

*Director's Protest Resolution Report*

**Little Snake  
Resource Management Plan**

October 14, 2011



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## Reader's Guide

### How do I read the Report?

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

### Report Snapshot

**Issue Topics and Responses**  
NEPA

**Topic heading**

**Submission number**

**Issue Number:** PP-CA-ESD-08-0020-10

**Protest issue number**

**Organization:** The Forest Initiative

**Protesting organization**

**Protester:** John Smith

**Protester's name**

**Issue Excerpt Text:**

Direct quote taken from the submission

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

**Summary**

General statement summarizing the issue excerpts (optional).

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

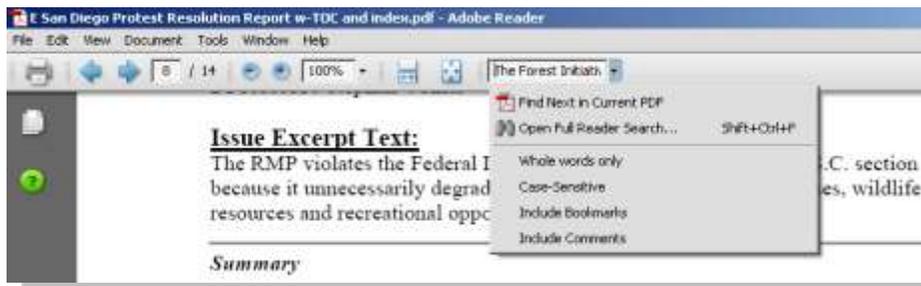
**Response**

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

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

### 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 used.



### *List of Commonly Used Acronyms*

ACEC	Area of Critical Environmental Concern	FLPMA	Federal Land Policy and Management Act of 1976
APD	Application for Permit to Drill	FO	Field Office (BLM)
BA	Biological Assessment	FWS	U.S. Fish and Wildlife Service
BLM	Bureau of Land Management	GIS	Geographic Information Systems
BMP	Best Management Practice	IB	Information Bulletin
BO	Biological Opinion	IM	Instruction Memorandum
CAA	Clean Air Act	MOU	Memorandum of Understanding
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
CSU	Controlled Surface Use	NOI	Notice of Intent
CWA	Clean Water Act	NRHP	National Register of Historic Places
DM	Departmental Manual (Department of the Interior)	NSO	No Surface Occupancy
DOI	Department of the Interior	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
EA	Environmental Assessment	RFDS	Reasonably Foreseeable Development Scenario
EIS	Environmental Impact Statement	RMP	Resource Management Plan
EO	Executive Order	ROD	Record of Decision
EPA	Environmental Protection Agency	ROW	Right-of-Way
ESA	Endangered Species Act	SHPO	State Historic Preservation Officer
FEIS	Final Environmental Impact Statement		

SO	State Office	VRM	Visual Resource Management
T&E	Threatened and Endangered	WA	Wilderness Area
USC	United States Code	WSA	Wilderness Study Area
USGS	U.S. Geological Survey	WSR	Wild and Scenic River(s)

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Michael Marinovich	Moffat County	PP-CO-LITTLESNAKE-10-0001	Denied, in part Dismissed, in part
Timothy Beaton	Yampa River Interest Coalition	PP-CO-LITTLESNAKE-10-0002	Denied, in part Dismissed, in part
Elise Aiken & Jaime Cavanaugh	National Wildlife Federation Rocky Mountain Natural Resource Center	PP-CO-LITTLESNAKE-10-0003	Denied, in part Dismissed, in part
Megan Mueller	Center for Native Ecosystems	PP-CO-Littlesnake-10-0004	Denied, in part Dismissed, in part
Eric Kuhn	Colorado River District	PP-CO-LITTLESNAKE-10-0005	Denied, in part Dismissed, in part
Jonathan Ratner	Western Watersheds Project	PP-CO-LITTLESNAKE-10-0006	Denied, in part Dismissed, in part
Kathleen M. Sgamma	Western Energy Alliance	PP-CO-Littlesnake-10-0007	Denied, in part Dismissed, in part
Mike Smith	QEP Resources Inc.	PP-CO-LITTLESNAKE-10-0008	Denied, in part Dismissed, in part

## *Issue Topics and Responses*

### *NEPA*

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Comment Number: PP-CO-LITTLESNAKE-10-0006-16  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

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

The RMP provides no required monitoring plan to collect the data needed to determine conditions of and impacts to most of the resources and species within the project area.

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#### **Summary**

The RMP does not require a monitoring plan to collect the data needed to determine conditions of and impacts to most of the resources and species within the project area.

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#### **Response**

Appendix F explains future data collection and monitoring, as a component of subsequent activity planning. The following text on Page F-2 explains how monitoring will help BLM make better decisions: “The constantly changing resource conditions create a challenge to management. Field data and observations will help make decisions better by—

- Measuring factors that indicate the condition of the RMPPA
- Increasing understanding of impacts by direct observation
- Increasing the effectiveness of project analysis by employing actual data
- Evaluating the progress toward management goals
- Helping develop effective and appropriate mitigation measures
- Providing information on the success of management practices and policies.”

The monitoring strategy or plan that BLM will undertake shall be formulated once BLM obtains all necessary data collection and evaluates on-the-ground conditions.

The monitoring plan would be dependent upon the data collected and physical on-the-ground conditions at the time a decision is made. Site-specific analyses, other potential mitigation and monitoring measures will be developed at the activity level.

## *FLPMA*

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Comment Number: PP-CO-LITTLESNAKE-10-0006-17

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

Issue Excerpt Text:

The RMP's Goals and Objectives fail to provide timelines for their achievement, thereby rendering them worthless and unenforceable.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-72

Organization1: Western Watersheds Project

Protesstor: Jonathan Ratner

Issue Excerpt Text:

BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-74

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

Issue Excerpt Text:

or [Tthere is no analysis of]...the loss in wilderness or ACEC quality resources due to OHV s.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-81

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

Issue Excerpt Text:

B) The RMP provides no inventory or baseline information on biological crusts within the planning area, and barely acknowledges that crusts are present. Despite this lack of information, the BLM has elected to make planning decisions for land uses and environmental factors that have been clearly linked to the health and stability of biological crusts-namely,

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Comment Number: PP-CO-LITTLESNAKE-10-0006-86

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

Issue Excerpt Text:

D) The RMP also fails to present any baseline or other inventory data on the effects of OHV use within the planning area. There is no evidence that the BLM has "prepare[d] and maintain[ed] on a continuing basis an inventory" of this particular resource use and its effects on other resource values such as road and trail density, habitat fragmentation, degradation of wilderness quality lands, wildlife displacement, soil erosion, invasives and loss of biological crusts.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-9

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

Issue Excerpt Text:

The RMP fails to demonstrate that the BLM has complied with FLPMA's mandate that the agency shall prepare and maintain on a continuing basis an inventory of the public lands and their resources, in particular for the wilderness resource, biological crusts, weeds, cultural, archeological and paleontological resources, native plant communities, and OHV's.

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### **Summary**

Goals and Objectives should include deadlines for achievement in order to provide clear guidance.

BLM has not documented that inventories have been maintained to establish baseline conditions of the following resources:

- Biological Crusts
- Weeds
- Cultural, Archaeological and Paleontological Resources
- Native Plant Communities
- Wilderness

In addition, BLM has not provided a baseline or inventory of the impacts of OHV use in the Plan Area.

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### **Response**

The Land Use Planning Handbook (H-1610-1), page 12, states that "Land use plans must identify desired outcomes expressed in terms of specific goals and objectives." It goes on to explain that "Goals are broad statements of desired outcomes that usually are not quantifiable." Objectives, it states, "are usually quantifiable and measurable and may have established timeframes for achievement (as appropriate)" (emphasis added). It is not a requirement to include deadlines to achieve goals and objectives.

The requisite level of information necessary to make an informed choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The baseline data provided in Chapter 3 and in various appendices in the PRMP/FEIS are sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from the management actions in resource allocation presented in the PRMP/FEIS and augmented through the Appendices. A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although the BLM realizes more data could always be gathered, the baseline data used are adequate to form the basis for informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation-level documents, such as for oil and gas field development, allotment management plans, grazing permit renewals, and public land use authorizations. These activity plan-level analyses will tier to the land use planning analysis and extend the environmental analysis by using information from site-specific

project proposals. In compliance with the NEPA process, the public will have the opportunity to participate in the environmental analysis process for these actions.

Chapter 3 includes a summary of baseline soil conditions starting on page 3-17. Soil crusts are discussed in this section, as well as in the Landscape Health Assessment summaries beginning on page 3-3. The BLM acknowledges the important role macrobiotic crusts serve on rangelands and forested landscapes. The BLM interdisciplinary team determined that if an ecological site is functional and healthy, the amount of biological crusts present is adequately supporting ecological processes in conjunction with the vascular plants. The DRMP/DEIS management alternatives address the overall functioning and ecological condition of an entire planning unit rather than attempting to manage for the health of biological crusts alone. The alternatives in the EIS are designed to maintain or improve overall rangeland health, thus functioning rangelands in healthy condition are assumed to maintain biological soil crusts at an appropriate level and distribution. Site-specific impacts to biological soil crusts will be discussed in implementation-level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

Current conditions relative to invasive species are discussed in the sections pertaining to Landscape Health Assessment summaries (page 3-3), Vegetation (page 3-26), Fish and Wildlife.

Habitat (page 3-40). Cultural and Heritage Resources are discussed on page 3-81, Appendix K, and the Regional Class I Overview of Cultural Resources for the BLM Little Snake RMP, which is part of the administrative record. Baseline information regarding Paleontological Resources is addressed on page 3-84. Plant communities are addressed in sections pertaining to Landscape Health Assessment summaries (Section 3.1.1), Vegetation (Section 3.1.5), Fish and Wildlife Habitat (Section 3.16), and ACECs (Section 3.1.12.3). A discussion of current OHV use is included in Section 3.2.3.1 Recreation Use (page 3-116) and Section 3.2.6.3 Off-Highway Vehicles (page 3-129). BLM is collecting baseline data where possible, and NEPA requires BLM to disclose potential impacts using best available information which has been done. Appendix F includes information on future data gathering efforts to assist in the adaptive management process. Additionally, FLPMA Section 201 requires BLM to “maintain on a continuing basis an inventory of all public lands and their resource and other values...” In accordance to this, BLM works closely with all involved parties to continue the collection of inventory and monitoring data.

## *Withdrawals*

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Comment Number: PP-CO-LITTLESNAKE-10-0001-18

Organization: Moffat County

Protestor: Michael Marinovich

### **Issue Excerpt Text:**

2. Closure of Areas Greater than 5,000 Acres to Mineral Leasing Violates FLPMA's Withdrawal Procedures

Moffat County has repeatedly commented that closing over 150,000 acres to oil and gas leasing in the Dinosaur North (45,620 acres), Vermillion Basin area (77,080 acres), and Cold Springs Mountain (30,470 acres) alleged

wilderness character areas is a "withdrawal" under FLPMA. Statutory "withdrawals" must be reported to Congress with justification, and BLM violated FLPMA's procedural requirements under Section 204, 43 V.S.C. §1714. FEIS at App. Q-175-176. The same is true with respect BLM's proposed mineral leasing closure of the Irish Canyon Area of Environmental Concern (11,910 acres). FEIS at 2-42-44,2-63.

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Comment Number: PP-CO-LITTLESNAKE-10-0001-4

Organization: Moffat County

Protestor: Michael Marinovich

**Issue Excerpt Text:**

(2) The RMP' s proposed closure of over 150,000 acres of these alleged "wilderness character" areas to oil and gas leasing fails to comply with the withdrawal procedures required by law under Section 204 of FLPMA, 43 D.S.C. §1714. FEIS at 2-52-55, 4-132-135, 4-183. The same is true with respect BLM's proposed mineral leasing closure of the Irish Canyon Area of Environmental Concern (ACEC) (11,910 acres). FEIS at 2-42-44, 2-63.

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***Summary***

Closing and area over 5,000 acres in size constitutes a withdrawal that requires compliance with Section 204 of FLPMA.

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***Response***

The Little Snake RMP proposes to remove areas from mineral leasing that are discretionary and do not require a withdrawal. Those areas would be closed to oil and gas leasing because the Little Snake Field Office determined that it is not reasonable to apply a no surface occupancy (NSO) stipulation.

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

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

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

The MLA is clear that leasing is discretionary. Therefore, no withdrawal is required to make public lands unavailable under this law.

## *Land Use Plan Consistency*

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Comment Number: PP-CO-LITTLESNAKE-10-0001-26

Organization: Moffat County

Protestor: Michael Marinovich

### **Issue Excerpt Text:**

#### 5. Proposed RMP Fails to Adequately Resolve FLPMA's Consistency Mandate

FLPMA requires that BLM develop land use plans consistent with those of local governments to the extent possible so long as not contrary to federal mandate. 43 U.S.C. §1712(c)(9); H-1601, p. III-7, ¶4.

The Proposed RMP is in direct conflict with the County's land use plan. Moffat County Land Use Plan at p.28 (expressly opposing special designations by BLM for the protection of wilderness character, that as in this case, were imposed without substantial local input, local support, and sound science), pp.23-24 (the standard of living and services which Moffat County residents benefit from and enjoy, are directly tied to sustainable management of natural resource extraction and use...Moffat County encourages future coal, oil and gas exploration, and extraction in an environmentally responsible manner...and any federal land management changes must take into consideration the potential economic impact), p.14 (opposing the closure of existing roads or R.S. 2477 rights-of-way without scientific justification, support of the Moffat County Commission, and support of the citizens of the affected area), pA8 (promoting procedures (i.e., FLPMA's statutory withdrawal process) that provide for the long term availability and responsible development of its mineral resources). As demonstrated above, there is no contrary mandate for any of the protest points raised which urge compliance, not inconsistency, with federal laws, and thus, the RMP must be revised to conform to the County's land use plan.

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Comment Number: PP-CO-LITTLESNAKE-10-0001-8

Organization: Moffat County

Protestor: Michael Marinovich

### **Issue Excerpt Text:**

(5) The RMP provisions that are the subject of this protest conflict with the plans, programs, and policies of Moffat County. FEIS at 1-13,5-5. BLM must resolve these conflicts, unless there is a contrary federal mandate. 43 D.S.C. §1712(c)(9).

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Comment Number: PP-CO-LITTLESNAKE-10-0002-23

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

### **Issue Excerpt Text:**

WSR suitability poses a significant risk of interfering with valid existing water rights and impeding the development of reasonably foreseeable water and related land uses for industrial, agricultural, municipal and recreational purposes, the WSRA suitability determinations expressly conflict with Moffat County's land use plan, and the purposes for which JWCD was created. 2001 Moffat County Comprehensive Land Use Plan at 32 (expressly supporting the protection of individual water rights and the development of new water sources, and specifically recommending that federal agencies identify the future water use issues and needs of Moffat County residents when creating planning documents and to minimize and mitigate adverse effects). Moreover, Moffat County will not commit to assisting BLM in protecting the disputed ORV values on the private lands within its jurisdiction, and the

suitability determinations are flawed on these grounds alone. BLM Manual 8351.33A2.

Despite the significant local opposition identifying major inconsistencies with local policies and interests, BLM only pays lip service to these interests, FEIS at App. D-18, without any meaningful effort to address, resolve or reconcile the identified conflicts. BLM Manual 8351.04B, 8351.33B. FLPMA expressly requires BLM to ensure that its land use plan is consistent to the greatest extent possible with state and local government plans, unless contrary to federal law. 43 U.S.C. §1712(c)(9). Coalition members were not consulted or provided the required opportunity for involvement on BLM's internal and cursory Suitability Analysis as to consistency with local plans, programs, and policies. Supra at pp. 8-9

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### ***Summary***

The RMP does not meet FLPMA's mandate to be consistent with local plans.

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### ***Response***

BLM land use plans and amendments shall be consistent with officially approved or adopted resource-related plans of Indian tribes, other Federal agencies, and state and local governments to the maximum extent practical. See FLPMA, 43 U.S.C. § 1712(c)(9); 43 C.F.R. § 1610.3-2(a). However, BLM land use plans must also be consistent with the purposes, policies, and programs of the FLPMA and other Federal laws and regulations applicable to public lands. *Id.* To this end, the Little Snake PRMP/FEIS makes reference to and complements, to the maximum extent practical, many other Federal, state, and local plans and policies.

The BLM has worked closely with state and local governments during preparation of the Little Snake PRMP/FEIS. The PRMP/FEIS lists the cooperating agencies actively involved in the planning process in section 5.2, which include Moffat County. Because it may not be possible for the BLM to be consistent with the plans and policies of all state and local agencies, the statutory guidance to the BLM is to provide consistency to the extent practical. The BLM works to find a balance among uses and needs as reflected in these local and state government plans, and has done so in the preparation of the Little Snake PRMP/FEIS.

The BLM's land use plans, including the Little Snake RMP, are designed to balance the public demands for various land uses while ensuring appropriate levels of resource protection. While there may be times when the BLM cannot meet the needs of all segments of public land users concurrently, the BLM strives to address concerns as possible. The Little Snake PRMP/FEIS, to the maximum extent practical, is consistent with State and local plans, thereby meeting the intent and purpose of the FLPMA.

### ***Multiple Use***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-95

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

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

The definition of multiple use requires land managers to ensure "harmonious and coordinated management of the

various resources without permanent impairment of the productivity of the land and the quality of the environment." 43 U.S.C. § 1702(c) (emphasis added). This, in addition to preventing the unnecessary or undue degradation of the lands, is the bare minimum that the BLM must accomplish in the RMP. The RMP's authorization of livestock grazing use to the detriment of important values such as cultural, paleontological and archeological resources, native fish, wildlife, vegetation, soils, water quality and non-motorized recreation, demonstrates that the BLM has not satisfied these mandates.

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Comment Number: PP-CO-Littlesnake-10-0007-2

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

1. Closure of the Vermillion Basin to Oil and Gas Leasing: Western Energy Alliance protests the closure of Vermillion Basin. The preferred alternative that BLM analyzed in the draft EIS included a balanced plan for leasing and development in the basin which was developed through a community effort called the Northwest Colorado Stewardship (NWCOS). NWCOS included all major stakeholders - local governments, ranchers, federal agencies, industry, environmental groups, and other community members. NWCOS developed a highly restrictive plan that would allow surface disturbance of just 1% at any given time in the basin. BLM instead chose to close the basin based on narrow conservation interests. Western Energy Alliance protests this closure as contrary to BLM's multiple use mandate from FLPMA to balance the productive uses of the land such as oil and gas development with protection of other resources.

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Comment Number: PP-CO-Littlesnake-10-0007-6

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

NWCOS, a community group representing a broad section of society including local government and not just the single interest of the conservation lobby, was formed in March 2003. The group spent three years developing a compromise that represented multiple community interests. No one special interest got all it wanted, which is a sign of the success of the process and compromise. Despite that outstanding example of community cooperation with BLM and other federal agencies that balanced multiple uses, BLM chose to ignore the input and impose a federal solution that satisfies only conservation interests, at the expense of jobs and local economic activity.

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Comment Number: PP-CO-LITTLESNAKE-10-0008-2

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

1. Closure of the Vermillion Basin to Oil and Gas Leasing: QEP protests the closure of Vermillion Basin. While the preferred alternative that BLM analyzed in the draft EIS included an overly restrictive plan for leasing and limited development in the basin, that alternative was at least developed through a community effort called the Northwest Colorado Stewardship (NWCOS). NWCOS included all major stakeholders-local governments, ranchers, federal agencies, industry, environmental groups, and other community members. If BLM is at all interested in encouraging such efforts, BLM shouldn't ignore the results of such a process. Closure of the Vermillion Basin to all leasing is short-sighted, ignores the work of the NWCOS, handicaps local economic development efforts, and is contrary to BLM's multiple use mandate from FLPMA to balance productive uses of the land such as oil and gas development

with protection of other resources. See 43 D.S.C. §§ 1701(a)(8), 1701 (a)(12), and 1702(c).

### ***Summary***

The RMP's closure of large areas of land to oil and gas leasing and overall emphasis of livestock grazing does not meet FLPMA's mandate to manage for multiple use.

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### ***Response***

Contrary to the previous protestor's assertion, the Northwest Colorado Stewardship (NWCOS) did not agree on an approach to manage Vermillion Basin.

The term "multiple use" is defined in the FLPMA (Section 103(c)) 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." Accordingly, the BLM is tasked with the complicated task of striking a balance among the many competing uses for public land allocations. However, the BLM's multiple use mandate does not require that all uses be allowed on all areas of the public lands; that would preclude any kind of balance. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses, which involves tradeoffs between competing uses. The alternatives in the DRMP/DEIS and PRMP/FEIS reflect this provision.

The BLM has sufficient latitude for periodic adjustments of a particular use. For lands deemed available for grazing under a land use plan, it is the BLM's policy, regarding the adjustments to the authorized levels of livestock use, to monitor and inventory range conditions under existing stocking levels and make adjustments, as necessary based on the collected data, to ensure that Standards for Rangeland Health and resource objectives are met. Grazing issues will continue to be addressed on a site-specific basis in compliance with the Standards for Rangeland Health and Guidelines for Grazing Management. Therefore, the BLM appropriately applied its land use planning policy and is in full compliance with FLPMA's principle of multiple use.

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 U.S.C. §1712). This section of the BLM's organic statute gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Nothing in this section constrains the Secretary's authority to manage lands as necessary to "achieve integrated consideration of physical, biological, economic, and other sciences" (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))). Further, FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use." (FLPMA, Section 103(c) (43 U.S.C. §1702(c))).

### ***Air Resources***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-25

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide for human health and safety by disallowing the venting of hydrogen sulfide, HAP's or VOC's.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-37

Organization1: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP also fails to analyze impacts that surface disturbing activities such as OHV use and livestock grazing have on air quality. These activities reduce soil cover and increase soil erosion and increase the ability of wind and water to erode soils.

**Summary**

The RMP does not analyze impacts from activities, such as mineral leasing and grazing, that produce particulates, nor does it prevent hazardous emissions, e.g., venting of hydrogen sulfide, HAP's or VOC's.

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***Response***

Impacts on air quality are discussed beginning on page 4-6. Effects from surface disturbing activities, such as OHV use and livestock grazing, are analyzed. Emissions from OHV use and livestock grazing were calculated and included in the emissions inventory (see Appendix I for details). The PRMP/FEIS states: "Recreational OHV use would also cause fugitive dust emissions of PM from traffic on unpaved trails and emissions of PM, CO<sub>2</sub>, CO, and NO<sub>x</sub>, directly from the tailpipe. In the winter, tailpipe emissions occur primarily from snowmobiles...Livestock grazing and support of grazing activities, which include trucking of livestock into and out of the LSFO area, and checking livestock range improvements generate tailpipe emissions and dust. These emissions are produced by construction and maintenance activities and by travel on unpaved and paved roads. Ruminant livestock also emit methane through enteric fermentation." The alternatives do not state that the venting of HAPs or VOCs is disallowed. Rather, alternatives B, C, and D encourage the use of Best Management Practices to mitigate impacts to air quality from oil and gas development.

***Fish, Wildlife, Plants, Special Status Species***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-107

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP has failed to address the Colorado River Threatened and Endangered species that might be affected by tributary flows and watershed alteration in the planning area.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-109

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

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Comment Number: PP-CO-LITTLESNAKE-10-0006-14

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide any evidence that Endangered Species Act Section 7 consultation requirements are being followed, and fails to provide the public with an opportunity to comment on this information and the potential modifications to the RMP that may be required.

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Comment Number: PP-CO-Littlesnake-10-0007-10

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Amalgamated Sagebrush Habitat: The surface disturbance limitations for medium and high priority sagebrush habitat represent an extremely different management concept for resource management in the planning area than what was envisioned in the DRMP/EIS. We are concerned that the surface disturbance limitations could unreasonably place perhaps more than 75% of the planning area (the PRMP fails to quantify the amount of land) with high energy resource development potential off limits from development (Map 2-3 and 3-32). These surface disturbance limitations were imposed in the PRMP/FEIS without adequate justification or analysis.

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Comment Number: PP-CO-Littlesnake-10-0007-11

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Western Energy Alliance protests the amalgamation of multiple wildlife habitats into a single sagebrush habitat designation and the utilization of a single management concept for that aggregated area. Areas designated as medium priority sagebrush habitat, which cover a very large portion of the planning area, consist of big game winter concentration areas, severe winter range, migration corridors, sage-grouse winter range, sage-grouse breeding habitat, and areas within the 4 mile radius around leks.<sup>2</sup> By utilizing a single management concept for the aggregate habitat, the PRMP/FEIS imposes unduly burdensome environmental stipulations and deviates from the BLM's Manual on Land Use Planning, which requires BLM to identify areas that would be subject to different categories of restrictions and also show that the least restrictive lease stipulation is utilized to provide adequate protection for the resource.<sup>3</sup> Further, the five percent surface limitation in medium priority habitat may be inappropriate if only one or a few habitats are actually present. For example, if a lease in medium priority habitat contains sage-grouse winter range but no other habitats, the operator will still be bound by the much more restrictive 5 percent limitation, even though timing limitations would provide the appropriate level of avoidance.

<sup>2</sup>Little Snake PRMP/FEIS. p. 2-17

<sup>3</sup> BLM Handbook H-1601-1, Appendix C. Section II. F. at 16

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### ***Summary***

- 1) The RMP does not provide mitigation to prevent impacts to threatened and endangered species and does not analyze impacts to Colorado River endangered fish species. Consultation with the US Fish and Wildlife should be conducted, and the public should be allowed to comment on the results.
- 2) The sagebrush habitat designation and proposed management would cause undue restriction on oil and gas development.

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### ***Response***

1) Alternative C (Proposed Plan) implements both the conservation measures and recommendations for special status Colorado River fish species, detailed in Appendix J of the PRMP/FEIS. Additional mitigation measures will be identified at the project level. The BLM must initiate Section 7 consultation with the USFWS for any projects with the potential to impact Colorado River fish. This process results in acceptance of all mitigation measures deemed necessary by the FWS. The impacts of this mitigation for Alternative C (Proposed Plan) are discussed in Section 4.3.6.3. The reader can see the substantial differences in the impacts to Colorado River fish from Alternative A, which does not implement either the conservation measures or measures in Appendix J, to Alternative C and D, which implement both the conservation measures and recommendations in Appendix J. Impacts to Colorado River Fish are described in Section 4.3.6.1 in terms of disturbance from casual use, disturbance from permitted use, and changes to habitat condition. Additional impacts are covered in Section 4.3.11.4.

Section 7 consultation will be conducted. Section 7 consultation is performed on the Proposed Plan in the PRMP/FEIS, not on the Preferred Alternative of the Draft RMP/EIS. The Section 7 consultation process was initiated after the release of the PRMP/FEIS.

2) The Draft RMP/EIS analyzed a range of alternatives to ensure a balanced approach allowing opportunities for mineral exploration and production while protecting resource values and resource uses. The range of alternatives provide a wide array of sagebrush habitat mitigation measures, including no protection (Alternative D) to NSO stipulations, CSU stipulations, timing limitation stipulations, and the habitat protection (Alternative C). The management actions proposed under the Preferred Alternative will offer management flexibility to allow for acceptable levels of mineral development while ensuring that resource values and uses are protected. Mitigation measures for sagebrush habitats in Alternative C (Proposed RMP) are consistent with local and state sage-grouse conservation plans, as well as with sage-grouse research, and are supported by state and national wildlife agencies. Research in Wyoming and Montana (Holloran 2005; Naugle et al. 2006a, 2006b) suggests that standard stipulations designed to avoid significant impacts to sage-grouse (the 0.25 mile NSO buffer, 2-mile buffer timing limitation stipulation for nesting, no habitat protection measures, etc.) are not effective, at least in areas experiencing large-scale and intense energy development.

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### ***Sage Grouse***

Comment Number: PP-CO-LITTLESNAKE-10-0003-11

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

The proposed RMP calls for a "5 percent disturbance limitation" for all new oil and gas leases in medium priority habitat areas. As indicated in the CWF's comments on the Draft EIS from June 2007, male lek attendance is impacted at surface spacings as low as 1 per 640 acres. CWF Comments on Little Snake Draft RMP/EIS, 3 (2007). The 5 percent surface limitations are based on "one gas pad per 160 acres," which is considerably more disruptive than a single gas pad per 640 acres. CWF Comments on Little Snake Draft RMP/EIS, 3 (2007). Our previous comments addressed this issue directly by reporting that "impacts on male lek attendance. . . became significant between 1 well pad per 320 acres and 1 well pad per 160 acres." CWF Comments on Little Snake Draft RMP/EIS, 3 (2007). Therefore, this 5 percent surface disturbance limitation in medium priority habitat areas will not effectively ensure that sage-grouse populations will not continue to decline.

Comments of the draft RMP/EIS provided to the BLM by 18 organizations, including NWF, also warned the BLM that the 5 percent disturbance limitation would not adequately discourage habitat fragmentation. NWF Comments on Little Snake Draft RMP/EIS, 41. In Wyoming, male lek attendance declined when density increased by more than one well per 699 acres. Matthew J. Holloran, Greater Sage-Grouse (*Centrocercus urophasianus*) Population Response to Natural Gas Field Development in Western Wyoming, PhD Dissertation, University of Wyoming, Laramie, Wyoming at 50 (2005).

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Comment Number: PP-CO-LITTLESNAKE-10-0003-13

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

Additionally, despite the fact that a 5% disturbance limitation is not adequate to protect sage-grouse populations, the proposed RMP also states that "[0]ther BLM permitted activities, nonpermitted activities and non-oil and gas related rights-of-way do not count toward the 5 percent maximum." (2-19) This shows that a much greater percent of medium priority habitat may ultimately be affected. The large number of activities not included in the disturbance limitation could decrease the overall effectiveness of having any disturbance limitations in place.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-14

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

To effectively decrease fragmentation of sagebrush habitat and adequately protect sage-grouse populations, NSO should be enforced in a radius larger than 0.6 miles around leks. Since 1977 scientists have recommended a buffer of at least 3.2 km (1.9 miles) around sage-grouse leks. Matthew J. Holloran and Stanley H. Anderson, Spatial Distribution of Greater Sage-Grouse Nests in Relatively Contiguous Sagebrush Habitats, *The Condor* 107: 742, 748 (2005). More recently, Holloran observed "dramatic declines" in breeding populations when energy developments were located within 3 - 5 km (1 - 3 miles) of leks. Holloran, Greater Sage-Grouse, 49. This data signifies the need to increase the buffers surrounding leks within core areas. Also, the scoping comments provided to the BLM by NWF and CWF called for

NSO stipulations within three miles of leks year-round and stated "[n]o other form of mineral extraction should be authorized within three miles of leks." NWF and CWF Scoping Comment, 31 (2005).

This proposed RMP has called for Controlled Surface Use (CSU) within a 4 mile radius of leks, but we do not find this restriction adequately protective of sage-grouse populations. First, the CSU stipulation is only in effect from March 1 - June 30, meaning there are no other restrictions on surface occupancy outside this time of year. The presence of disruptive activities or infrastructure can negatively affect both male and female sage-grouse. CSU is also less restrictive than NSO, meaning that even within the restricted time period, operators and developers would have the opportunity to continue to use land within a 4 mile radius of leks in some ways. To fully protect sage-grouse populations these seasonal restrictions must become stricter. Current scientific literature suggests that surface disturbing activities and surface disruptive activities should be prohibited or restricted on nesting/early brood-rearing habitat from the 4 mile core area lek buffer out to 11 miles surrounding the leks from March 15 to June 30. John W. Connelly, Michael A. Schroeder, Alan R. Sands, Clait E. Braun, Guidelines to Manage Sage-grouse Populations and Their Habitats, Wildlife Society Bulletin, Vol. 28, No.4, 967, 78 (2000). Therefore, the BLM should consider increasing the strictness of both the buffer zones surrounding leks and the amount of activity allowed within these buffer zones.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-15

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

Finally, many of the proposed RMP's stipulations need further description and clarification to maintain uniformity and adequacy of protection. First, the conditions listed for medium and high priority habitats as applied to existing leases are all voluntary. Although stipulations cannot be added to existing leases, further stipulations could be required to secure a permit to extract oil and gas. Without a uniform policy for leases in this area, sage-grouse populations will not be adequately protected.

Next, this RMP uses language such as "operators are encouraged to develop proposals that leave larger blocks of sagebrush habitat undisturbed within project areas." (2-19). While this may further the goal of decreasing habitat fragmentation, it also does not prohibit developers from ignoring this consideration altogether. To further the goal of decreasing habitat fragmentation, the RMP should include more specific restrictions or incentives to either force or encourage operators to cluster developments together. In the absence of actual spacing requirements, it is highly unlikely that this approach will be successful.

The RMP also says that the use of "BMPs would be encouraged," and that the "BLM may require implementation of some of these BMPs." (2-28). This language is not adequate in specifying how the BLM can actually encourage use of BMPs, nor is it specific in when BMPs would actually be required. As BMPs are very important for effective management of sagebrush habitat, this language should be expanded so that operators are clear as to when and which BMPs they must implement.

Further, in high priority habitats, operators are in charge of analyzing existing disturbances within their leases as well as recording their surface disturbances themselves. Although it is understandable that the BLM could not reasonably take on this task itself, this methodology may have irreversible negative consequences for sage-grouse. If operators are not completely accurate in their measurements of disruptions, high priority habitat could be irreparably damaged. Under the current RMP, it appears that there are not enough checks on operators operating within high priority habitat and without strict enforcement of these stipulations, this RMP will not be successful in protecting sage-grouse populations.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-19

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

Of special concern is that the BLM chose not to designate ACECs for the greater sage-grouse, despite a recommendation to do so by Clait Braun, a leading expert on greater sage-grouse. Greater sage-grouse habitat protection is particularly important in the Little Snake Resource Area, which contains the largest, healthiest lek complex in Colorado.<sup>5</sup> The BLM acknowledges this in the FEIS stating that Little Snake Resource Area "contains the largest Greater Sage-Grouse population in the State of Colorado." FEIS 3-65. There is much support for how important this sage-grouse population is and the BLM needs to provide adequate protection for it by designating ACECs and apply scientifically-based protections from the impacts of oil and gas development and ORVs. Currently, the LSPRMP and FEIS fail to provide necessary protection.

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Comment Number: PP-CO-Littlesnake-10-0004-14

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

BLM IM 2010-071 outlines a set of actions that should be considered in priority habitat, when necessary to maintain sustainable sage-grouse populations across the landscape. These actions include actions to protect greater sage-grouse from a variety of different types of energy development, including not only oil and gas development, but also geothermal development, oil shale development, wind and solar energy development and associated site testing, and transmission. The proposed RMP fails to adequately consider mitigation measures to protect greater sage-grouse from non-oil and gas related energy development and other non-oil and gas related resource uses. In RMP amendments, the IM states that BLM should analyze one or more alternatives that exclude priority habitat from energy development and transmission projects. The BLM has failed to do so, and has failed to adequately consider the indirect, direct and particularly cumulative impacts of various types of energy development on greater sage-grouse.

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Comment Number: PP-CO-Littlesnake-10-0004-17

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

The BLM's analysis of the direct, indirect and cumulative impacts of the proposed plan on greater sage-grouse is inadequate because the use of landscape health assessments as the environmental baseline against which to measure impacts is inappropriate and obscures an number of relevant impacts to greater sage-grouse, and because BLM failed to include an adequate geospatial assessment of the amount of extent of existing surface disturbance in sage-grouse habitat, and an assessment of the likely cumulative impacts of habitat loss and fragmentation given the amount development likely to occur under the Reasonably Foreseeable Development scenario.

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Comment Number: PP-CO-Littlesnake-10-0004-3

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

In the LSFO RMP, BLM presumes a preference for oil and gas development over maintenance of sustainable sage-grouse populations, which is contrary to current BLM policy. In addition, BLM's response implies that CDOW's recommendation would exclude core areas from mineral development. This is not accurate as CDOW did not recommend that core areas be from mineral development or to leasing, but rather that they be from leasing or re-leasing (on un-leased lands and expired leases) and mineral development (on existing leases) until development in non-core areas has been completed and rehabilitated, and the sagebrush habitat functionality proposal has been evaluated. Thus, these areas could still potentially be developed over the life of the proposed RMP as part of a phased development approach. In addition, BLM could have considered deferring oil and gas development in at least a subset of the core areas, or applying No Surface Occupancy (NSO) and No Ground Disturbance (NGD) protections in core areas as lease stipulations on new leases or conditions of approval on existing leases. Either of these approaches would have constituted a step towards the goal of establishing large refuges deferred from oil and gas development, while allowing oil and gas to be extracted from a proportion of the core areas. The BLM does not adequately explain why of energy development in priority habitat (for new and expired leases, as well as existing leases) is contrary to the purpose and need statement, BLM's multiple use mandate, and current BLM policy.

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Comment Number: PP-CO-Littlesnake-10-0004-4

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

BLM's statement that large-scale closures to leasing are contrary to BLM policy and do not represent a reasonable alternative is also inaccurate. Current BLM policy is to maintain sustainable sage-grouse populations and to manage sage-grouse to promote conservation and minimize the need for listing of the greater sage-grouse under the Endangered Species Act. See, Instruction Memorandum (1M) 2010-071) If greater sage-grouse experts suggest that deferring greater sage-grouse core areas from oil and gas development is necessary to maintain sustainable sage-grouse populations, then BLM should seriously consider doing so. In fact, BLM policy suggests that large-scale closures to energy development may be appropriate and constitute a reasonable alternative. 1M 2010-071 outlines a set of actions that should be considered in priority habitat, when necessary to maintain sustainable sage-grouse populations across the landscape. These measures include excluding priority habitat from energy development and transmission projects via the RMP revision process. See 1M 2010-171 (In RMP revisions and amendments, analyze one or more alternatives that would exclude priority habitat from energy development and transmission projects."). Thus, BLM does not adequately explain how deferral of core areas from oil and gas development is contrary to BLM policy.

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Comment Number: PP-CO-Littlesnake-10-0004-6

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

CDOW's comments suggest that more specificity is needed in the adaptive management criteria, particularly in the area of "floors" below which resources would not be allowed to fall during the application of adaptive management. CDOW notes that the implementation of an effective adaptive management process is critical to the success of the sagebrush habitat functionality proposal. CDOW recommends that basic minimums ("floors") below which wildlife resources will not be allowed to fall should be included in the RMP. In part, BLM responds that, identifying "floors" below which resources would not be allowed to fall does not consider the source of the decline. Therefore, requiring stipulations if a "floor" is exceeded may not necessarily address the problem. However, BLM could include language that suggested that, if resources fall below "floors", BLM will identify the source of the decline and revisit management, as appropriate to address declines. BLM's response does not adequately address CDOW's recommendation, particularly given that the effectiveness of the entire sagebrush habitat functionality proposal relies

on effective adaptive management, and that adaptive management is unlikely to be effective if the RMP does not detail specific "floors" and actions that will be taken when resources approach "floors" Finally, CDOW spells out a number of additional concerns a letter submitted to BLM on June 25, 2007, including but not limited to comments on the following topic areas: 1) the importance of establishing minimum lease/project area sizes in order to ensure the effectiveness of the habitat functionality proposal, 2) periodic cumulative effects analysis, 3) adaptive management criteria, 4) exception and waiver criteria, and 5) reclamation standards.

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Comment Number: PP-CO-Littlesnake-10-0004-9

Organization: Center for Native Ecosystems

Protestor: Megan Mueller

**Issue Excerpt Text:**

The BLM failed to adequately consider and incorporate CDOW's comments and recommendations into the proposed plan. As a consequence of this failure, future BLM management of greater sage-grouse in the Little Snake Field Office may 1) prevent CDOW from meeting the goals of the Colorado Greater Sage-Grouse Conservation Plan,

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Comment Number: PP-CO-LITTLESNAKE-10-0006-111

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The BLM's 2005 National Sage Grouse Habitat Conservation Strategy requires the BLM to analyze a maximum sage grouse restoration alternative and other requirements during the RMP development process. These requirements have not been implemented during this process.

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Comment Number: PP-CO-Littlesnake-10-0007-12

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

The requirements that limit surface distribution to no more than one percent in high priority sagebrush habitats for new leases are unduly restrictive and excessive. The Wyoming BLM's density requirements within sage-grouse core areas limit disturbances to five percent of sagebrush habitat.<sup>4</sup> These density limitations are considered among the most restrictive in the region and preclude most oil and gas projects. Western Energy Alliance is concerned that the even more restrictive one percent limitation will preclude future leasing and development on thousands of acres with high oil and gas occurrence potential in the planning area.

<sup>4</sup> BLM Instruction Memorandum No. WY-2010-012, p.4

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Comment Number: PP-CO-Littlesnake-10-0007-13

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Western Energy Alliance also protests the method BLM will use to determine appropriate stipulations if a lease is in multiple levels of habitat priority. BLM states that "if a lease straddles two or more levels of habitat priority, the higher stipulation would apply."<sup>5</sup> It is not inconceivable that a lease may fall predominantly in low or medium priority habitat while a very small segment falls within a higher priority habitat. It is unreasonable for BLM to apply

stipulations for medium or high priority habitat on an entire lease when only a portion of the lease is designated as a higher priority habitat.

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Comment Number: PP-CO-Littlesnake-10-0007-7

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

3. Greater Sage-Grouse Surface Disturbance Limitations: Western Energy Alliance protests the incorporation and use of the plan's surface disturbance limitation concept for greater sage-grouse management in the planning area. The surface disturbance limitations for medium and high priority sagebrush habitats represent a vastly different greater sage-grouse management concept than what was described in the DRMP/EIS. The surface disturbance limitation concept, which is inherently different from a management model based on buffer zones around leks and timing limitations, was introduced as the primary sage grouse management tool very late in the planning process and the public was not given opportunity to comment on it. BLM did not have ample time to fully analyze how the concept will impact balanced resource use in the planning area and never allowed the public an opportunity to provide comment during the revision process.

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Comment Number: PP-CO-Littlesnake-10-0007-8

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Western Energy Alliance also protests the expansion of the No Surface Occupancy (NSO) buffer zones from 0.25 to 0.6 miles throughout the planning area and requests that BLM retain the 0.25 mile NSO buffers around leks in low and medium priority sagebrush habitats. These expanded buffer zones were never discussed in any of the alternatives in the draft document and BLM never analyzed how the expanded zones would impact management of the planning area or energy development.

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Comment Number: PP-CO-Littlesnake-10-0007-9

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Further, the expanded NSO buffer zone is at odds with recently implemented greater sage-grouse requirements in Wyoming. New Wyoming BLM guidance requires a 0.6 mile NSO buffer around leks inside the state's designated sage grouse "core areas" only, but a 0.25 mile NSO buffer around leks outside the core areas.<sup>1</sup> The lack of consistency within BLM but across state lines raises questions about the validity and scientific basis of the buffers. A more consistent policy for BLM would be to retain the 0.25 mile NSO buffers around leks in low and medium priority sagebrush habitats given the more restrictive surface disturbance limitations in high priority habitat. Western Energy Alliance protests the arbitrary surface disturbance limitations for sage grouse in the PRMP.

<sup>1</sup> BLM Instruction Memorandum No. WY-2010-012, p.3

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Comment Number: PP-CO-LITTLESNAKE-10-0008-10

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

QEP also protests the method BLM will use to determine appropriate stipulations if a lease is in multiple levels of

habitat priority. BLM states that "if a lease straddles two or more levels of habitat priority, the higher stipulation would apply." See PRMP at 2-17. This statement defeats the purpose of the habitat designations in the first place, would be arbitrary and capricious, and would allow manipulative leasing offerings to further restrict domestic oil and gas development.

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Comment Number: PP-CO-LITTLESNAKE-10-0008-5

Organization1:QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

2. Greater Sage-Grouse and Surface Disturbance Limitations: QEP protests the incorporation and use of the surface disturbance limitation concept for greater sage-grouse management set forth at 2.5.5.2 - Management Actions - at pp. 2-17 to 22. This entire management scheme, including surface disturbance limitations for medium and high priority sagebrush habitats, represents a vastly different greater sage-grouse management concept than what was described in the PRMP/EIS. BLM did not have ample time to fully analyze how the concept will impact balanced resource use in the planning area and more importantly, never allowed the public an opportunity to provide comment during the revision process.

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Comment Number: PP-CO-LITTLESNAKE-10-0008-6

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

QEP protests the manner in which the habitat designations and maps themselves were made and incorporated into the PRMP. See Map 2-3. This map, and the concept of low, medium and high priority habitats, was not discussed in the Draft. It apparently has been assembled by BLM and CDOW employees without public input or comment. The Draft included a map of "critical sagebrush habitat," but the "high priority" habitat included in Map 2-3 dwarfs the critical sagebrush habitat identified in the Draft. Lands designated as medium and high priority sagebrush habitat make up a huge portion of the planning area, including a majority of the areas in the planning area with high oil and gas occurrence potential (Map 2-3 and 3-32). In addition, the priority areas seem to combine multiple species habitat designations into a single use restriction map, the result being the growth of no development zones at the expense of BLM's obligation to show that the least restrictive lease stipulation is utilized to provide adequate protection for a particular resource. See BLM Handbook H-1601-1, Appendix C, Section II. F at 16. BLM cannot support restrictions supposedly aimed at protecting sage grouse by pointing to habitat vital to big game winter use or migration. The public is owed an opportunity to comment on and shape this drastic policy change prior to its implementation and it has not been provided in this instance.

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Comment Number: PP-CO-LITTLESNAKE-10-0008-7

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

QEP protests the elements of the surface disturbance limitations. For new leases, limiting disturbance to 1 % of high priority habitat is punitive and unnecessarily limits domestic oil and gas production. A 1 % limitation is really a functional ban on most, if not all, development in that area. And again, this severe restriction was not mentioned in any of the alternatives in the Draft RMP. QEP also protests the element of the 5% cap envisioned for current leases in the high priority areas and all development in the medium priority areas that includes all existing disturbance within the cap.

Comment Number: PP-CO-LITTLESNAKE-10-0008-9

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

QEP also protests the expansion of the No Surface Occupancy (NSO) buffer zones from 0.25 to 0.6 miles throughout the planning area and requests that BLM retain the 0.25 mile NSO buffers around leks in low and medium priority sagebrush habitats. There is no support for this expansion beyond verbal communications.

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***Summary***

1) The RMP does not do enough to protect sage grouse for the following reasons:

- The 5% habitat disturbance limitation is not adequate to prevent habitat fragmentation.
- The 0.6-mile buffer around leks is not adequate.
- The seasonal restrictions for activity around leks is not adequate.
- No “floors” were set for declines in resources.
- Many of the provisions to protect sage grouse are not mandatory.
- No ACECs were designated to protect sage grouse.
- The BLM did not consider a phased development approach in priority habitat.

Analysis of the impacts to habitat is inadequate because the BLM failed to follow the guidelines set by IM 2010-071 and the 2005 National Sage Grouse Habitat Conservation Strategy, and because the BLM failed to include a baseline of existing surface disturbance of sage grouse habitat. In addition, the BLM’s management of the sage grouse habitat may prevent CDOW from meeting the goals of the Colorado Greater Sage Grouse Conservation Plan.

2) The RMP is excessive in protecting sage grouse because:

- Limiting surface disturbance to no more than 1% in high priority areas is unduly restrictive.
- The BLM will apply more restrictive stipulations to an entire lease if only a portion of the lease area falls in a higher priority habitat.
- There is no rationale for the need of a 0.6 mile buffer around leks in low and medium priority sage grouse habitat.

In addition, there was inadequate opportunity to comment upon the proposed sage grouse habitat management decisions.

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***Response***

The BLM developed the National Sage-Grouse Habitat Conservation Strategy in 2004. This conservation strategy provides national sage-grouse habitat conservation guidance for BLM land use plans. The Northwest Colorado Greater Sage-grouse Conservation Plan (NWSG Plan, 2009) and the Colorado Greater Sage-grouse Conservation Plan (CCP, 2008) identify potential conservation actions that might be implemented to maintain and enhance greater sage-grouse populations and their habitat. To achieve sage-grouse conservation objectives, the BLM intends to cooperate with the Northwest Colorado Greater Sage-Grouse Working Group to conserve sage-grouse habitat by, for example, identifying, maintaining, and restoring sagebrush with an

emphasis on creation of functional blocks of sagebrush as greater sage-grouse habitat.

The protection and conservation measures outlined in the RMP are consistent with the strategies outlined in the GRSG CCP and have been evaluated with consideration to current research and guidance for the species. Although it isn't possible to anticipate all projects and/or site-specific management that may be proposed in greater sage-grouse habitat during the life of the plan, the range of alternatives considers various levels of multiple use activities, as well as protective measures to manage those activities. The suite of conservation measures included in Alternative C were developed in consultation with the USFWS and CDOW, and are supported by the CCP (see appendix B for rationale of the 0.6 mile lek buffer, and 4-mile seasonal breeding and summer-fall habitat distance). In addition, individual proposed actions will be subject to site-specific NEPA, and may incorporate a number of mitigative measures to achieve established sage-grouse habitat goals or objectives. Such measures could range from clustering wells (fluid minerals program) to modified grazing rotation systems (range program) to reclamation of closed roads (travel management & weed programs). The BLM has worked closely with CDOW throughout the development of this RMP and will continue that close working relationship in the development of specific projects in the future.

Site-specific studies from throughout the west were taken into consideration while developing management prescriptions for the sage-grouse. The PRMP/FEIS utilizes Connelly et al. 2000, Naugle et al. 2004 and 2006, Holloran 2005, Walker et al. 2007, Doherty et al. 2008, and others, to analyze impacts and develop mitigation or protective measures. Research in Wyoming and Montana (Holloran 2005; Naugle et al. 2006a, 2006b) suggests that standard stipulations (0.25 mile NSO and 2 mile TL) designed to avoid significant impacts to sage-grouse are not effective, at least not when they are in areas experiencing intense energy development. This research led the BLM to consider both the lek NSO buffer (0.6 miles) and the timing limitation buffer (4 miles) in the range of alternatives in the Little Snake RMP/DEIS. Additionally, the studies led BLM LSFO to develop a new approach to protect sage-grouse habitat in the land use plan. The Draft RMP/DEIS included an approach to reduce habitat fragmentation and preserve large blocks of undisturbed habitat. After the release of the Draft RMP/DEIS, more recent research became available, which resulted in the BLM including mandatory 1% and 5% surface disturbance limitations for new leases in high and medium priority sagebrush habitats, as well as incorporation of the 0.6 mile NSO and 4-mile timing limitation, under Alternative C.

Because the RMP does not authorize any specific activities, impacts to sage-grouse populations depend upon how future activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures.

A “floor,” also referred to as a “threshold” or “trigger point,” is a predetermined value of an indicator that triggers thought or action. Due to the varied nature of sage-grouse reproductive performance, habitat capability, and conservation threats among the seven different management zones established by the NWSG Plan, each zone will focus on meeting the desired condition for greater sage-grouse habitat and population performance on a sufficient portion of the zone to meet population goals. Conservation activities may proceed at different rates, and in different directions in each management zone based on the needs of the zone, its priority in meeting

overall goals, and the availability of resources.

The issue of developing trigger points for sage-grouse was raised during the public comment period on the Draft RMP/EIS. This led the BLM to work closely with CDOW and USFWS in adding a discussion about thresholds for greater sage-grouse in the PRMP/FEIS. If Alternative C (Proposed Plan) is adopted, the targets from the Northwest Colorado Greater Sage-Grouse Conservation Plan and the use of downward trend and populations reaching the “evaluation zone” as the “floor” for declining sage-grouse populations will be used. Page 2-19 of the PRMP/FEIS states:

“[The] BLM would work with other agencies and interested parties to achieve the goals and objectives, including CDOW’s population targets, included in the Northwest Colorado Greater Sage-Grouse Conservation Plan. [The] BLM would support monitoring and evaluation efforts as outlined in the Northwest Colorado and Colorado statewide conservation plans to detect changes in sage-grouse trends due to land use activities. If it is determined that any Management Zone or the whole population is in a downward trend, BLM would assist in development and implementation of strategies to reverse this trend through the management of seasonal sagebrush habitats. If populations were to drop into the “evaluation zone,” as defined in the Northwest Colorado Greater Sage-Grouse Conservation Plan, action would be taken within one year to reverse declining sage-grouse trends, return populations to the levels above the “evaluation zone” and prevent declines of sage-grouse populations below the target range.”

In compliance with 43 USC 1712(c)2 and 1702(a), BLM reviewed all nominated ACECs as specified in BLM Manual Section 1613-1. Nominations were evaluated based on relevance and importance criteria in 43 CFR 1610.7-2 and BLM Manual 1613-1-.11 and .12. Areas that met both importance and relevance criteria were considered as potential ACECs in the Draft RMP/EIS alternatives. A summary of these ACECs is located in Appendix G. Nominated ACECs that failed to meet both relevance and importance criteria were not considered in the Draft RMP/EIS alternatives. The nominated sage-grouse ACEC did not meet the importance criterion. BLM identified special management for potential ACECs, as directed by BLM Manual 1613-1 Section 12, to protect and prevent irreparable damage to the relevant and important values. The different relevant and important values in the various potential ACECs have required specific management decisions to address the various threats. The management decisions in each ACEC were designed to protect the relevant and important values. The impact to relevant and important values from identified management associated with each ACEC is noted in chapter 4.

The sagebrush habitat protection approach detailed in section 2.5.5.2 of the PRMP/FEIS is a form of phased development. Under the approach, operators would not be able to exceed a 5% or 1% surface disturbance limitation. If these caps were reached, the operators would not be able to move to a new area without reclaiming their previous disturbance. The operators would have to complete development and reclamation in one area before phasing into another.

WO IM 2010-071 recommends analyzing one or more alternatives excluding mineral leasing “when needed to maintain sustainable SG populations.” Agency biologists deemed the package of mitigative measures appropriate and therefore large-scale closures were not needed to maintain sustainable sage-grouse populations.

The public was allowed to comment on the surface disturbance limitation concept, as this approach was included in the Draft RMP/DEIS and received a wide range of public comments.

## *Big Game*

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Comment Number: PP-CO-LITTLESNAKE-10-0003-6

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

### **Issue Excerpt Text:**

While the SLPRMP and FEIS do provide some protection for big game species, they still fail to provide adequate and scientifically-grounded protection to big game species crucial habitat. Alternative C, the BLM's preferred alternative in the FEIS, closes winter range to surface disturbances from December 1 to April 30, but provides that exceptions are allowed as outlined in Appendix E. This is problematic for two reasons. First, the provisions governing waivers outlined in Appendix E are too vague. While the FEIS contains much more detail than the DEIS did to explain how certain pieces of information will be used in the decision process, the FEIS still fails to provide clear guidelines and leaves everything up to the discretion of the administrator. There are some situations in which a waiver should never be granted (when a species will be unreasonably threatened), and the waiver procedures should make clear what those situations are and forbid waiver under them. More importantly, research from Wyoming clearly suggests that, when oil and gas development occurs within mule deer winter range, timing restrictions alone are insufficient to prevent declines in deer abundance.

In addition, the FEIS preferred alternative does not do enough to protect against habitat fragmentation and the cumulative effects of development. The plans goal is to limit disturbance to 5% of the lease area by allowing no more than one facility to be built for every 160 acres. FEIS 2-19. However, the plan states that "operators are encouraged to develop proposals that leave larger blocks" of habitat open, not that they will be required to do so. *Id.* (emphasis added). In order to make sure that larger blocks of habitat are left undisturbed the BLM needs to require, not merely encourage, developers to leave them open. Furthermore, Appendix E suggest that timing limitations for development could be waived, only clarifying that "[e]xceptions requested for the middle of a restricted time period are less likely to be granted than exceptions at the beginning or end of a restriction period." FEIS Appendix E. That they are less likely to be granted does not provide a quantitative standard to assure that timing limitations are adhered to in critical wildlife habitats. The BLM needs to provide stronger enforcement mechanisms if the proposed protections are going to be effective.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-7

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

### **Issue Excerpt Text:**

BLM should allow no more than one well pad per mile. There is evidence that 160-acre spacing for well pads may not be sufficient to conserve crucial big game habitat, especially in calving and fawning areas. See Wyoming Game and Fish Department, Recommendations for Development of Oil & Gas Resources Within Crucial & Important Wildlife Habitats 2004 <http://gf.state.wy.us/downloads/pdf/og.pdf>. Given current technology, it is unclear why this

density is even necessary. Using directional drilling with a 2,500ft reach reduces surface density dramatically, and is currently used in the industry. One well pad per section is not out of the question and 320-acre spacing is clearly attainable.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-8

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

Ensuring that migration corridors stay open is another critical consideration for big game survival and health. The BLM does a good job overall of discussing migration corridors, however, they leave too much leeway for development to encroach. The FEIS specifically says, "developers could claim economic hardship and, therefore, not have to implement recommended mitigation measures." FEIS 4-44. That all a developer has to do to avoid reducing or mitigating impacts is show "economic hardship," which is not defined by the FEIS, is disconcerting, and undermines the protections the BLM is trying to afford migration corridors. The BLM should, instead, provide assurances that developers will be required to minimize and mitigate impacts to big game animals, their habitats and migration areas.

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Comment Number: PP-CO-LITTLESNAKE-10-0003-9

Organization: National Wildlife Federation Rock Mountain Natural Resource Center

Protestor 1: Elise Aiken

Protestor 2: Jaime Cavanaugh

**Issue Excerpt Text:**

Finally, as the BLM notes, climate change in the planning area could have a major effect on the migration patterns of big game species.<sup>4</sup> More consideration should be given to the possible effects of climate change, and adjustments made to oil and gas development planning should be made accordingly. Especially because climate change may cause more frequent and more prolonged periods of drought that could threaten big game survival. Considering the possible effects on mitigation is especially important in light of the above discussion of migration corridors. <sup>4</sup> See FEIS 3-13

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Comment Number: PP-CO-Littlesnake-10-0007-17

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Given the overpopulation of elk in the planning area, Western Energy Alliance protests the designation of elk distribution and use areas as medium and high priority sagebrush habitat. The White River elk herd, which resides within the planning area, is the largest migratory elk herd in North America and has been overpopulated for the past several years. According to the Colorado Division of Wildlife, overall elk population estimates in the planning area are 28% higher than the agency's objectives.<sup>7</sup> Therefore, lumping elk habitat in with other big game crucial habitat and designating it as a medium and high priority habitat is unjustifiable and excessive.

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***Summary***

1) The RMP does not adequately protect big game species because it fails to provide clear guidelines for waiving seasonal restrictions on surface disturbance and encroachment on

migration corridors, measures to reduce habitat fragmentation are not mandatory, and well spacing is too dense.

2) Since there is an overpopulation of elk in the planning area, identifying crucial elk habitat and designating it as medium and high priority habitat is excessive.

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***Response***

The BLM approves a modification or waiver of lease terms and stipulations in accordance with 43 CFR 3101.1-4. The regulation states that “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. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.”

Beyond this, the PRMP/FEIS has been modified with additional detail to the criteria presented in Appendix E, clarifying under what conditions the criteria could be considered. It is not required to quantify Waiver, Exception, and Modification criteria. Based on the regulations and the revised Appendix E, a waiver, modification, or exception would not be granted if the factor/resource for which the stipulation was developed was still at risk of unacceptable impacts. The regulation and the criteria identified in Appendix E explain the limitations on the applicability of exceptions, modification or waivers. However, each request would be considered and analyzed on a case-by-case basis and documented individually, as explained in Appendix E.

To the extent that these protests raise the issue of the inadequacy of mitigation measures for wildlife habitat, it is not possible to anticipate specific projects and specific wildlife mitigation needs that may occur during the life of the plan. Accordingly, mitigation will be considered if and when specific projects are proposed. Special requirements to alleviate wildlife impacts would be included on a case-by-case basis in future use authorizations within the scope of the BLM’s authority. The BLM has worked closely with the CDOW throughout the development of this RMP and will continue that close working relationship in the development of specific projects in the future. Mitigative measures in Alternative C (Proposed RMP) have been developed in consultation with the CDOW.

Wildlife populations vary over time. While elk populations may be above target levels in 2010, this will not necessarily be the case for the entire life of the land use plan. The BLM manages big game habitat while CDOW is responsible for managing big game populations. It is the BLM’s goal to maintain healthy and functioning big game habitat, regardless of big game population levels.

***Leasable Minerals***

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Comment Number: PP-CO-Littlesnake-10-0007-14

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Western Energy Alliance protests the method BLM will use to apply Best Management Practices (BMPs) on projects on existing leases whose operators have chosen not to opt into a voluntary surface disturbance limitation approach in medium and high potential habitats. For these projects, BLM states that appropriate habitat protection BMPs would be required as Conditions of Approval (COAs) on drilling applications and that BMPs "could include, the practices listed in Section This language supposes that BLM may apply any BMP they see fit as a COA.

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***Summary***

Western Energy Alliance protests the method the BLM will use to apply Best Management Practices (BMPs) on projects on existing leases whose operators have chosen not to opt-into a voluntary surface disturbance limitation approach in medium and high potential habitats.

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***Response***

The Oil and Gas Order Number 1 states that the BLM can require specific BMPs if they are carried forward as part of the NEPA required evaluation or environmental review.

“This rule encourages operators to use Best Management Practices when developing their APDs. Using Best Management Practices is the BLM’s current policy. Best Management Practices are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis that reduce, prevent, and avoid adverse environmental or social impacts of oil and gas activities. The BLM Field Offices currently incorporate Best Management Practices into proposed APDs and associated on-lease and off-lease Rights-of-Way approvals if they are carried forward as part of the NEPA required evaluation or environmental review. This final rule clarifies the existing policy that Best Management Practices may be included as Conditions of Approval. The BLM started using Best Management Practices in 2004 and encourages the voluntary use of these practices.”

This text can be found at: <http://www.federalregister.gov/articles/2007/03/07/07-934/onshore-oil-and-gas-operations-federal-and-indian-oil-and-gas-leases-onshore-oil-and-gas-order#p-3>.

The previous direction provided by The Oil and Gas Order Number 1 carries forward to section 2.6.1.2 Management Actions, Oil and Gas Leasing Decisions, which states “[The] BLM has the discretion to modify surface operations to change or add specific mitigation measures when supported by scientific analysis. All mitigation/conservation measures not already required as stipulations would be analyzed in a site-specific NEPA document, and be incorporated, as appropriate, into conditions of approval of the permit, plan of development, and/or other use authorizations” (p.2-62). Such management actions have been analyzed in section 4.4.1.3 Alternative C of the “Impacts to Energy and Minerals” beginning on page 4-159.

***Livestock Grazing***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-21  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide a mechanism to close allotments or cancel ADM's (for group allotments due to the voluntary waiving of permits back to the agency).

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Comment Number: PP-CO-LITTLESNAKE-10-0006-22  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide guidance for permit renewals in cases of unresolved resource conflicts/degradation and failure to meet Standards and Guidelines

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Comment Number: PP-CO-LITTLESNAKE-10-0006-40  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

BLM further ignores the impact that livestock grazing has had, and will continue to have under the Proposed RMP, on native vegetation

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Comment Number: PP-CO-LITTLESNAKE-10-0006-57  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP does not reveal the current condition of allotments, plant and soil communities nor does it analyze the impacts of water developments and other "range improvements".

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Comment Number: PP-CO-LITTLESNAKE-10-0006-60  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

Since livestock numbers remain unchanged, the increased forage demand must come from that needed by wildlife or the residual vegetation needed to maintain the native plant communities. BLM has failed to review the best available information and present an analysis that reflects actual on-the-ground conditions.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-64  
Organization: Western Watersheds Project  
Protestor: Jonathan Ratner

**Issue Excerpt Text:**

3) BLM Fails to Disclose its Assessment and Inventory of Acres Suitable for Livestock Grazing

The requirements in BLM's Land Use Planning Handbook (H-1601-1) Appendix C which requires that BLM "Identify lands available or not available for livestock grazing (see 43 CFR 4130.2(a)), considering the following factors: 1. Other uses for the land; 2. terrain characteristics; 3. soil, vegetation, and watershed characteristics; 4. the presence of undesirable vegetation, including significant invasive weed infestations; and 5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs." Neither the DEIS, FEIS or RMP provide this analysis.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-66

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

The Taylor Grazing Act (TGA) requires the BLM to set forth its criteria and assessments for grazing suitability determinations. 43 U.S.C. § 315. Enacted "[t]o stop injury to the public grazing lands by preventing overgrazing and soil deterioration," 48 Stat. 1269, preamble, June 28, 1934, the Taylor Grazing Act requires the Secretary to determine the characteristics of a parcel of land, classify that land based on its characteristics, and then regulate the use of the land based on its classification. 43 U.S.C. § 315.

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***Summary***

The RMP/EIS analysis relies on outdated data resulting in a decrease in forage that can be allotted to wildlife and residual vegetation. The BLM did not comply with the LUP Handbook to identify lands available for livestock grazing and the RMP/EIS does not analyze the impacts of livestock grazing on native vegetation including riparian areas, nor the impacts of range improvements, including water developments. Nor does the RMP provide guidance for grazing management when standards and guidelines are not met or a mechanism for to close allotments after voluntary relinquishment.

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***Response***

The BLM used the most recent and best information available relevant to a land use planning scale of analysis. The BLM believes the baseline data provided in Chapter 3 and various appendices in the PRMP/FEIS are sufficient to support the environmental impact analysis resulting from management actions presented in the PRMP/FEIS. The BLM recognizes that comprehensive baseline data is not available for all resources. This fact and an identification of some of the major types of unavailable data are noted in Section 4.2 of the Proposed RMP/Final EIS.

The PRMP/FEIS does not anticipate an increase of forage demand on a field office-wide basis. However, the BLM does not contend that all public lands in the field office are suitable for livestock grazing. Areas that may be unsuitable for grazing due to highly localized land form and vegetal characteristics are not substantial enough to preclude authorization of livestock grazing at

the allotment scale in which the PRMP/FEIS addresses. The BLM determines which areas are unsuitable for grazing following site-specific scientific analysis at the project level. On an allotment basis, all lands that are open to grazing and analyzed in the PRMP/FEIS are not precluded from grazing use due to the criteria listed in H-1601-1, Appendix C. Within any particular allotment, there may be specific, localized areas that are, due to topography or vegetation density, physically unavailable to livestock. However, these areas do not preclude those adjacent areas within the allotment from being recognized as suitable.

The PRMP/FEIS addresses the impacts to native vegetation by livestock grazing on pages 4-33 through 4-37 and 4-40 through 4-42. The PRMP/FEIS addresses the current condition of vegetative and soil resources on a landscape/watershed level. These are summarized in Table 3-1. The condition of soil resources is further discussed on page 3-19. Analysis of the impacts of range improvements, including water developments, is discussed under Section 4.3.4, Impacts on Vegetation. More site-specific analyses of impacts from range improvement facilities, including water developments, are too variable and numerous to be effectively analyzed at this PRMP/FEIS scale. The impacts of range improvement projects are analyzed individually through activity-level NEPA analysis. On page 3-33, the BLM reported that 337 miles of streams had been evaluated for proper functioning condition. This represents the total mileage of the RMPPA riparian resources baseline information that was analyzed for the plan. Total known riparian resources and their condition status is shown on Map 3-9. Loss of riparian productivity in terms of species diversity resulting in a decrease in riparian functionality by alternative is discussed on pages 4-35 and 4-38. Guidance for permit renewals in cases of unresolved resource conflicts or when standards are not met is provided within the Livestock Grazing Alternatives, pp. 2-80 and 2-81. The issue of closing allotments after voluntary relinquishment is a policy-level decision that is outside the scope of a land use plan.

### *No Grazing Alternative*

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Comment Number: PP-CO-LITTLESNAKE-10-0006-27

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

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

there was no analysis of alternatives such as No Grazing, Significantly Reduced Grazing or closing sensitive areas such as wilderness quality lands, riparian areas, ACECs or areas with sensitive soils, cultural or paleontological, or wildlife resources, to livestock or the application of a suite of management standards based on current science to reduce impacts.

This violates the National Environmental Policy Act (NEPA), 42 D.S.C. §§ 4321-4361, requirement that federal agencies analyze a reasonable range of alternatives. 42 U.S.C. §§ 4332(2)(C)(iii) (EIS must contain "a detailed statement [of]..alternatives to the proposed action"); 4332(2)(E) (independent requirement that agencies must "study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources").

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Comment Number: PP-CO-LITTLESNAKE-10-0006-28

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

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Comment Number: PP-CO-LITTLESNAKE-10-0006-30

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

BLM eliminated detailed consideration of a No Grazing Alternative using arguments of multiple use and sustained yield and the Taylor Grazing Act. However, BLM is not obligated to continue authorizing uses which degrade resources and create conflicts, such as livestock grazing. A recent decision by Interior Board of Land Appeals, Department of Hearing and Appeals,<sup>3</sup> cited *NWF v. Bolten Ranch, Inc.*<sup>4</sup> stating, "The Secretary of the Interior is not limited by 43 CFR 4113.1 in determining whether to renew a grazing license. The secretary or his delegate is not obligated to issue a license or permit to an applicant. The issuance of such permits or licenses is committed to agency discretion." Beyond this, BLM has described allotments in the Richfield Planning Area that it has already closed to livestock grazing covering 138,952 acres. Merely analyzing a No Action Alternative does not provide an adequate baseline with which to compare direct, indirect or cumulative impacts. Through its analysis, BLM has accepted the status quo as its baseline, therefore burying the impacts occurring under the current land use plan for the past two decades and now adding the impacts of its proposed action as if past impacts did not occur.

<sup>3</sup> *Western Watersheds Project v. Bureau of Land Management*, Docket No. WY-090-2007-15, 16, 17.4

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Comment Number: PP-CO-LITTLESNAKE-10-0006-54

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

BLM did not reveal what percent of the riparian/wetland resource has actually been monitored to ascertain its reported conditions, nor did it analyze the loss in productivity occurring under continued livestock grazing compared to cessation of grazing<sup>26</sup> (Paper enclosed).

<sup>26</sup> Schulz, Terri T and Wayne C. Leininger. 1990. Differences in riparian vegetation structure between grazed areas and exclosures.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-69

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

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

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Comment Number: PP-CO-LITTLESNAKE-10-0006-91

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

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Comment Number: PP-CO-LITTLESNAKE-10-0006-93

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

Further, a reasoned decision regarding grazing can only be made if the decision maker is informed as to the benefits and consequences of grazing. As indicated in this protest, BLM has not assembled the information to understand the impacts of grazing or revealed that information in the RMP. BLM fails to disclose the assessment of acres suitable for livestock grazing. There is no disclosure of criteria, no baseline analysis, nor a determination of which acres are capable and suitable for livestock grazing. Without this information, the BLM cannot claim that it has made an informed decision in the RMP and the agency ignores the multiple use and unnecessary and undue degradation mandates of FLPMA.

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***Summary***

The livestock grazing range of alternatives is inadequate. The lack of a "No Grazing" alternative and the failure to present baseline inventories and evaluations of the effects of livestock grazing in the planning area has resulted in an analysis that does not fully disclose the impacts of livestock grazing and will not result in an informed decision.

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***Response***

Livestock grazing alternatives vary substantially in addressing conflicts between livestock grazing and other uses, management of the Standards and Guides process, and construction of range improvements. These actions are provided within the Livestock Grazing Alternatives, pp. 2-80 and 2-81. Grazing systems and range improvements are activity plan-level actions designed to achieve the management goals for livestock grazing and to achieve and maintain healthy rangelands. Allotment specific information pertaining to livestock grazing administration, allotment management plans, and landscape-scale assessments are available for review at the Little Snake Field Office.

Public land livestock grazing is a authorized use of public lands. As declared by Congress in Section 102 of FLPMA, “the public lands be managed in a manner that will...provide food and habitat for fish and wildlife and domestic animals” (refer to 43 U.S.C. § 1701(a)(8)).

Additionally, “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands...” (refer to 43 U.S.C. § 1701(a)(12)).

Livestock grazing will be managed in accordance with existing laws, regulations, and policies including, but not limited to, the Taylor Grazing Act of 1934, as amended; and FLPMA. In accordance with 43 CFR § 4180, the BLM will manage the public rangelands in accordance with the Colorado Standards for Public Land Health as identified in Table 2-1 of the PRMP/FEIS (refer to pp. 2-32 and 2-33). The BLM works closely with livestock permittees and the interested public, to determine the most appropriate methods to achieve the Standards for Healthy Rangelands (refer to Appendices 8, 19, and 20 of the PRMP/FEIS).

The BLM is directed by the Taylor Grazing Act and its implementing regulations to allocate forage to uses of the public lands in RMPs and to determine and adjust stocking levels, seasons of use, and grazing management activities. Consequently, the BLM determined that it would not analyze in detail an alternative to entirely eliminate grazing. This is explained on p. 2-2 and 2-3 in the PRMP/FEIS. An alternative that proposes to close the entire planning area to grazing would be inconsistent with the Taylor Grazing Act, which directs the BLM to provide for livestock use of BLM lands; adequately safeguard grazing privileges; provide for the orderly use, improvement, and development of the range; and stabilize the livestock industry dependent upon the public range (refer to 43 U.S.C. §§ 315(a), (b)). In addition, the FLPMA includes livestock grazing as a principal or major use of public lands (refer to 43 U.S.C. § 1702(l)). The issue of a no grazing alternative was not raised during the public scoping period, and no new information has been presented that would warrant a full analysis of the no grazing alternative.

## *Social, Economic Interests*

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Comment Number: PP-CO-LITTLESNAKE-10-0001-24

Organization: Moffat County

Protestor: Michael Marinovich

### **Issue Excerpt Text:**

BLM's abrupt change in course was not accompanied by the reasoned analysis required by the APA, but instead, justified on the grounds that the impacts of the Vermillion Basin mineral leasing closure were analyzed under the DEIS' range of alternatives, and thus, complied with the National Environmental Policy Act (NEPA), 42 U.S.C. §4332. Id. Moffat County's protest, however, does not lie with NEPA, but rather with the absence of reasoned-decision-making required by the APA.<sup>15</sup> The arbitrary, unexplained change in course is best demonstrated by correspondence sent to BLM following its news release from the BLM's Northwest Resource Advisory Council (NW RAC), Club 20 and U.S. Congressman Salazar.

<sup>15</sup>Nowhere, however, does BLM' s FEIS Socio- Economic analysis (Sec. 4.5) accurately disclose the devastating economic impacts to the region from the closure of Vermillion Basin to mineral leasing. This includes \$700 million of natural gas resource that would have been extracted, \$25.6 million to Moffat County Taxing Districts, \$7.7

million in bonus payments and \$87 million in federal royalties split between the State of Colorado and federal governments and partially returned to the County and cities, \$43.75 million of the State of Colorado's share of the royalty, and \$77 million of ad valorem and severance tax payments. Ex. 1, Moffat County Letter to the Public. See also Letter from Craig/Moffat Economic Development Partnership Board of Directors to BLM Director (September 11, 2010) (opposing Vermillion Basin closure and detailing economic harm), [www.craigdailypress.com/news/2010/sep/11/guest-columnist-edp-letter-advocates-1-percent-ver](http://www.craigdailypress.com/news/2010/sep/11/guest-columnist-edp-letter-advocates-1-percent-ver). On remand, BLM's reasoned analysis must address and reconcile these impacts.

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Comment Number: PP-CO-LITTLESNAKE-10-0008-3

Organization: QEP Resources Inc.

Protestor: Mike Smith

**Issue Excerpt Text:**

In addition, there is a certain amount of disingenuousness involved in this analysis. If BLM is going to shut down a huge area -77,000 acres -- to appease a narrow political interest, some analysis of the economic impact of that decision is warranted. That is unfortunately absent in the PRMP. According to BLM figures, 13% of the possible 1.9 million acres in the PRMP area are completely off-limits to oil and gas development. Another 11 % is available, but with a no surface occupancy restriction. And a paltry 9% of the land - just 168,180 acres - is available to lease with standard stipulations.

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***Summary***

The Little Snake Proposed Resource Management Plan and Final Environmental Impact Statement do not adequately disclose a reasoned socioeconomic analysis for the closure of the Vermillion Basin to oil and gas development.

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***Response***

The BLM met with the Little Snake RMP Cooperating Agencies on June 29, 2010, to discuss changes to the Proposed RMP/Final EIS. The BLM communicated to the cooperating agencies during this meeting that the Vermillion Basin would be closed to oil and gas leasing in Alternative C (Proposed RMP). (The change is identified in the PRMP/FEIS in Section 1.7, Summary of Changes between the Draft RMP/EIS and the Proposed RMP/Final EIS.) Closing the Vermillion Basin to oil and gas leasing and some other surface disturbing activities was analyzed in Alternative D of the Draft RMP/EIS. The NEPA Handbook (H-1790-1) states, "Various parts of separate alternatives that are analyzed in the draft can also be 'mixed and matched' to develop a complete alternative in the final." The Draft RMP/EIS maintains that under the approach to limit oil and gas disturbance to 1% of Vermillion Basin previously contained in the Preferred Alternative, wilderness characteristics would be significantly impacted. Page 4-126 states, "Despite these stipulations and mitigations, oil and gas development would result in a significant impact to wilderness characteristics." After a review of the decisions and analysis in the Draft RMP/EIS and public comments, BLM determined the stated impacts were unacceptable, and chose to manage Vermillion Basin to protect its wilderness characteristics.

The BLM coordinated very closely with the public and the cooperating agencies, including Moffat County, in developing the socioeconomic analysis for the Little Snake RMP. The cooperating agencies provided baseline data, reviewed current economic conditions, and

provided substantial comment to the impact analysis.

The social and economic impacts of closing Vermillion Basin to oil and gas leasing for the life of the plan are included in Section 4.5 of the PRMP/FEIS, Impacts on Social and Economic Conditions. The direct, indirect, induced, and cumulative impacts of closing areas within the planning area to oil and gas development, including Vermillion Basin, are covered beginning on page 4-204 of the PRMP/FEIS. A myriad of economic indicators were analyzed, including industry income, employment, employee compensation, non-market values, Federal Mineral Lease tax revenues, PILT payments, property taxes, and severance taxes. The impacts of all oil and gas leasing categories for each alternative, such as closed, NSO, CSU, or timing limitation stipulations, were analyzed. Deferring oil and gas leasing on 77,000 acres in Vermillion Basin is factored into impacts on the oil and gas sector for Alternative C (Proposed RMP) and Alternative D.

However, the BLM is not required to perform an in-depth analysis of socioeconomic costs and benefits of proposed actions for individual areas within the planning area. At no stage has the socioeconomic analysis estimated the impacts of closing Irish Canyon to oil and gas development, for example, and this approach was not changed for the PRMP/FEIS. NEPA does not require this level of analysis. The socioeconomic analysis is adequate.

### ***R.S. 2477***

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Comment Number: PP-CO-LITTLESNAKE-10-0001-21

Organization: Moffat County

Protestor: Michael Marinovich

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

Namely, that while the presence of R.S. 2477 claims may be taken into consideration during the planning process, non-binding determinations (NBDs) are to be identified and made on a case-by-case basis during implementation of the RMP (i.e., subsequent travel management planning). FEIS at App. Q-503.

The RMP's proposed closure of R.S. 2477 rights-of-way makes adverse "determinations" regarding these claims in violation of Tenth Circuit precedent and implementing policies which BLM acknowledges it must follow. Any change to these closures would require a plan amendment, which could take years following the travel management process.

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#### ***Summary***

The RMP/EIS does not acknowledge the existence of the R.S. 2477 assertions through making adverse "determinations" resulting in potential Land Use Plan amendments.

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#### ***Response***

The BLM recognizes that R.S. 2477 assertions are made by Moffat County and that many of these routes existed before 1976 on public lands that were unreserved. Some of these routes claimed by Moffat County may well be R.S. 2477. Departmental policy and case law indicate

that the BLM may not make binding determinations as to R.S. 2477 claims. The BLM assured the Moffat County Commissioners that the RMP/EIS will acknowledge the existence of the R.S. 2477 assertions, and that the RMP/EIS decisions are subject to valid existing rights. As such, land use plan decisions do not affect RS 2477 assertions. If, through a binding determination made through the judicial system, an assertion is found to be a valid RS 2477 rights-of-way, it would be treated as a valid existing right.

On March 22, 2006, Interior Secretary Gale Norton issued a policy statement that, among other things, revoked the 1997 DOI policy moratorium and confirmed DOI's recognition of the Tenth Circuit's ruling. The March 22, 2006, DOI policy encourages communication and cooperation in the administration of R.S. 2477. It also reiterates the Tenth Circuit finding that binding determinations of R.S. 2477 rights is a judicial, not an executive function. As such, the RMP is not the venue to definitively resolve the R.S. 2477 issue. The RMP/EIS will address transportation and access issues at the land use plan level, and will disclose impacts of travel management decisions on resource uses and motorized access. Potential conflicts may exist between BLM planning decisions and R.S. 2477 assertions to different degrees in the different management alternatives. Chapter 4 provides an analysis of which R.S. 2477 assertions would not be available for vehicle use under each alternative, unless later recognized as valid existing ROW. The RMP/EIS does not constitute a non-binding determination.

## ***OHV***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-31

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

### **Issue Excerpt Text:**

B) The RMP fails to present and assess - an adequate range of alternatives with respect to off-highway vehicle (OHV).

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Comment Number: PP-CO-LITTLESNAKE-10-0006-33

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

### **Issue Excerpt Text:**

If the agency cannot provide baseline inventory and analytical information to support leaving the majority of the lands in the Planning Area open to OHV use, then the BLM has not adequately supported its alternatives or the decisions made in the RMP.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-71

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

### **Issue Excerpt Text:**

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, the RMP does not analyze the baseline condition of the planning area OHV use.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-73

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

There is no analysis of the extent of user created roads and trails,

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***Summary***

The RMP does not provide a baseline for the OHV use in the planning area, the lack of which has resulted in an inadequate range of alternatives which will result in an uninformed decision.

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***Response***

The best available data and information were used in preparation of the PRMP/FEIS, which includes a description of baseline OHV use. Chapter 3 of the PRMP/FEIS includes discussions of OHV use and trends over the past 15 years in the planning area as well as OHV use/resource conflicts (beginning on page 3-128). Locations in the planning area that experience high levels of OHV use are identified and the proliferation of trails by OHVs is also addressed.

The PRMP/FEIS identifies only one area as open for OHV use encompassing about 19,710 acres of public land. The majority of the planning area is identified as limited to motor vehicle and OHV use. These limited designation areas are displayed in Table 2-38 of the PRMP/FEIS.

The BLM has identified a range of potential management actions to resolve resource conflicts, including closing areas to OHV use, in the alternatives in Chapter 2 (pages 2-109 through 2-116). The range of alternatives includes Alternative B which designates 1,154,570 acres as open to OHVs and 50,440 acres as closed, to Alternative D which designates zero acres as open to OHVs and 283,290 acres as closed.

***Vegetative Communities***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-19

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

Degraded riparian function is the primary issue throughout the Field Office, but the RMP fails to provide any useful direction other than general Goals and Objectives. The RMP is where overarching direction applicable to all allotments much be given. For instance, from the Vernal RMP we see: "stubble height of 4 inches or 30% utilization on key species if riparian conditions in that reach are to be maintained and 6 inches or <20% utilization if riparian conditions need to be improved. A maximum of 10% stream bank alteration is allowed."

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Comment Number: PP-CO-LITTLESNAKE-10-0006-42

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP did not disclose or analyze the current condition of vegetation communities in the planning area and how that condition compares to historical or potential condition other than generic descriptions of the general community types.

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***Summary***

The FEIS does not compare present vegetative community conditions with historical conditions and the proposed RMP does not provide management direction to restore riparian vegetation.

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***Response***

The scope of the PRMP/FEIS necessitates that plant communities are described in broad terms of how they currently exist within the RMPPA. Site-specific characterizations of plant communities, such as seral states, composition, vigor, or disturbance history are only appropriately described on a project-specific basis at the activity level.

The PRMP/FEIS establishes the goal and objective for riparian function as the achievement of proper functioning condition (PFC) as determined through established BLM protocols. Further, riparian and wetland plant communities would be managed to achieve Desired Plant Community (DPC) objectives, as described on page 2-13. DPC objectives would be established for local areas based on NRCS Range Site Guides and other information. This allows for management approaches which are more appropriately tailored to the needs of specific systems rather than a one-size-fits-all prescriptive approach that may or may not achieve DPC objectives and PFC.

***Noxious Weeds***

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Comment Number: PP-CO-LITTLESNAKE-10-0006-51

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP contains no analysis of the area affected by invasive species or that suffer from reduced native species and production compared to potential.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-61

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

Despite WWP's and others comments and the scientific literature they provided, BLM continues to ignore the effects of livestock grazing and the epidemic proportions of the spread of weeds-in the affected environment, alternatives, and environmental consequences sections of the document. BLM did not analyze the actual causes of the spread of invasive species within the planning area. There was no mention of the effects of livestock grazing on invasives or the effectiveness of current control methods.

BLM ignores the role of livestock on soil disturbance and cheatgrass establishment

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Comment Number: PP-CO-LITTLESNAKE-10-0006-84

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to present any baseline or other inventory data on weeds and invasives.

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***Summary***

The RMP/EIS neither discloses baseline data of the area infested by invasive weeds, nor the role livestock grazing plays in their spread.

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***Response***

The PRMP/FEIS does analyze the impact that invasive species (i.e., noxious and invasive weeds) have on the native plant communities within the RMPPA. On page 4-33, the assumption that “noxious and invasive weeds would continue to be introduced and spread” is made for all alternatives. On page 4-35, the analysis of Alternative A refers to “reduced vegetation diversity [increasing the] opportunities for noxious and invasive species establishment, indirectly reducing the ecological health of rangelands.” On page 4-37, the analysis of Alternative B refers to decreases in vegetation diversity from actions increasing livestock forage as increasing the risk for the establishment of noxious and invasive species and the significant impact that could have on the ability of rangelands to support other resources in the long term. On pages 4-40 and 4-41, the analysis for Alternatives C and D refer to both alternatives’ goals of restoring habitats through vegetation treatments results in increasing diversity and cover while decreasing the opportunities for noxious and invasive weed establishment. The PRMP/FEIS addresses the role of disturbance, including livestock grazing, in the establishment and spread of noxious and invasive weeds in Chapter 2: Alternatives (pages 2-13, 2-15, 2-123, 2-127), Chapter 3: Affected Environment (page 3-39), and Chapter 4: Environmental Consequences (page 4-33).

Impacts to soils are discussed on page 4-14, which describes livestock grazing as “reducing percent cover of soil surface crusts through trampling and generally decreasing vegetative ground cover, increasing potential for surface runoff and erosion and reducing infiltration rates. These impacts would be concentrated in site-specific areas of ungulate congregation and not in areas of more dispersed use.” The link between soil disturbance and cheatgrass establishment is not discussed directly because soil disturbance may or may not result in cheatgrass establishment and many other activities other than livestock grazing provide opportunities for and conditions conducive to cheatgrass establishment.

Weed presence can vary greatly from site-to-site or year-to-year depending on the status of treatments, seasonal climactic variability, or the increase in weed seed dispersal. As a result, there is no single, comprehensive baseline inventory of weed presence within the RMPPA. The species of weeds found within the various plant communities within the RMPPA are described on page 3-39. Due to the highly variable nature of weed infestations as well as the unique impacts and ecological effects where they do occur, detailed weed information, especially as it relates to specific management actions, is addressed at the activity level.

## *Watersheds*

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Comment Number: PP-CO-LITTLESNAKE-10-0006-11

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

### **Issue Excerpt Text:**

The RMP fails to provide meaningful objective, measurable standards (requirements) for management of rangelands and their associated vegetative and soil resources,

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Comment Number: PP-CO-LITTLESNAKE-10-0006-75

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

### **Issue Excerpt Text:**

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

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### ***Summary***

No watershed condition data was provided for the planning area, nor analysis of erosion due to compromised conditions.

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### ***Response***

The PRMP/FEIS focuses on the use of the Standards and Guides as the broader framework for setting resource objectives for the management of rangelands within the RMPPA. This approach is in conformance with both 43 CFR 4180, Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration, and the resulting Colorado Public Land Health Standards (the Standards and Guides). Ecological site inventories were not included because they consist of data collected over the course of many years and may or may not accurately reflect current conditions.

Table 3-1 summarizes the Landscape Health Assessments that were conducted on the landscape and 5th order watershed levels between 1998 and 2008. The methodology used in conducting these assessments is described on page 3-2. The assessment methodology includes the determination of land health relative to site potential. The table provides the most up-to-date information on resource conditions relative to potential on the broad scale addressed by the PRMP/FEIS, as well as presenting it in context with the goal of managing plant and soil resources to achieve land health under the Standards and Guides.

A discussion of erosion relative to current conditions in the RMPPA is included in Table 3-1, Section 3.1.3.1, Section 3.1.4.1, and Section 3.1.5.1 of the PRMP/FEIS. Impacts to resources from erosion, including impacts from livestock grazing, are covered primarily in Section 4.3.2,

Impacts on Soil Resources, Section 4.3.3, Impacts on Water Resources, and Section 4.3.4, Impacts on Vegetation.

## *Water*

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Comment Number: PP-CO-LITTLESNAKE-10-0005-5

Organization: Colorado River District

Protestor: Eric Kuhn

### **Issue Excerpt Text:**

While the PRMP/FEIS recognizes that historically a Wild and Scenic River designation by Congress has included an implied federal reserved water right, PRMP/FEIS, 4-29, it fails to analyze what the impact of such a right would have on future water appropriations in the basin and the associated implications for the State of Colorado.

As noted in the River District's earlier comments on the draft EIS, the State of Colorado is struggling to meet its future water demands as evidenced by the Statewide Water Supply Investigation and the process established by the Colorado Water for the 21st Century Act. C.R.S. § 37-75-101 et seq. Any federal reserved right resulting from a designation would need to be in an amount necessary to ensure that the BLM-identified outstandingly remarkable values ("ORV") are not impaired; The PRMP/FEIS discussion of impacts to water resources lacks any meaningful analysis of the impacts that a federal reserved water right would have on future appropriations. Nor does it include any impacts analysis of the implications of such a designation on a state already struggling to meet its future water demands.

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Comment Number: PP-CO-LITTLESNAKE-10-0005-8

Organization: Colorado River District

Protestor: Eric Kuhn

### **Issue Excerpt Text:**

iii Reliance on future BLM action and speculation about Colorado's Congressional delegation are not a substitute for analyzing the impacts to vested water rights.

As discussed above, BLM is required to analyze "reasonably foreseeable potential uses of the land and related waters which would be enhanced, foreclosed, or curtailed if the area were included in the NWSRS." 16 U.S.c. §1275; BLM Manual 8351.33.A.3. In analyzing the Yampa River segments, BLM concluded "that a suitability determination would not foreclose any of the proposed projects, because BLM has the ability to amend its land use plan at a future date to allow a project to occur. BLM can change its suitability determination, provided that additional data is provided to BLM that the project is justified and that the public benefits of the project outweigh the impacts associated with the project." PRMP/FEIS at D-16. BLM further comments that the reality of a Congressional designation is unlikely "because project proponents would work closely with the Colorado Congressional delegation to ensure that any designation would not impede any critical projects for Colorado's future water supply." Id.

The River District appreciates the LSFO's offer and ability to reconsider suitability determinations based on the public benefits associated with water supply projects; however, speculating about how the BLM may review a suitability determination in the future is not a substitute for an adequate analysis of the impacts on water projects that would be foreclosed or curtailed in the event of a suitability determination. Nor is speculation about what the

Colorado Congressional delegation mayor may not do a substitute for an adequate impacts analysis.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-102

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

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

There is no evidence of any attempt to demonstrate that grazing and areas allotted to grazing, as authorized under the proposed alternative, will ensure adequate water quality.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-108

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

WWP, in its comments on the Draft RMP/EIS, provided detailed comments and citations relating to the role of livestock and other activities on watersheds, water quality, the Colorado River Salinity Control Act and stream habitat. The RMP has not adequately addressed these issues.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-99

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP does not reveal how many of its water bodies have been monitored for compliance with water quality criteria, anti degradation and narrative standards, nor the management actions affecting these listed water bodies and the corrective actions to be taken.

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***Summary***

The RMP/EIS does not disclose possible future impacts in fulfilling future water demands due to the proposed Wild and Scenic River designations. The RMP does not provide information on monitoring for water quality and the impact of livestock grazing on surface water sources.

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***Response***

The BLM has qualitatively disclosed such impacts in section 5.1.1.3 (page D-16) by stating “any project that would impair the free-flowing character of this segment and/or any of the outstandingly remarkable values would be foreclosed.” In addition, in Section 5.1.1.7 (page D-18), BLM stated “future water projects could be affected if sufficient water levels could not be

maintained to protect the ORVs of these segments.” The BLM has not yet conducted studies to determine the timing and rate of flows necessary to support the ORVs, relative to the amount of un-appropriated water available in the Yampa River. The BLM would not be obligated to do so until the river is designated. The BLM’s preliminary determinations of the flows needed to support the ORVs may be significantly modified by the final decree of the water court.

Impacts of livestock grazing on surface water quality are discussed in Section 4.3.3 of the PRMP/FEIS. The analysis states that surface disturbing activities, or activities that decrease vegetation cover, or otherwise alter land surface cover, would potentially affect water quality and watershed health (p.4-24). The analysis identifies causal effects to significant impacts and depicts various assumptions that the analysis incorporates.

Surface disturbing activities include but are not limited to fire suppression activities and cross-country OHV use. The analysis continues by stating managing livestock use of riparian areas, limited duration of use during the hot season, changing season of use from summer to winter use, and herding would reduce soil compaction and vegetation loss that could increase surface runoff and sediment loading. The development of off-site water sources, developing riparian pasture management systems, and fencing riparian and spring sources could reduce livestock impacts on creeks, springs and riparian areas, which could maintain or improve riparian condition and reduce the likelihood of sediment loading to nearby creeks and springs (p.4-25).

## ***Wild, Scenic Rivers***

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Comment Number: PP-CO-LITTLESNAKE-10-0002-16

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

### **Issue Excerpt Text:**

The Juniper/Cross Mountain Projects are major water resource projects that will store over 1,000,000 acre feet of water, as well as direct flow rights. The Juniper dam is located below Segment 2, but would inundate all of the Segments 1 and 2 on the Yampa. The Cross Mountain Reservoir Project would involve the inundation of Segment 1 of the proposed Yampa WSRA segments. These uses would be foreclosed if the Yampa River segments were designated as Wild and Scenic because the uses are mutually exclusive to the goal of protecting the ORVs. FEIS App. Q564. BLM also ignored Colowyo's Milk Creek Reservoir project located on a Yampa River tributary but supplied in part by diversions from the Yampa River.

BLM, however, declined to analyze in detail these reasonably foreseeable potential uses of the land and related waters and their potential impairment because: (1) a suitability determination would not foreclose any of the proposed projects as BLM has the ability to amend its land use plan at a future date to allow a project to occur, and (2) it received no information or comments, in the form of financing plans, construction plans, or water supply contracts that would leave BLM to believe the proposed projects would be constructed during the 15 to 20 year life of the plan. FEIS at App. D-16.

BLM's "ability" to amend its land use plan at a future date to allow a project to occur does not relieve BLM of its obligation to analyze impacts to existing and future land and water uses as part of the development of the underlying WSR Study. BLM Manual 8351.33.A3, A7. Veiled assurances dependant on discretionary future events are not a substitute for the consideration of required suitability criteria. Furthermore, neither the WSRA nor implementing

policy provide for or allow BLM to disregard the existing and future uses specifically identified by the Coalition for lack of financing plans, construction plans, or water supply contracts. Other Sections: 2

Comment Excerpt Text:

This unwarranted justification is particularly arbitrary considering BLM never solicited public input on its internal WSR Suitability Analysis.

Moreover, as previously explained, a privately owned and maintained railroad track and bridge trestles for transport of as many as 300 coal cars per day exist on the bank of the Yampa River in Segment 1. The existing Duffy Tunnel water diversion structure is located in Segment 2 and the proposed Yampa River-Milk Creek Pipeline water diversion and pumping plant are located in Segment 1. High voltage transmission lines cross the Yampa River in Segment 1 and transmission towers are located within 1/4 mile of the river bank. Supra at p.14.

Limiting these existing facilities to "historical operation and maintenance practices" directly contradicts BLM conclusion that its suitability findings are not incompatible with future uses and state and local interests in the river. FEIS at App. Q-8. According to BLM, in the event that BLM assumptions about water development during the next 20 years are incorrect, BLM has built "safety clauses" into its suitability findings. Id. No provisions, however, for building, maintaining, rip-rapping, or upgrading these existing structures were analyzed, and BLM provided no "safety clauses" for grand-fathering in the construction, use, and upgrade of these facilities. BLM's freeze of existing uses unlawfully impairs the ability to exercise valid existing rights. FEIS at Q-546-547..

The proposed WSRA classifications, therefore, irrevocably conflict with planned water projects and existing land uses that exercise both vested and valid rights and reasonably foreseeable uses. As part of its land use planning and study, BLM can only exercise the power delegated by Congress, which is to study potential river segments not previously identified. 16 U.S.C. §1286. Federal law does not authorize BLM to supersede a state or local government water project by adopting WSRA classifications that conflict with planned projects and valid rights. 43 U.S.C. §1701, n. §§ 701(a);701(g)(2); 701(h); BLM Manual 8351.32C(2).

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Comment Number: PP-CO-LITTLESNAKE-10-0005-3

Organization: Colorado River District

Protestor: Eric Kuhn

***Issue Excerpt Text:***

Additionally, and despite the fact that endangered species were a concern identified in the PRMP/FEIS to justify suitability, the study failed to adequately address how a suitability determination might impact the cooperative and successful Upper Colorado River Endangered Fish Recovery Program ("Recovery Program"). As part of the Recovery Program, an endangered fish management plan presently exists for the Yampa River: USFWS, Management Plan for Endangered Fishes in the Yampa River Basin and Environmental Assessment (2004). The Yampa Plan was initiated through a cooperative agreement signed by the US Fish & Wildlife Service, the States of Colorado and Wyoming, and the River District on behalf of Yampa River basin water users. The Yampa Plan anticipated human water needs for the next 40 years and proscribes measures to minimize adverse impacts to the four endangered fishes from current and projected future water depletions from the Yampa River and its tributaries.

Determination of suitability or designation under WSRA could conflict with the Recovery Program by precluding or constraining the size and scope of future water projects. The Recovery Program's dual mission is to recover the endangered fish while allowing existing and future water development to occur. As discussed below, determination of suitability would have a chilling effect on water development within and upstream of the Yampa River segments.

### ***Summary***

Analyses for the Wild and Scenic River designations are inadequate because they fail to disclose impacts to present and future projects along segments found eligible for the designation. In addition, the designations could hamper the Recovery Program for endangered fish in the Yampa Basin.

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### ***Response***

In the Final EIS and Proposed Plan, Appendix D, section 5.1.1.3 and 5.1.1.6, BLM disclosed that multiple conditional water rights exist in the segments determined to be suitable. These conditional water rights include water rights mentioned by the Protester, including the Cross Mountain Reservoir Project and diversions associated with Colowyo's Milk Creek Reservoir Project. The BLM disclosed that while a suitability determination (or W&SR designation) is in effect, new storage projects that would affect the free-flowing nature of the segment would be foreclosed in the segment. The BLM correctly determined that the referenced conditional water rights do not include the right of access to Federal lands, and that a suitability determination or W&SR designation does not foreclose the opportunity for the conditional water rights owners to change the conditional water rights and construct the projects in other locations.

As part of its analysis that led to the Eligibility Report in Appendix D of the Draft Plan and EIS, the BLM considered the existence of existing developments in the Yampa River Segments 1 and 2, including the railroad tracks, railroad bridges, water diversions, and high voltage transmission lines referenced by the Protester. In its W&SR eligibility report, the BLM concluded that the ORVs presently exist with the current land uses in place.

In its suitability report (Appendix D, Section 5.1.1.7), the BLM correctly noted that historical operation and maintenance practices would be allowed on existing structures, allowing future use to continue. The protest incorrectly concludes from the suitability report language that the BLM would automatically prohibit maintaining and upgrading such structures and would automatically prohibit any new structures in Segment 1 and Segment 2. The classifications assigned by the BLM to Segments 1 and 2 are recreational and scenic, respectively. These classifications allow the BLM to consider authorization of maintenance, upgrade, and construction projects that would be consistent with maintenance of the identified ORVs and consistent with maintenance of the classification. As such, the suitability determination does not impair valid existing rights, future uses of existing structures, or local and state interest in continued use of such structures.

The BLM believes the objectives of the Yampa River Recovery Program cannot be construed to provide specific support for development of water supply facilities within Yampa River Segments 1, 2, and 3. Rather, the BLM believes that the recovery program has a general objective of recovering the endangered fishes while allowing existing and future water development to occur. Recovery program documents, including the biological opinion issued by the Fish & Wildlife Service on the program, address future water development by assessing general water demand by sectors, such as agricultural demand or municipal demand, and recovery program documents do not identify or support specific future projects to meet those demands. The BLM's determination of suitability does not preclude future water development within the Yampa River basin.

## *Public Involvement*

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Comment Number: PP-CO-LITTLESNAKE-10-0002-3

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

### **Issue Excerpt Text:**

Neither Coalition members nor the public were afforded a meaningful opportunity to comment on BLM's internal, uninformed Evaluation of WSR Suitability Criteria (Suitability Analysis) made part of the WSR Evaluation and Study (WSR Study) and included in the FEIS as Section 5 of Appendix D in violation of BLM policy and National Environmental Policy Act (NEPA) regulations.

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Comment Number: PP-CO-LITTLESNAKE-10-0002-8

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

### **Issue Excerpt Text:**

Providing the public with its only opportunity to "comment" on the WSR Suitability Analyses at the protest stage, after it is final, violates FLPMA, NEPA and WSR policy. The public was denied full disclosure and meaningful involvement in the development of the WSR Suitability Analysis, and for the few interested parties that were aware of it, BLM arbitrarily forced them to anticipate the internal analysis and findings.

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### ***Summary***

There was inadequate opportunity for the public to comment on the WSR suitability analysis.

### ***Response***

The BLM believes there was adequate opportunity to comment. The Draft RMP/EIS, on pages 2-44 through 2-47, contained a full range of alternatives of W&SR suitability determinations, including two alternatives in which Yampa River Segments 1, 2, and 3 would be determined to be suitable. In response to these suitability determinations, the public provided extensive comments that were considered by BLM, including a request that BLM better explain their suitability determinations. The BLM added a more detailed assessment of suitability criteria in the PRMP/FEIS. Other than stating that it believed there was inadequate opportunity to comment on the W&SR suitability analysis, the protest raises no new issues that were not presented in previous comments submitted by members of the Yampa River Interest Coalition and other interests.

### ***Suitability***

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Comment Number: PP-CO-LITTLESNAKE-10-0002-11

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

### **Issue Excerpt Text:**

While adverse effects on water rights from WSR suitability determinations must certainly be considered, BLM must also conversely consider the impacts of these water rights on BLM's ability to manage proposed WSR segments for their free-flowing values. BLM Manual 8351.32C(1) (free-flowing characteristics cannot be modified to "allow stream impoundments, diversions, channelization, and/or rip-rapping to the extent BLM is authorized under law").

By BLM's own admission, under a suitability determination in a land use plan, BLM does not yet hold any sort of water right which would allow it to object to the development of upstream conditional water rights. FEIS at App. 0-18. The WSR Study and suitability findings are, therefore, flawed because BLM provides no free-flowing analysis, as required by law and policy, of the fact that the Yampa River segments are fully appropriated and subject to many vested water rights, both absolute and conditional. BLM may not merely ignore the contrary data and fact-specific information provided in the DEIS comments and summarily assume that any upstream development "would likely be small enough in scale that the suitable segments would not see any significant impact." Id.

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Comment Number: PP-CO-LITTLESNAKE-10-0002-12

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

**Issue Excerpt Text:**

By the same token, each segment "shall be managed to protect identified outstandingly remarkable values," BLM Manual 8351.32C(2), and BLM must consider characteristics which do or do not make the area a worthy addition to the NWSRS. 16 U.S.C. §1275; BLM Manual 8351.33A1. In this regard, it was emphasized that there are many existing facilities associated with these valid existing rights along the proposed Yampa River WSR segments which impair the alleged wild, scenic or recreational values identified by BLM. Specifically:

- A large Western Area Power Administration ("WAPA") 345 kV electric transmission line spans the Yampa River in proposed Segment 1 and its towers are located within 1/4 mile of each bank;
- Colowyo's privately-owned rail line travels along the south bank of the Yampa River in proposed Segment 1, and up to three coal trains consisting of approximately 100 cars each travel that line each day;
- Approximately one-third of the total length of the south bank of the Yampa River in proposed Segment 1 is private property (approximately 0.5 mile is owned by Colowyo and the rest is owned by other private parties);
- For the 1.9 miles of BLM property on the south bank of the proposed Segment 1, LSFO BLM recently renewed Colowyo's Railroad Right-of-Way Grant, thereby authorizing Colowyo to continue until December 31, 2038 operating and maintaining its existing private railroad track through BLM lands along the river;
- The long-established and privately-owned Duffy Tunnel water diversion structure in proposed segment 2;
- The site for the Yampa-River-Milk Creek Pipeline water right diversion structure and pumping plant are located on the south bank of the Yampa River in proposed segment 1.

Ex. 3, Colowyo Comments re: BLM's Suitability Analysis (September 22, 2009).<sup>8</sup>

<sup>8</sup>The Coalition also directed BLM to these same structures in the DEIS comments, including the major man-made diversion of the Yampa River through the Duffy Mountain Tunnel on the end of Segment 2. The magnitude of this diversion in the proposed Segment 2 and its close proximity to Segment 1 are grounds for a finding of lack of suitability. JWCD DEIS Comments, FEIS App. Q-567.

All of these developed facilities conflict and are incompatible with a WSRA designation, yet BLM completely ignores the foregoing impacts to ORV values. Instead, in conclusory fashion, BLM incorrectly maintains: "There are no conflicting or incompatible land uses within the river corridor segments which have the potential to degrade ORVs or prevent BLM from effectively managing the ORVs. Besides recreation, which is an ORV for all three segments, the only significant current land use within the river corridor of Yampa segments is cattle ranching." FEIS at App. D-15.

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Comment Number: PP-CO-LITTLESNAKE-10-0002-15

Organization: Yampa River Interest Coalition

Protestor: Timothy Beaton

**Issue Excerpt Text:**

In this regard, several proposed future uses of water and the adjacent land in the identified WSR segments were not addressed, thereby rendering BLM's suitability determinations unsound. The Coalition identified two massive proposed reservoir projects on the Yampa River (Juniper and Cross Mountain) that would impact each of the proposed Yampa WSR segments. FEIS App. at Q-554, Q-579. JWCD was, in fact, created as the beneficiary of the Juniper/Cross Mountain Projects when built, and the water rights for the Juniper/Cross Mountain Projects, are valid, vested water rights that are held by the CRCWD.10

10A list of which was provided to BLM and a map showing the projects locations Id. at Q-547.

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Comment Number: PP-CO-LITTLESNAKE-10-0005-2

Organization: Colorado River District

Protestor: Eric Kuhn

**Issue Excerpt Text:**

A. PROPOSED SEGMENTS DO NOT MEET BLM'S OWN SUITABILITY CRITERIA.

The River District does not believe that the proposed segments are suitable for designation because they fail to meet at least five of the criteria in the BLM's Wild and Scenic Rivers Policy and Program Manual ("BLM Manual"). The BLM does not have jurisdictional control over all the lands, which will make it difficult to manage as Wild and Scenic. BLM Manual 8351.33 (A)(2). The reasonably foreseeable potential use of the land and related waters. includes two significant reservoirs (Juniper and Cross Mountain). BLM Manual 8351.33 (A)(3). These uses could be foreclosed in the event of a suitability determination or designation as Wild and Scenic, because the uses are mutually exclusive to the goal of protecting the free flowing nature and the segments' individual ORVs.

Finally, the BLM's Manual considers whether or not there are other mechanisms available to protect the segment. The State of Colorado has processes in place to address non-consumptive water needs as well as consumptive needs. See C.R.S. § 37 - 75-104(2)(c). Designation of segments in the Yampa River would preempt that process, contrary to BLM's own guidance and FLPMA. BLM 8351 and 43 U.S.C. § 1712(c)(9). Perhaps most important, there is significant opposition to designation of any segments as Wild and Scenic in the Yampa River basin. BLM Manual 8351.33(A)(4).

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***Summary***

The WSR suitability analysis is flawed because of impacts from current and future projects along the segments found eligible. There was no consideration made that other processes could have protected the segments.

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***Response***

The BLM concludes that the protestor incorrectly interprets the term "free-flowing" as applied by the W&SR Act. The protestor argues that free-flowing refers to stream flow rates that would be available to support the ORVs, given current water rights and future water development projects. Under the W&SR Act, "free-flowing" refers only to the lack of dams, impoundments,

and channel modifications within the segments in questions. The BLM correctly analyzed the subject segments as part of its eligibility analysis (Draft RMP/EIS, page D-7 through D-10) and found that under the definition used by the W&SR Act, the segments are “free-flowing.”

As part of its analysis leading up to the Eligibility Report found in Appendix D of the Draft RMP/EIS, the BLM considered the existence of existing developments in the Yampa River Segments 1 and 2, including the railroad tracks, railroad bridges, water diversions, and high voltage transmission lines referenced by the protester. In its W&SR eligibility report, the BLM concluded that the ORVs presently exist with the current land uses in place. In its suitability report (PRMP/FEIS Appendix D, Section 5.1.1.7) the BLM correctly noted that historical operation and maintenance practices would be allowed on existing structures, allowing future use to continue. The classification for the Yampa River segments proposed by the BLM in the Draft RMP/EIS (page D-12) allow for continued management of these facilities in a manner consistent with maintenance of the ORVs.

In Appendix D section 5.1.1.3 and 5.1.1.6 of the PRMP/FEIS, the BLM disclosed that multiple, conditional water rights exist in the segments determined to be suitable. These conditional water rights include water rights mentioned by the protester, including the Cross Mountain Reservoir Project and diversions associated with Colowyo’s Milk Creek Reservoir Project. The BLM disclosed that, while a suitability determination or W&SR designation is in effect, new storage projects that would affect the free-flowing nature of the segment would be foreclosed in the segment. The BLM correctly determined that the referenced conditional water rights do not include the right of access to federal lands, and that a suitability determination or W&SR designation does not foreclose the opportunity for the conditional water rights owners to change the conditional water rights and construct the projects in other locations.

In Appendix D section 5.1.1.3 and 5.1.1.6 of the PRMP/FEIS, BLM specifically found that 87% of the lands in the segments are under management by the BLM, and activities conducted on private lands were compatible with W&SR management. Additionally, in these same sections of Appendix D, BLM disclosed that multiple conditional water rights exist in the segments determined to be suitable. These conditional water rights include water rights mentioned by the protester. The BLM disclosed that while a suitability determination or W&SR designation is in effect, new storage projects that would affect the free-flowing nature of the segment would be foreclosed in the segment. The BLM correctly determined that the referenced conditional water rights do not include the right of access to federal lands, and that a suitability determination or W&SR designation does not foreclose the opportunity for the conditional water rights owners to change the conditional water rights and construct the projects in other locations.

The protester alleges that there are other processes in place to protect the segment, specifically the State of Colorado water resource planning process to address non-consumptive water needs. The BLM did not include this process in its analysis found in Appendix D Section 5.1.1.6, page D-17 because the BLM concluded that this process is in the study phase, and specific actions to provide long-term protection flows have not yet been implemented. The BLM’s suitability determinations do not preclude this process from continuing. In Appendix Section 5.1.1.4, (page D-16 and D-17) of the suitability report, the BLM acknowledged this opposition, but noted that, overall, support and opposition to designation is mixed.

## *Wilderness Characteristics*

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Comment Number: PP-CO-LITTLESNAKE-10-0001-12

Organization: Moffat County

Protestor: Michael Marinovich

**Issue Excerpt Text:**

Thus, there is no rational basis for BLM to now argue that public lands likely to contain wilderness characteristics need not be roadless. As consistently explained to BLM by Moffat County, public lands in the Little Snake Resource Area may have some of the qualities of wilderness, such as opportunities for solitude or primitive recreation but the areas in contention lack the totality of wilderness character found in the Wilderness Act's definition of wilderness. FEIS at Q-289. BLM, therefore, misconstrues its parameters in determining which public lands may even be considered for the protection of characteristics associated with the concept of wilderness. For these reasons, BLM's likely to have wilderness character determinations must be set aside and remanded for reconsideration consistent with statutory criteria.

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Comment Number: PP-CO-LITTLESNAKE-10-0001-3

Organization: Moffat County

Protestor: Michael Marinovich

**Issue Excerpt Text:**

and the underlying wilderness character findings are flawed due to the presence of roads and man made developments. FEIS at 2-52-54, 4-132-135, 4-183.

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Comment Number: PP-CO-LITTLESNAKE-10-0006-76

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

The RMP arbitrarily refuses to re-analyze the suitability of non-WSA Lands with Wilderness Characteristics.

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### ***Summary***

- 1) The RMP/EIS did not reanalyze non-WSA lands for wilderness characteristics.
  - 2) The RMP/EIS disclosed that areas with roads and other developments were found to have wilderness characteristics.
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### ***Response***

An assessment of wilderness values in the field office outside WSAs was performed as part of the Little Snake RMP revision. Section 3.1.12.2 Lands with Wilderness Characteristics explains the process employed by the BLM:

In May 2005, BLM specialists conducted a preliminary assessment of areas likely to have wilderness characteristics in the LSFO. The assessment was based on criteria for naturalness, outstanding opportunities for solitude and primitive/unconfined recreation, and supplemental

values (i.e., ecological, geological, or other features of scientific, educational, scenic, or historical values). Public comments were received from local and state agencies, conservation groups, and private interests disputing the initial determination completed by the BLM in May 2005. The comments focused on differences from the original wilderness inventories from 1991, noting presence of developments (such as pipelines, reservoirs and developed springs, tanks, trails, and fences) and presence or condition of vehicle routes. In August 2005, the BLM specialists reviewed the comments and new data to make final assessments about the likeliness of wilderness characteristics.

The results of this exercise are presented in Table 3-25. The PRMP/FEIS has identified approximately 166,000 acres of non-WSA lands as possessing wilderness characteristics and will be managed as such. These areas include Dinosaur North, Cold Spring Mountain, Yampa Canyon, and Vermillion Basin.

Wilderness characteristics are defined in IM 2003-275 as having attributes that “may include the presence or absence of roads and trails, fences and other improvements; the nature and extent of landscape modifications; the presence of native vegetation communities; and the connectivity of habitats.” While the BLM acknowledges that developments do exist in these areas, they are mostly temporary, not significant in number and presence, and due to their scattered nature, substantially unnoticeable, their cumulative impact is slight. Therefore, they do not detract from overall naturalness of areas.

### *Managing for Wilderness Characteristics*

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Comment Number: PP-CO-LITTLESNAKE-10-0001-13  
Organization: Moffat County  
Protestor: Michael Marinovich

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

B.Ultra Vires and Unlawful Establishment of De Facto WSA Management on Non-WSA Lands with Alleged Wilderness Characteristics

The proposed Cold Spring Mountain, Dinosaur North and Vermillion Basin de facto wilderness management areas exceed the authority granted to BLM in both FLPMA and the Wilderness Act, and violate the terms of BLM' s 2003 Settlement Agreement in State of Utah v. Norton, Civ No. 2:96CV0870B.5

5A complete legal brief was attached to the County's DEIS comments explaining why BLM does not have authority to manage for de facto wilderness. FEIS at App. Q-287-89.

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Comment Number: PP-CO-LITTLESNAKE-10-0001-16  
Organization: Moffat County  
Protestor: Michael Marinovich

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

Through the land use planning process, BLM may also consider all available information, including assessments of wilderness character, "to determine the mix of resource use and protection that best serves the FLPMA multiple use

mandate." BLM 1M 2003-274. Thus, for example, when appropriate, BLM may limit OHV use or establish mitigation measures, stipulations or conditions of use to be attached to permits, leases, and other authorizations to avoid or minimize impacts to individual wilderness values. See BLM 2003-275 at 2, Attachment 1.

BLM, however, may not impose sweeping protection of these areas as if they were WSAs as proposed in the RMP.

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Comment Number: PP-CO-LITTLESNAKE-10-0001-2

Organization: Moffat County

Protestor: Michael Marinovich

**Issue Excerpt Text:**

(1) The RMP unlawfully proposes to manage the Dinosaur North, Cold Spring Mountain and Vermillion Basin areas for their alleged "wilderness character." BLM lacks authority to adopt de facto Wilderness Study Area (WSA) management,

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Comment Number: PP-CO-LITTLESNAKE-10-0006-79

Organization: Western Watersheds Project

Protestor: Jonathan Ratner

**Issue Excerpt Text:**

See also IM 2001-075 at 2 ("BLM does have the authority, under section 202 of FLPMA, to designate new WSAs, which can be adjacent to existing section 603 WSAs...In deciding whether to do so, the BLM may rely upon existing WSA information to the extent that it remains accurate. But the BLM may not refuse to consider credible new information which suggests that...public lands within the planning area...have wilderness characteristics and are suitable for management as [WSAs].") (emphasis added); Sol. Memo at 6 (same).

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Comment Number: PP-CO-Littlesnake-10-0007-4

Organization: Western Energy Alliance

Protestor: Kathleen M. Sgamma

**Issue Excerpt Text:**

Wilderness characteristics are not a major use of public lands defined in FLPMA. Lands that allegedly contain wilderness characteristics are not afforded any special protection or priority under FLPMA or any other federal statute. Accordingly, BLM should not place the Vermillion basin off limits to oil and gas leasing and development.

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***Summary***

- 1) The BLM does not have the authority to manage areas with Wilderness Characteristics as Wilderness instead of complying with the multiple-use mandate.
- 2) IM 2001-075 states that the BLM has the authority to designate new WSA's, and should do so to meet demand and protect the lands from OHV use.

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***Response***

The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). The Tenth Circuit, in August 2008, declined to find that the BLM was prohibited from protecting lands it determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs.

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202. This section of the BLMs organic statute gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Nothing in this section constrains the Secretary's authority to manage lands as necessary to "achieve integrated consideration of physical, biological, economic, and other sciences" (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))). Further, FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use..." (FLPMA, Section 103(c) (43 U.S.C. §1702(c))). The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations.

The BLM does not have the authority to designate new WSAs under the land use planning process. The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. In September 2006, the Utah District Court affirmed that the BLM retained authority to protect lands it determined to have wilderness characteristics in a manner extremely similar to the manner in which such lands are protected as WSAs. The Utah v. Norton Settlement Agreement merely remedied confusion by distinguishing between wilderness study areas established under FLPMA §603 and those lands required to be managed under §603's non-impairment standard, and other lands that fall within the discretionary FLPMA §202 land management process.