number: PP-MT-LEWISTOWN-GRSG-15-03-6

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text:

Additionally, the definition of “net conservation gain” must be clarified because it conflicts with statements elsewhere in the Proposed RMP about where the net conservation standard will be applied. The

definition of “net conservation gain” in the Glossary suggests that only actions “that result in habitat loss and degradation within priority habitat (core population areas and core population connectivity corridors)” require mitigation that ensures a net conservation gain. See Proposed RMP at Glossary-20. The Proposed RMP, however, suggests that the “net conservation gain” standard will be applied in both PHMA and General Habitat Management Areas (GHMA).

Summary:

The definition of “net conservation gain” in the Glossary suggests that only actions “that result in habitat loss and degradation within priority habitat (core population areas and core population connectivity corridors)” require mitigation that ensures a net conservation gain. See Proposed RMP at Glossary-20. The Proposed RMPA, however, suggests that the “net conservation gain” standard will be applied in both PHMA and General Habitat Management Areas (GHMA).

Response:

The definition provided in the glossary is incorrect. The BLM will require and ensure “net conservation gain” in both PHMA and GHMA, as stated in Chapter 2. This definition will be corrected in the Approved RMP.