



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

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

March 15, 2019

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Acronyms

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

Protesting Party Index

Protester	Organization	Determination
Carrie Mann	Friends of the Earth	Dismissed – Comments Only, No Standing
Curtis Moore	Elko County	Dismissed – Comments Only
Darcy Marud	Western Exploration Inc.	Denied – Issues and Comments
Fred Fulstone, ¹ Marianne Leinassar, Kristofer Leinassar	F.I.M., Corp. Farming and Livestock ¹	Denied – Issues and Comments
Greta Anderson, ² Nancy Hilding, Michael Saul, Mark Salvo, Karimah Schoenhut, Rebecca Fischer, Steve Holmer,	Western Watersheds Project, ² Prairie Hills Audubon Society, Center for Biological Diversity, Defenders of Wildlife, Sierra Club Environmental Law Program, WildEarth Guardians, American Bird Observatory,	Denied – Issues and Comments
Jake Tibbitts	Eureka County Board of Commissioners	Denied – Issues and Comments
Jim Butler	Barrick Gold North America, Inc.	Denied – Issues and Comments
Katie Fite	Wildlands Defense	Denied – Issues and Comments
Laura Skaer	American Exploration & Mining Association	Denied – Issues and Comments
Michael Wetzel	N/A	Dismissed – No Standing
Nada Culver, ³ Brian Rutledge, Jayson O’Neill, Robert Gaudet, Mary Greene, Robert McEnaney	The Wilderness Society, ³ National Audubon Society, Western Values Project, Nevada Wildlife Federation, National Wildlife Federation, Natural Resources Defense Council	Denied – Issues and Comments
Paul Turcke	Blue Ribbon Coalition	Denied – Issues and Comments
Richard Howe	White Pine County	Denied – Issues and Comments
Ron Cerri	Humboldt County	Denied – Issues and Comments

¹ This letter was cosigned by multiple parties. In this report, it is referenced as Fred Fulstone, F.I.M., Corp. Farming and Livestock

² This letter was cosigned by multiple parties. In this report, it is referenced as Greta Anderson, Western Watersheds Project

³ This letter was cosigned by multiple parties. In this report, it is referenced as Nada Culver, The Wilderness Society

Endangered Species Act (ESA)

The Wilderness Society

Nada Culver

Issue Excerpt Text: The changes made in the Proposed Amendments will also affect plants and wildlife species, including those that are listed as threatened or endangered under the ESA. Since these are new risks of harm, related to the new purpose and need, circumstances and policies that underly these Proposed Amendments, BLM cannot rely on findings from the 2015 ESA consultations.

Summary: The Bureau of Land Management (BLM) cannot rely on findings from the 2015 ESA consultations because there are new risks of harm related to the new purpose and need, circumstances,

and policies that underlie the Proposed Resource Management Plan (RMP) Amendment/Final Environmental Impact Statement (EIS).

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

In 2015, the BLM Nevada and California engaged in informal consultation and determined the 2015 plan *may affect, but is not likely to adversely affect* Webber's ivesia (*Ivesia webberi*) or its designated critical habitat; the actions proposed in 2015 would not affect an additional 17 species. In 2018, the BLM Nevada and California again engaged with the USFWS regarding the Proposed RMP Amendment/Final EIS. The BLM again determined that under the proposed amendments there would be no effect on the 17 species; the actions proposed in the 2018 Proposed RMP Amendment/Final EIS *may affect, but not likely to adversely affect* Webber's ivesia. The BLM, therefore, has fulfilled its obligations under Section 7 of the ESA.

Because the BLM has fulfilled its obligations under Section 7 of the ESA, the protest is denied.

Federal Land Policy and Management Act (FLPMA)—Areas of Critical Environmental Concern (ACECs)/Research Natural Areas (RNAs)

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: As WWP stated in their comments and protests of the 2015 ARMPAs and their Complaint challenging the adequacy of those ARMPAs, BLM has failed to carry out its FLPMA-mandated obligation to prioritize the designation and protection of areas of critical environmental concern (ACECs) by failing to designate sage-grouse habitat as an ACEC. WWP et al . 2018. As defined in the PRMP, Biologically Significant Units (BSUs) contain "relevant and important" habitat for sage-grouse. Consequently, they meet the criteria for designation as ACECs. 43 C.F.R. § 1610.7-2.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Nevertheless, BLM never even considered designating sage-grouse ACECs in the process of producing the PRMP, let alone prioritizing such designation. This violated NEPA and FLPMA.

WildLands Defense

Katie Fite

See also: NEPA—Range of Alternatives

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

Summary: The BLM has violated the FLPMA by failing to prioritize the designation and protection of ACECs by not designating Greater Sage-Grouse habitat as an ACEC. The BLM violated the National Environmental Policy Act (NEPA) by not considering ACECs in the process of producing the Proposed RMP.

Response: The BLM must carry forward all potential ACECs as recommended for designation in at least one alternative in the Draft RMP Amendment (BLM Manual Section 1613.22.B). There is no requirement to carry forward potential ACECs into the Proposed RMP Amendment.

The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternatives leads to development and selection of the Proposed RMP Amendment. BLM Manual 1613.33.E provides direction for when the BLM may choose not to designate potential ACECs.

In 2015, the BLM properly considered and analyzed the designation of ACECs as Alternatives C and F in the Proposed Land Use Plan Amendment/Final EIS. The BLM incorporated by reference the 2015 analysis of proposed ACEC designations in the Proposed RMP Amendment/Final EISs. No new information suggests it is necessary to reconsider those decisions; the BLM has determined the issue of ACECs falls outside the scope of this effort to better align federal management with state management plans.

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

FLPMA—Consistency with State and Local Plans

American Exploration & Mining Association

Laura Skaer

Issue Excerpt Text: Although FLPMA Section 202(c)(9) gives State and local governments a specific statutory role in the federal land use planning process, it does not authorize BLM to defer to State or local plans if they conflict with Federal law and the purpose of FLPMA. 14 "Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him." AEMA Protest of the Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 27 of 28 With respect to the proposed mitigation protocol/standard, BLM has unlawfully deferred to the States of Nevada and Idaho and appears to have capitulated to the States' demands for consistency rather than seeking to resolve the conflicts between the States' plans and federal law.

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: BLM failed to fully coordinate and ensure consistency with Eureka County local plans and policies as required pursuant to the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. §§ 1711(b), 1712(c)(9), 1712(f), 1714(c)(1)(8); 1718, 1720, 1721, 1733, 1739(e), and the National Environmental Policy Act ("NEPA") 42 U.S.C. §§ 4321- 4375 and as noted in our August 2018 comments, various statements in the 2018 Plan fail to reference local government focusing only on the state.

Summary: The BLM has unlawfully deferred to the state of Nevada's local land use plans rather than resolving conflicts between state plans and federal law.

The BLM failed to coordinate and ensure consistency with local plans and policies as required by FLPMA and NEPA.

Response: Section 202(c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent [s]he finds consistent with federal law and the purposes of this act." However, BLM land use plans may be inconsistent with state, local,

and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other federal laws and regulations applicable to public lands (43 Code of Federal Regulations [CFR] 1610.3-2(a)).

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

In accordance with these requirements, the BLM has given consideration to state, local, and tribal plans that are relevant to the development of the Proposed RMP Amendment/Final EIS. The BLM properly coordinated with the State of Nevada to address inconsistencies between the Proposed RMP Amendment and the State of Nevada’s Greater Sage-Grouse Conservation Strategy (2014, as amended). The BLM established a cooperating agency relationship with various State of Nevada agencies at the initiation of this planning process. Through close coordination, the BLM worked with the State of Nevada to identify planning issues that needed to be addressed through the range of alternatives established in the Draft and Final EIS; this was done to resolve the various inconsistencies between the 2015 Approved RMP Amendment/Record of Decision and the State of Nevada’s Greater Sage-Grouse Conservation Strategy. Chapter 5 describes the coordination that has occurred throughout the development of the Proposed RMP Amendment/Final EIS. A list of the local, state, and tribal plans that the BLM considered can be found in Chapter 1. The BLM seeks to be consistent with or complementary to other management actions and plans whenever possible.

Eureka County was a cooperating agency in this planning process and entered into a memorandum of understanding with the BLM that outlines roles and responsibilities of being a Cooperating Agency. The BLM provided Eureka County an opportunity for participation and input at each stage of development of the Proposed RMP Amendment. The BLM engaged the County through review opportunities on administrative drafts, an opportunity to meet and discuss modifications of the Draft RMP Amendment/ EIS, and the invitation to submit written input on the scope of the plans and revisions to the Draft RMP Amendment/ EIS. The BLM has an obligation to consider the extent to which federal plans can align with local plans, but where necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other statutory authorities, its plans may not always align with local plans. Eureka County has not demonstrated how BLM could improve alignment of the Proposed RMP Amendment/Final EIS without cost to improving alignment with state management of the species. The goal of this proposed plan is to align with state sage-grouse plans. Local and tribal governments are encouraged to work with their state to ensure those plans address local sage-grouse issues.

On page 2-19 of the Proposed RMP Amendment/Final EIS, under the management decisions for the allocation exception process, the BLM describes consultation with the States of Nevada and California through the Nevada Division of Wildlife, the Sagebrush Ecosystem Technical Team, and the California Department of Fish and Wildlife. This government to government consultation with the States of Nevada and California, like other consultation with state, local, and tribal governments, help fulfill BLM’s obligation to coordinate its planning efforts (43 CFR 1610.3-1). Nowhere in the plan is there a decision that delegates or otherwise cedes federal decision-making authority to the States of Nevada and California. While BLM may not delegate land management authority to the states, it does recognize that the states have special expertise and authority as a wildlife manager. Therefore, the BLM carefully considered state recommendations for managing wildlife habitat. The BLM may also recognize state permitting authority when applicable.

Because the BLM properly followed the provisions of FLPMA regarding public involvement and consistency with state and local plans, rules, and regulations, this protest is denied.

FLPMA—General

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: 43 C.F.R. § 4160.1 does not necessarily conflict with MD LG 5. The regulation requires that in most cases BLM serve an affected permittee with a proposed decision prior to implementing a management change. But see 43 C.F.R. § 4110.3-3(a) & (b) (authorizing BLM to reduce permitted use via agreement, or by final decision). BLM could issue decisions to implement changes to grazing management outside the permit renewal process. 43 C.F.R. § 4130.3-3. In cases where it was important for changes to take place immediately, BLM has authority to place decisions in immediate effect. 43 C.F.R. §§ 4110.3-3(b); 4160.3(f). There may also be situations where management changes have already been subject to NEPA, such as for a programmatic district drought plan. In conclusion, BLM's assertion that MD LG 5 is inconsistent with 43 C.F.R. § 4160.1 is simply incorrect. Consequently, its explanation for eliminating MD LG 5 is arbitrary. Even if MD LG 5 was inconsistent with BLM's regulations, the PRMP/FEIS only says that it is inconsistent "as written." Therefore, if any action is justified, it is only a modification of MD LG 5, not removal of this provision. Further, the PRMP/FEIS states that both MD LG 6 and 10, which reference MD LG 5, will be modified because MD LG 5 will be eliminated. But it does not say how. The public cannot comment on the proposed changes because they will be done through some future plan maintenance. Even if BLM eliminates MD LG 5, it must still preserve the intent of MD LG 6 and 10, which reference MD LG 5. In order to maintain the intent of MD LG 6, any modification will need to explicitly incorporate the specific utilization standards that are now referenced as part of MD LG 5. If the second sentence of MD LG 6 is simply removed, it will be a major change to the substance of the management decision rather than a mere administrative change as BLM implies. Therefore, if MD LG 6 is changed, the reference to MD LG 5 should simply be replaced with the actual utilization standards that are now part of MD LG 5. Similarly, for MD LG 10, BLM must make any modification without changing the intent of the management decision.

Summary: The BLM's assertion that a decision about livestock grazing (MD-LG 5) is inconsistent with BLM regulations is false. Even if MD LG 5 is eliminated, this should not change the intent of MD LG 6 and MD LG 10, which reference MD LG 5.

Response: Federal grazing regulations require that modifications to the terms and conditions of livestock grazing permits and leases be made through a decision-making process that includes issuance of a proposed decision (43 CFR 4160.1) and opportunity for protest (43 CFR 4160.2) before a final decision can be issued. Therefore, the BLM must complete such a process before implementing MD LG 5 to the extent that there would be a conflict with the terms and conditions of any applicable livestock grazing permit or lease. The ROD will clarify that the BLM's implementation of MD LG 5 must comply with applicable laws and regulations.

For the reasons stated above, this protest is denied.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Finally the plan abdicates too much federal authority to the states. There are multiple problems with the proposed plan's approach that gives increased and undue authority to the state. First, there is no legal or regulatory basis for giving state governments' interests more consideration than other interested parties. While it's true that FLPMA, by its own terms, does not diminish states' authority to manage wildlife, neither does FLPMA instruct BLM to defer to the states. States' views are but one of many perspectives that the agency should consider, just as extractive uses should not be given preferential treatment under the "multiple use" mandate. Second, the states have

already shown that they are poor managers of sage-grouse, as demonstrated by the discussion of current regulatory mechanisms in FWS's 2010 "warranted but precluded" decision. Finally, BLM has an affirmative obligation to manage federal lands for wildlife conservation, even if states have different views. According to Nie et al.'s (2017) review: federal wildlife management authority, federal agencies are often too deferential to states, and the management scheme described in the FEIS would exacerbate this shortcoming. We protest on this basis.

Wildlands Defense

Katie Fite

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

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Any provisions of the 2018 Plan such as those in Table 2-2 that purport to delegate any authority to regulate use of the public lands is an unlawful delegation of authority.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: WEX respectfully requests BLM remove references to mandates for Net Conservation Gain and delegation of authority to the state for mitigation requirements. The FEIS acknowledges that FLPMA does not explicitly mandate or authorize the BLM to require public land users to implement compensatory mitigation as a condition of authorization of use of BLM-administered lands. Yet, the FEIS, in Table 2-2 at 2-15, for example, provides for application of state required mitigation including a net conservation gain. There is no legal support for such requirements in the documents and while voluntary measures can be provided (as the FEIS notes), it is important to be clear about what can and cannot lawfully be required on federal lands.

Summary: The BLM has improperly abdicated too much authority to the states in the development of the Proposed RMP Amendment/Final EIS.

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

The BLM has not abdicated authority to the states. As specified in the planning effort's purpose and need, FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and wildlife. As the sovereign entities with the lead role in managing game species, including Greater Sage-Grouse, states play a critical role in conserving the Greater Sage-Grouse and its habitat. This role is unique among stakeholders.

The BLM continues to build on the 2015 planning effort as envisioned in Secretarial Order (SO) 3353 by collaborating with states and stakeholders to improve compatibility between federal management plans and state plans and programs at the state level, while ensuring consistency with the BLM's multiple-use mission and obligation to protect Greater Sage-Grouse habitat. The proposed amendments are consistent with the BLM's discretionary authority to balance multiple use in a manner that remains consistent with federal law.

For the reasons stated above, this protest is denied.

Western Watersheds Project

Greta Anderson

See also: NEPA—Supplemental EIS

Issue Excerpt Text: We protest that the PRMP/FEIS makes a number of substantive changes to the 2015 ARMPA through various extra-planning actions. BLM will implement several "clarifications" of previous management decisions regarding livestock grazing through plan maintenance or unspecified plan implementation. These clarifications defy legitimate planning processes because they are unclear, defer actual decisions, lack analysis of their impacts, do not allow appropriate public input, and are inaccurate.

Summary: The BLM unlawfully made substantive changes to the 2015 Approved RMP Amendment/Record of Decision through extra-planning actions that are unclear, defer actual decisions, lack analysis of their impacts, do not allow public input, and are inaccurate.

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

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

As described above, the BLM has not made substantial changes between the draft and final document without public notice or review; accordingly, this protest is denied.

The Wilderness Society

Nada Culver

Issue Excerpt Text: It appears BLM intends to administer the "allocation exception process," which could completely undermine the habitat designation framework, without any form of public notice or information-sharing. Doing so is directly contrary to BLM policy, which compels BLM to include documentation requirements for waivers, exceptions, and modifications in land use plans.

Summary: The BLM has failed to document waivers, exceptions, and modifications to the Proposed Plan with its intention to administer the "allocation exception process."

Response: Under the Land Use Planning Handbook, "It is important to document decisions to modify or not modify the land use plan or NEPA analysis when these decisions are reached as part of the formal land use plan evaluation process (Section V). In reviewing new information or circumstances that are controversial or of interest to the public, it is also important to provide all interested parties with written documentation of the BLM's determination." Further, if the BLM reaches a decision to "change decisions or revisit the NEPA analysis, the rationale to modify, revise, or further evaluate decisions or NEPA analysis may be documented in a NOI prepared during scoping activities or in the planning or NEPA document."

The BLM has adequately documented the exceptions to allocation decisions depicted in Table 2-1 of the 2018 Nevada and Northeastern California Proposed RMP Amendment. The Draft RMP Amendment and the Proposed RMP Amendment both present a range of alternatives for these allocation exceptions. The exceptions clearly outline implementation-level actions that can take place if they meet the criteria outlined on pages 2-19 through 2-22.

For the reason stated above, this protest is denied.

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

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

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

The BLM analyzed the management situation in full compliance with its regulations and policies. The BLM evaluated inventory and other data and information, partnering with the United States Geological Survey (USGS) and coordinating extensively with states, to help provide a basis for formulating reasonable alternatives. The BLM described this process in its Report to the Secretary in response to SO 3353 (August 4, 2017). Among other things, the Report describes how the BLM coordinated "with each State to gather information related to the [Secretary's] Order, including State-specific issues and potential options for actions with respect to the 2015 Greater Sage-Grouse Plans and IMs to identify

opportunities to promote consistency with State plans” (Report to the Secretary at 3). This process overlapped to some degree with the BLM’s scoping process, which also assisted the BLM in identifying the scope of issues to be addressed and significant issues, and with coordination with the State of Nevada occurring after the Report. In addition, as described in Chapter 3 of the Draft EIS, the BLM determined that the current management situation is similar in condition to that assessed in 2015.

For the reasons stated above, this protest is denied.

American Exploration & Mining Association

Laura Skaer

Issue Excerpt Text: During the 2015 greater sage-grouse land use planning process, several memoranda, studies, and reports were prepared in response to and, in many cases, relied upon to adopt restrictions on multiple use on federal lands for the purported purpose of protecting an unlisted species. These documents include: 1. NTT Report; 2. COT Report; 3. SO 3330; 4. 2014 FWS Memo; 5. 2014 FWS Mitigation Framework; 6. 2014 USGS Lek Buffer Study; 7. "Range-Wide Network of Priority Areas for Greater Sage-Grouse, A Design for Conserving Connected Disturbances or Isolating Individual Zoos" by Michele R. Crist, Steven T. Knick, & Steven E. Hanser (USGS, Open-File Report 2015-1158) ("Crist Study"); and 8. Monograph. These documents suffer from significant defects, including being outcome-orientated and reverse-engineered. Most importantly, these documents rely on landscape-scale land use planning principles that Congress rejected when it used the Congressional Review Act (5 U.S.C. §801 et seq. "CRA") to rescind BLM's Planning 2.0 Rule. In overturning the Planning 2.0 Rule, Congress reaffirmed its intent that DOI must develop resource management plans like the GRSG LUPs in compliance with the land management principles in FLPMA, which does not authorize the landscape-scale planning measures embraced in the Planning 2.0 Rule and the 2015 GSG LUPAs. Because the CRA prohibits agencies from reinstating a similar rule through rulemaking, BLM must not replicate the now defunct policies in its Planning 2.0 Rule in the 2018 PRMPA. Congress has made it clear that FLPMA does not authorize landscape-scale management of public lands. Therefore, the 2018 PRMPA must not be based on landscape-scale management philosophies.

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

Response: Section 202 of FLPMA, 43 United States Code (USC) 1712, directs the Secretary to develop, maintain, and revise land use plans governing the use of the public lands. Further, the BLM is to “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” while using and observing the principles of multiple and sustained yield (43 USC 1712(c)).

The BLM developed the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS under Section 202 of FLPMA and the BLM’s land use planning regulations. FLPMA does not identify the specific scale at which the BLM must develop, maintain, and revise its land use plans. The BLM has the discretion to determine the appropriate planning scale. Congressional disapproval of Planning 2.0 – which made several changes to BLM’s planning regulations -- does not affect BLM’s authority to determine the proper scale of a planning effort.

For the reasons stated above, this protest is denied.

FLPMA—Locatable Minerals

Western Exploration LLC

Darcy Marud

See also: *Other Laws*

Issue Excerpt Text: That standard is used to impose costly compensatory mitigation on a proponent such as WEX it is an unlawful interference with WEX's rights under the 1872 Mining Law, existing authorized uses and its VERs.

American Exploration & Mining Association

Laura Skaer

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

American Exploration & Mining Association

Laura Skaer

See also: *Other Laws*

Issue Excerpt Text: Prohibiting or restricting mineral exploration and development on lands co-located with sage-grouse habitat, by way of limits placed upon surface disturbance,⁶ travel and transportation management (roads),⁷ application of lek buffers,⁸ seasonal timing restrictions,⁹ and compensatory mitigation¹⁰ is contrary to the rights granted by § 22 of the Mining Law, and therefore the Proposed Plan is in violation of the Mining Law and FLPMA, and cannot be implemented.

Summary: The BLM's continued reference to net conservation gain and other restrictions contained in the Proposed RMP Amendment/Final EIS would violate FLPMA and other applicable laws by interfering with rights under the Mining Law of 1872.

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

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

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

American Exploration & Mining Association**Laura Skaer**

Issue Excerpt Text: The Proposed Plan directly conflict with FLPMA's and the MMPRDA's requirement that the Secretary must manage public lands to respond to the Nation's needs for minerals. Specifically, the restrictions that are retained from the 2015 Amendments that are contrary to FLPMA's directive include: Section 2.6.2: Objective SSS 1, Action SSS 2, Action SSS 5, Action, Action SSS 6, Action SSS 7, Action CTTM 2, Action CTTM 3, Action CTTM 5, Action CTTM 6, Action LR-LUA 2, Action LR-LUA 4, Action LR-LUA 5, Action R-LUA 6, Action LR-LUA 16, Action LR-LUA 19, Action LR-LUA 21, Action LR-LW 1, Action LOC 2; ? Section 2.6.3: GRSG-GEN-DC-002, GRSG-GEN-ST-004-Standard, GRSG-RT-ST-081-Standard, GRSG-LR-SUA-ST-014-Standard, GRSG-LR-SUA-ST-015, GRSG-LR-SUA-ST-016-Standard, GRSG-LR-LW-GL-025-Guideline, GRSG-RT-ST-081-Standard, GRSG-RT-GL-089-Guideline.

Summary: The Proposed Plan directly conflicts with FLPMA's and Materials and Minerals Policy, Research and Development Act of 1980's (MMPRDA) requirement that the Secretary must manage public lands to respond to the nation's needs for minerals because it restricts the opportunity for entry, use, and occupancy to develop minerals on public lands.

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

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

For the reasons stated above, this protest is denied.

American Exploration & Mining Association**Laura Skaer***See also: Other Laws*

Issue Excerpt Text: Despite, and in direct conflict with this legal obligation, BLM nevertheless has retained severe restrictions and prohibitions from the 2015 Amendments including: Section 2.6.2, Action SSS 2; Section 2.6.3, GRSG-GEN-DC-002, GRSG-GEN-ST-004-Standard (2015 PLUPA/DEIS); Sections 2.6.2 and 2.6.3: Action CTTM 2, Action CTTM 3, Action CTTM 5, Action CTTM 6, GRSG-RT-ST-081-Standard, GRSG-RT-ST-083-Standard, GRSG-RT-GL-089-Guideline; Action SSS 2; Appendix B ? Section 2.6.2, Action CTTM 2, Action CTTM 3; Section 2.6.3, GRSG-RT-ST-081-Standard (2015 PLUPA/DEIS).

Summary: The Proposed RMP Amendment/Final EIS violates the Mining Law of 1872 and FLPMA by imposing restrictions on locatable mineral activities, including ingress and egress.

Response: BLM H-3809-I states:

“Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent unnecessary or undue degradation (FLPMA, 43 CFR 3809.415). Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.”

The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS is consistent with all applicable laws, regulations, and policy. Consistent with applicable law, BLM’s implementation of the Proposed Plan balances access pursuant to the Mining Law with FLPMA’s requirement to prevent unnecessary or undue degradation.

Because the BLM will apply all proposed actions considered in the Proposed Plan to locatable minerals only where they are consistent with the Mining Law, as well as the regulations at 43 CFR 3809, this protest is denied.

[FLPMA—Multiple Use](#)

American Exploration & Mining Association

Laura Skaer

Issue Excerpt Text: As described in detail in our 2015 protest at VI.B. the 2015 Amendments fail to comply with FLPMA multiple-use and sustained yield requirements. The PRMPA/FEIS perpetuates many of the numerous and severe flaws in the 2015 Amendments, as BLM has failed to eliminate the problematic issues contained in the 2015 Amendments. As 13 43 U.S.C. 1701(a)(12). AEMA Protest of the Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 26 of 28 such, the PRMPA/FEIS unlawfully prefers conservation of sage-grouse habitat to the exclusion of other uses including grazing, agriculture and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and Mining and Minerals Policy Act) rather than subordinate all other uses of public land and make sage-grouse conservation the dominant use of public lands. BLM must reconcile inconsistencies found in the 2015 Amendments and retained in the Proposed Plan and provide additional public review for substantial changes and/or prepare a Supplemental EIS and a Revised Proposed RMPA in order to comply with FLPMA Section 202(c)(1).

Summary: The BLM’s Proposed RMP Amendment/Final EIS fail to comply with FLPMA’s multiple-use and sustained yield requirements.

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

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

All alternatives considered in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment, as described in Chapter 2 (pp. 2-7 through 2-25), provide an appropriate balance of uses on the public lands. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Nevada and Northeastern California Proposed RMP Amendment is consistent with FLPMA’s multiple-use mandates.

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

The BLM has not violated FLPMA and has provided clear justification for balancing multiple resource uses on public lands; therefore, this protest is denied.

American Exploration & Mining Association

Laura Skaer

See also: Other Laws

Issue Excerpt Text: The Proposed Plan fails to comply with FLPMA's multiple use and sustained yield mandate under § 102(a)(7), and in the land use planning title of FLPMA at §202(c)(1), and the directive under § 102(a)(12), to recognize the Nation's need for domestic sources of minerals. Further, the multiple and cumulative restrictions on surface use retained from the 2015 Amendments in the Proposed Plan creates widespread, and cumulative de facto withdrawals across the entire planning area, which violate the multiple-use mandates under FLPMA §102(a)(7), and the directive under § 1732(b) that clearly establishes that FLPMA does not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including but not limited to, rights of ingress and egress.

WildLands Defense

Katie Fite

Issue Excerpt Text: BLM has not shown that making often weak Jewell plan changes even weaker, and imposing even greater flexibility (uncertainty and chaos) on public lands grazing, energy development and other uses will result in management of "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... a combination of balanced and diverse resource use that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." 43 U.S.C. § 1701(c).

WildLands Defense**Katie Fite**

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

Summary: The BLM's Proposed RMP Amendment/Final EIS fail to comply with FLPMA's multiple-use and sustained yield requirements.

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

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

All alternatives considered in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment, as described in Chapter 2 (pp. 2-7 through 2-25), provide an appropriate balance of uses on the public lands. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Nevada and Northeastern California Proposed RMPA is consistent with FLPMA's multiple-use mandates.

For the reasons stated above, this protest is denied.

FLPMA—Special Status Species**Western Watersheds Project****Greta Anderson**

Issue Excerpt Text: By proposing to exempt certain projects from sage-grouse protection compliance, without analyzing the degree to which such protections would apply or the environmental impact of making such protections optional (at the discretion of the State Director), BLM violates NEPA's 'hard look' requirements regarding direct and cumulative impacts to the human environment. Furthermore, making these protections optional and therefore weakening sage-grouse conservation throughout the planning area, BLM allows the 'unnecessary or undue degradation' to sage grouse habitats and the bird

populations they support, in violation of FLPMA and in contravention of the agency's Sensitive Species and Sage-Grouse policies. WWP et al. 2018.

Summary: By proposing to exempt certain projects from Greater Sage-Grouse protection compliance, the BLM weakens Greater Sage-Grouse conservation throughout the planning area and allows the “unnecessary or undue degradation” to Greater Sage-Grouse habitats and the bird populations they support. This is in violation of FLPMA and the agency's sensitive species policies.

Response: Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” However, Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield.” Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. These vital resources include fish and wildlife species.

The BLM recognizes that Greater Sage-Grouse is a state-managed species, and, in accordance with 43 CFR 24.3(a), that state authority regarding fish and resident wildlife guides how the BLM cooperates with the state in the absence of specific, overriding federal law. Further, the BLM recognizes that state governments have established fish and wildlife agencies that are charged with the responsibility and mandate to implement state statutes for effective, appropriate, and efficient conservation and management of fish and resident wildlife species. Aligning federal habitat management with state management of the species is therefore consistent with its SSS policy.

The allocation exception process outlined in the Proposed Plan identifies criteria that are conditional to the granting of exceptions. These criteria describe circumstances where granting allowances would not harm the species, are necessary for human health or safety, or are covered by existing valid rights and uses. Thus, where limited exemptions exist, they are tailored tightly and largely held to criteria which describe conditions under which exempt actions would not adversely affect the species, much less cause UUD. Accordingly, these limited allowances would not materially change the outcome of restrictions from the 2015 plans. The three-tier habitat approach in the plans is designed to avoid and minimize effects to sage grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non-habitat, effectively mitigating the adverse effect and avoiding UUD. In addition, many of the conservation objectives and management restrictions in the Proposed Plan were carried forward from the Approved 2015 RMP Amendments. The allowances under WEMS are but a small part of the comprehensive sage-grouse planning framework. Seven components are outlined under section ES 3.3, which are not affected by the changes in the Propose Plan and which will remain in place. Many of the other modifications made by this planning efforts are adjustments, which build upon, 2015 decisions.

For the reasons stated above, this protest is denied.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: here, it defies logic and legal authority to identify lands as habitat and PHMA and subject them to substantial land management restrictions when, in their current condition, they are incapable of serving as habitat without substantial modification, rehabilitation and then only with many years of such rehabilitation might once again become potential habitat.

Summary: Land-use restrictions are being applied to lands that do not contain habitat in its current condition usable by Greater Sage-Grouse. This runs contrary to the BLM's legal authority and policy.

Response: A primary objective of the BLM SSS policy is to initiate proactive conservation measures that reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing the species under the ESA (BLM Manual Section 6840.02.B).

Priority habitat management area (PHMA) designations identify large, contiguous blocks of BLM-administered lands which contain sage-grouse habitat. They are intended to identify areas which warrant special management attention for sage-grouse; they do not signal that all lands within the area constitute existing or potential sage-grouse habitat, or that all lands within that block would be managed with restrictions appropriate to usable habitat. This is a land use planning instrument, not a blanket management prescription.

Habitat management area (i.e., priority habitat management area [PHMA], general habitat management area [GHMA], and other habitat management area [OHMA]) boundaries are based on composite management categories contained within the USGS's Spatially Explicit Modeling of Annual and Seasonal Habitat for Greater Sage-Grouse (*Centrocercus urophasianus*) in Nevada and Northeastern California—An Updated Decision-Support Tool for Management (Coates et al. 2016), as adopted and modified by the State of Nevada on December 11, 2015. Habitat management areas identify habitat suitability for Greater Sage-Grouse and are based on the best available peer-reviewed science.

For the reasons stated above, this protest is denied.

FLPMA—Unnecessary or Undue Degradation (UUD)

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: As WWP et al. (2018) recited to the BLM, the agency's own scientists, working with state agencies, developed the Conservation Objectives Team (COT) report that cautioned, "There is an urgent need to 'stop the bleeding' of continued population declines and habitat losses by acting immediately to eliminate or reduce the impacts contributing to population declines and range erosion. There are no populations within the range of sage-grouse that are immune to the threat of habitat loss and fragmentation." U.S. Department of Interior, Greater Sage-Grouse Conservation Objectives: Final Report 31-32 (FWS February 2013) (COT Report). In WWP et al. 2018 at 10. The COT report went on to make conservation recommendations, an effective baseline of management actions that must be undertaken to conserve and protect the sage-grouse throughout its range, i.e. to prevent undue and unnecessary degradation to the species' habitat. The current plans do not comport with the COT report recommendations - which were themselves weakened due to political influence - but are the very minimum that is necessary for the agency to do. Since these proposed actions are inconsistent with that standard, the plans fail to comply with FLPMA's overarching mandate.

WildLands Defense

Katie Fite

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

Summary: The BLM’s Proposed Plan does not comport with the Conservation Objectives Team (COT) report and removes minimum necessary protections for Greater Sage-Grouse, which contravenes FLPMA’s mandate to prevent unnecessary or undue degradation.

Response: Section 302(a) of FLPMA directs the Secretary to "manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act" except as otherwise provided by law. Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. These vital resources include fish and wildlife species. Section 302(b) of FLPMA also requires that "in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

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

BLM Manual 6840 describes how the BLM should address BLM sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of initiating "proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA"(6840.02(B)).

The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

In addition, adoption of the proposed plan would not violate FLPMA's requirement to prevent UUD because adoption of the proposed plan would not authorize any public land uses, much less any that would result in UUD. In addition, many of the conservation objectives and management restrictions in the Proposed Plan were carried forward from the Approved 2015 RMP Amendments. The allowances under WEMS are but a small part of the comprehensive sage-grouse planning framework. Seven components are outlined under section ES 3.3, which are not affected by the changes in the Propose Plan and which will remain in place. Many of the other modifications made by this planning efforts are adjustments, which build upon, 2015 decisions.

For the reasons stated above, this protest is denied.

The Wilderness Society

Nada Culver

Issue Excerpt Text: As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover may violate FLPMA's requirement to avoid unnecessary or undue degradation (UUD). Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits

degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques. TRCP, 661 F.3d at 76-77; Colo. Env. Coal., 165 IBLA at 229.

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

Response: Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act” except as otherwise provided by law.

IM 2018-093, as revised by IM 2019-18, explains that compensatory mitigation cannot prevent what would otherwise be unnecessary or undue degradation. To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the state in all action alternatives in its NEPA analysis, and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate.

When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

Moreover, the proposed plan would not authorize any public land uses, much less any that would result in UUD. The BLM will still evaluate compensatory mitigation in the same way the BLM will include other state requirements as part of a proposed action in the BLM’s NEPA analysis.

On pages 2-13 to 2-19 of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the BLM makes the following commitment: “In all Greater Sage-Grouse habitat, before authorizing third-party actions that result in habitat loss and degradation within the State of Nevada, the BLM will complete the following steps, in alignment with the State of Nevada’s Greater Sage-Grouse Conservation Plan (2014, as amended), including avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions: . . . 2) Incorporate state required or recommended mitigation into the BLM’s NEPA decision-making process, if the State of Nevada’s Sagebrush Ecosystem Technical determines that there are unacceptable residual impacts on Greater Sage-Grouse or its habitat and compensatory mitigation is required as a part of State policy or authorization, or if a proponent voluntarily offers mitigation.” On December 6, 2018, Nevada Governor Brian Sandoval signed Executive Order 2018-32, requiring the use of the State’s Conservation Credit System to mitigate impacts from projects within Greater Sage-Grouse habitat on state and federal lands in Nevada.

For the reasons stated above, this protest is denied.

NEPA—Best Available Science

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: The cumulative effects portion of the EIS nearly entirely lacks scientific citations and relies upon statements that are patently false. For example, the grazing portion of the cumulative

effects analysis states, without citation, that the landscape is adapted to "withstand grazing disturbance" from cows because it was once grazed by wild bison—a statement that ignores science showing the bison affected the landscape in a completely different way than domestic cattle do. PRPM/FEIS at 4-29.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Thus, siting facilities within PHMA or GHMA in non-habitat areas would be expected at minimum to depopulate adjacent suitable sage-grouse habitats within 1.9 to 11.8 miles of the project site. WWP et al. at 74. This nullifies the conservation value of PHMA and GHMA within these radii.

The Wilderness Society

Nada Culver

Issue Excerpt Text: But eliminating the prioritization requirement, or scaling it back, would not be in accord with the best available science. As mentioned above, the COT report recognized the need to provide for prioritization. The sage-grouse scientists in their letter to Secretary Zinke found that the prioritization guidance was an important way of dealing with indirect and cumulative effects. Exhibit I at 3. The BLM's National Technical Team (NTT) Report supports the need for prioritization.³⁰

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

Issue Excerpt Text: Further, BLM cannot merely assert that there are no impacts from these changes when they have undermined the consistency, reliability and measurability that supported not only the FWS's "not warranted" finding but also the BLM's conclusions regarding conservation of the greater sage-grouse. The conclusions of both FWS and BLM regarding the likely success of conservation measures and impacts of measures in the 2015 Sage-grouse Plans were based on best available science and the COT Report, but neither of these are consistent with the 2018 Proposed RMP Amendments, as has been repeatedly brought to BLM's attention by leading sage-grouse scientists

The Wilderness Society

Nada Culver

Issue Excerpt Text: New science has underscored the importance of GHMA for connectivity between PHMA, which makes landscape-scale management vital for successful conservation of sage-grouse habitat. The approach taken in the 2018 Proposed Amendments, which weakens protections undermines this approach.

The Wilderness Society

Nada Culver

Issue Excerpt Text: The scientists recommend that "management approaches and objectives established [in the 2015 plans] be used as minimum standards in sage-grouse habitats."

WildLands Defense

Katie Fite

Issue Excerpt Text: The EIS fails to consider recent science relevant to the risks of livestock grazing with large-scale flexibility/chaos in the face of climate change (Beschta et al. 2012, mining activity oil and

gas development and possible strategies to mitigate such risks. Recent studies and reports have raised concerns about the full range of environmental impacts that may accompany.

WildLands Defense

Katie Fite

Issue Excerpt Text: We Protest that BLM has not provided current environmental, economic and other data necessary to properly consider and weigh the relative values of sage-grouse, sensitive species impacted - including negatively, biodiversity, and public uses and enjoyment of public lands.

WildLands Defense

Katie Fite

See also: *NEPA—Range of Alternatives*

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

WildLands Defense

Katie Fite

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

Summary: The BLM has failed to demonstrate its reliance on best available science by:

- Not providing adequate scientific citations
- Relying on best available science by overlooking studies that evaluate the impacts of livestock grazing
- Eliminating prioritization of oil and gas leasing outside of Greater Sage-Grouse habitat
- Asserting there are no impacts associated with the Proposed RMP Amendment/Final EIS, which is inconsistent with the COT report
- Overlooking the role of GHMA for habitat connectivity
- Overlooking the role of oil and gas leasing and energy development in affecting Greater Sage-Grouse habitat, as described in the 2015 plans
- Failing to consider recent science relevant to the risks of livestock grazing in the face of climate change
- Not including current environmental, economic, and other baseline data in order to consider the values of impacted resources
- Not including current ecological data or the current status of habitats and populations
- Not including current ecological baseline data
- Failing to rely on it to determine lek buffer-distances in GHMA and IHMA

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

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

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

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

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

The BLM used the USGS "Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review" (Open File Report 2014-1239; Mainer et al. 2014) to establish lek buffer-distances. This open file report (OFR) is the best available science. In addition, the BLM utilized the lower end of the interpreted range of lek buffer-distances and guidance identified in Mainer et al. (2014) to establish the evaluation area around leks that would be used to analyze impacts during project-specific NEPA, including scientifically justifiable departures based on local data, topography, and other factors. The justifiable departures allow the BLM to either increase or decrease buffer distances based on site-specific factors. Lek buffer-distances are not one size fits all.

It is not necessary to incorporate protestors' suggested scientific reports and data into the Proposed RMP Amendment/Final EIS. As stated above, the BLM has already reviewed the referenced articles to determine if the information is substantially different than the information considered and cited in the Proposed RMP Amendment/Final EIS, and it does not provide additional information that would result in effects outside the range of effects already discussed in the Proposed RMP Amendment/Final EIS. The BLM relied on high-quality information from a large number of sources to examine changes made between the 2015 and 2018 plans.

The BLM used the best available science to fully analyze the impacts on Greater Sage-Grouse and its habitat related to livestock grazing in the 2015 Proposed Land Use Plan Amendment/Final EIS and is incorporated by reference in the 2018 Proposed RMP Amendment/Final EIS. See Table 3-1 in the Proposed RMP Amendment/Final EIS. In addition, the BLM reviewed all new science published between 2015 and 2018 and included any new relevant information in the Proposed RMP Amendment/Final EIS. See Section 3.1.1 in the Proposed RMP Amendment/Final EIS.

The EIS was prepared reflecting the information contained in this report, Hanser et al. 2018. Protestor's argument that the EIS is in conflict with the Hanser 2018 report is thus patently false.

For the reasons stated above, this protest is denied.

Humboldt County Board of Commissioners**Ron Cerri**

Issue Excerpt Text: Page 4-10 of the Proposed Plan Amendment states there is incomplete or unavailable information regarding social or economic effects specific to counties. Humboldt County recognizes data is not currently available to assess how the Greater Sage-grouse plans will impact local economies. Such an analysis is essential for counties to understand how proposed plans will impact local economies.

White Pine County Board of Commissioners**Richard Howe**

Issue Excerpt Text: Page 4-10 of the Proposed Plan Amendment states there is incomplete or unavailable information regarding social or economic effects specific to counties. The County recognizes data is not currently available to assess how the Greater Sage-grouse plans will impact local economies. Such an analysis is essential for counties to understand how proposed plans will impact local economies.

Summary: The BLM has failed to rely on best available science by not evaluating the social or economic impacts of the Proposed RMP Amendment/Final EIS on counties.

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

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

The Proposed Plan’s focus on alignment with state plans reflects socioeconomic factors that were accounted for through the development of state’s sage-grouse management plans. Such factors were also weighed through consultation with the states. The economic factors and industries that are important to the way of life for each state were not just considered explicitly through the EIS analysis but by the underlying state-level plans.

The Proposed RMP Amendment/Final EIS fully analyzes socioeconomic impacts using the best available science and data available at the time it was written. See Section 4.10 of the Proposed RMP Amendment/Final EIS; however, information specific to the Statewide Socioeconomic Baseline Data report that the University of Nevada, Reno is developing was not completed or available for inclusion.

For the reasons stated above, this protest is denied.

The Wilderness Society**Nada Culver**

Issue Excerpt Text: FEISs actually points to the need to sustain the direction in the 2015 Sage-grouse Plans, including maintaining a landscape-scale approach, retaining priority and general habitat management areas and preserving protections from oil and gas development. However, many of these elements of the plans are being weakened or removed altogether in contravention of this accepted science. In addition, more recent science has only reinforced this interpretation of the weight of existing, applicable science (including BLM’s USGS Synthesis). For instance, a report by Burkhalter et al. 2018 found that landscapes associated with a higher abundance of males on leks were those located in highly

connected, sagebrush-dominated areas with limited energy development. A report by Lipp, T.W. and Gregory, A.J. 2018 found that, as energy demands continue to increase, and with multiple species of grouse listed or nominated for listing under the ESA, negative impacts attributed to energy development are likely to continue. And a study by Row, et al., finds that, although population strongholds will likely have much higher suitability values, maintaining areas outside of these regions should help maintain connectivity between these existing protection areas. This new science emphasizes the importance of retaining protections from energy development, maintaining connectivity and ensuring that management is conducted at a landscape-scale.

Summary: The BLM has failed to rely on best available science by not maintaining a landscape-scale approach for Greater Sage-Grouse conservation.

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

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

The BLM has reviewed the referenced articles (Burkhalter et al. 2018; Lipp and Gregory 2018; and Row et al. 2018) to determine if the information is substantially different than the information considered and cited in the Proposed RMP Amendment/Final EIS, and if it does not provide additional information that would result in effects outside the range of effects already discussed in the Proposed RMP Amendment/Final EIS. These studies may be new publications, modeling approaches, or genetic analyses, but they all support the conclusions/findings detailed in the science synthesis found in the USGS OFR mentioned previously. Further, Row et al. is a direct continuation of work cited in the OFR.

Further, in developing the Proposed RMP Amendment/Final EIS, the BLM specifically partnered with the USGS to review the best available information and incorporate the management implications of that information into this EIS. The OFR from the USGS is available [here](#) and referenced throughout the EIS. The BLM also addressed this issue in its response to comments on the Draft EIS, and it remains committed to using the best available information.

For the reasons stated above, this protest is denied.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: The mapping in the plan, while updated from the 2015 Plan, still is based on modeling and does not incorporate current information available regarding existing ecological conditions and the fact that significant acres of habitat burned in the 2018 wildfires.

Summary: The BLM has failed to rely on best available science by not incorporating current information regarding existing ecological conditions into the Proposed RMP Amendment/Final EIS.

Response: The CEQ’s regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional

integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

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

Greater Sage-Grouse habitat management area (i.e., PHMA, GHMA, and OHMA) boundaries are based on composite management categories contained within the USGS’s Spatially Explicit Modeling of Annual and Seasonal Habitat for Greater Sage-Grouse (*Centrocercus urophasianus*) in Nevada and Northeastern California—An Updated Decision-Support Tool for Management (Coates et al. 2016), as adopted and modified by the State of Nevada on December 11, 2015. Habitat management areas identify habitat suitability for Greater Sage-Grouse and are based on the best available peer-reviewed science. Ecological conditions and other data are incorporated in the model. Areas that have burned are not removed from the maps based on the BLM’s ongoing rehabilitation efforts.

For the reasons stated above, this protest is denied.

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: The 2015 and 2018 analysis require further documentation of the science supporting certain of the changes proposed in the 2018 Plan and consideration of additional changes Eureka County proposed that were ignored.

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: The BLM should document the science relied upon that supports its changes from 2015 and consider additional changes as Eureka County has proposed to allow for consideration of the best available science and data including site-specific information and ground truthing relative to restrictions including those on lands eligible for disposal.

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: Unfortunately, the 2018 Plain still fails to adequately document the basis for the changes made in the proposed amendment despite the substantial science available and ignored in the 2015 process and additional significant science available since then that fully supports certain of the changes proposed in the 2018 Plan.

Summary: The BLM has failed to document the best available science used in the Proposed RMP Amendment/Final EIS that supports the changes made from the 2015 plans.

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

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

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

The rationale for the changes in the Proposed RMP Amendment/Final EIS are discussed in the purpose and need section. The BLM used the best available science to fully analyze the impacts on Greater Sage-Grouse and its habitat in the Proposed RMP Amendment/Final EIS. In addition, the BLM reviewed all new science published between 2015 and 2018 and included any new relevant information in the Proposed RMP Amendment/Final EIS. See Section 3.1.1 in the Proposed RMP Amendment/Final EIS.

For the reasons stated above, this protest is denied.

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: Despite these significant interests and socioeconomic benefit, there is a paucity of data suggesting significant adverse impacts to GRSG caused by recreation. Even the Fish and Wildlife Service's numerous reviews have referred only sparingly to recreation, and found recreation to be a tertiary factor in grouse population/habitat impacts. See, 75 Fed.Reg. 13987 (Mar. 23, 2010). Unfortunately, these factors are ignored and not coherently considered in the RMPA/FEIS.

Summary: The BLM has failed to rely on the best available science by not accounting for the impacts of recreation on Greater Sage-Grouse.

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

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

The BLM used the best available science to fully analyze the impacts on Greater Sage-Grouse and its habitat related to recreation in the 2015 plans; the Proposed RMP Amendment/Final EIS incorporates them by reference. See Table 3-1 in the Proposed RMP Amendment/Final EIS.

For the reasons stated above, this protest is denied.

NEPA—Cumulative Effects

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: The NVCA PRMP/FEIS claims to analyze the anticipated direct, indirect, and cumulative impacts of the proposed plan amendment, but fails to admit that the built in discretion of the new plans means that implementation is uncertain and impossible to predict. It also relies on unsupported assumptions about the implementation, including “[i]mplementation-level activities necessary to execute the RMP level decisions...would be subject to further environmental review, including that under NEPA.” NVCA PRMP/FEIS at 4-1.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: The NVCA PRMP/FEIS claims to analyze the anticipated direct, indirect, and cumulative impacts of the proposed plan amendment, but fails to admit that the built in discretion of the new plans means that implementation is uncertain and impossible to predict. It also relies on unsupported assumptions about the implementation, including “Implementation-level activities necessary to execute the RMP level decisions... would be subject to further environmental review, including that under NEPA.” NVCA PRMP/FEIS at 4-1. But this assumption is unsupported in light of the legislative changes to FLPMA through the National Defense Appropriations Act of 2015 (NDAA) and the recently passed H.R. 2, the so-called 2018 "Farm Bill," which includes a new categorical exclusion (CE) for vegetation management projects in mule deer and sage-grouse habitat, Pub.L. 115-334 § 8611.

Summary: The BLM’s assumptions about implementation are unsupported given that changes to FLPMA have created categorical exclusions for vegetation management projects in Greater Sage-Grouse and mule deer habitat; accordingly, the BLM has failed to analyze the impacts from the discretion accorded to “implementation-level activities.”

Response: The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “. . . the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

Regarding the general impacts analysis, NEPA directs that when an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, the agency always makes clear that such information is lacking, and provides the context of its relevance, available information, and alternative approaches of obtaining information to obtain a decision in the face of uncertainty (40 CFR 1502.22).

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

Because the BLM adequately analyzed cumulative effects in the Nevada and Northeastern California Proposed RMP Amendment/Final EIS, this protest is denied.

WildLands Defense

Katie Fite

Issue Excerpt Text: We Protest BLM failing to take a hard look at adverse cumulative effects of projects Orwellianly termed sagebrush "restoration" on sage-grouse, Pygmy rabbit, sensitive migratory songbird, and other species habitats.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: The PRMP does not and cannot analyze the proposed actions in context of the proposed changes to United States Forest Service (USFS) management. The USFS is also revising the land use plan amendments for sage-grouse habitat and the implications of the proposed management in both agencies have a cumulative impact that has not yet been assessed. The failure to take a rangewide look at reasonably foreseeable changes is a violation of NEPA, and also violates the agency's policy on connected actions. See IM 2018-023 ("Connected actions are those proposed Federal actions that are "closely related" and "should be discussed" in the same NEPA document (40 CFR 1508.25 (a)(1)).")

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: Wind farms and geothermal plants are now allowed in all designated habitats if the location of facilities is outside suitable habitat or the project could be offset by mitigation to achieve a net "no adverse impacts" (or a host of other exceptions). The original plans required no effect on sage-grouse or net conservation gain with mitigation in limited cases. The analysis of this change in the PRMP/FEIS is inadequate to really address this threat or consider it in terms of cumulative impacts on the species' habitat.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: As WWP et al. noted in our comments, Section 402(c)(a) of FLPMA as interpreted by BLM in court filings now indefinitely defers compliance with all applicable laws, including rangeland health regulations. Thus, the existing management provisions as they pertain to livestock grazing and vegetation management cannot be assumed to be implemented via future site-specific analysis, and the PRMP/FEIS's impact of its proposed changes are overlain onto this uncertainty and, with exemptions on further NEPA, the land use plan decisions are de facto implementation decisions, subject to greater need for site-specific analysis. The analysis also fails to assess the actual protective value of the acres it claims as "conservation actions" in the two states. NVCA PRMP/FEIS at 3-8, 3-9. Where the agency claims that conifer removal, fuel breaks, invasive species removal, etc. contribute to habitat improvement, it does not discuss how these projects may take a long time to show benefits, if at all. To the extent that BLM allows these to be claimed as mitigation or to offset human disturbance, the actual rehabilitation of the area as GRSG habitat should be demonstrated through population data. Finally, the reliance on the 2015 FEIS to analyze the cumulative impacts of the Proposed Plan Amendment is misplaced. NVCA PRMP/FEIS at 4-9. The 2015 amendments' analyses were also inadequate, an issue we raised in pending litigation. The agency's reliance on the flawed analysis to buttress this current revision is just as inadequate as the original. The 2015 amendment removed nearly 2.8 million acres from location and entry to mineral extraction. The FEIS claims that the RFD scenario would not be substantially different under the SFA or non-SFA scenarios. NVCA PRMP/FEIS at 4-11. But the analysis relies on number of projects rather than acreage involved, and the level of exploration possible under the non-SFA withdrawal scenario is double that of the SFA. *Ibid*. This difference is not addressed under the analysis of the proposed alternative either, and the FEIS is deficient in disclosing the actual predicted RFD impacts in Nevada under the proposed plan.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: As WWP and others have repeatedly asserted in court filings and comments, BLM cannot take the hard look NEPA requires without considering the impacts of its actions on a rangewide basis. WWP et al. 2018. Operationally, this requires BLM to prepare a Programmatic EIS looking at how the many exceptions to enforceable protections written into the PRMPs could combine

to affect the health of sage-grouse rangewide. Even if BLM does not prepare a PEIS, however, it still must consider the health of sage-grouse populations on a rangewide basis to achieve the required hard look.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Without examining impacts on a rangewide basis, an adequate cumulative impact analysis is not possible. Nevertheless, the agency elected to examine cumulative effects only at the WAFWA management zone level.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: WWP has raised these, and other, issues requiring a hard look throughout this process and BLM has nevertheless failed to review the impacts of its actions on a rangewide basis. This rangewide perspective is particularly important in light of the projected effects of climate change. Climate mapping projects that sage-grouse range will constrict severely over the next several years, forcing sage-grouse into smaller and lower quality habitats. Without this rangewide hard look, BLM has not considered how its decisions to permit sage-grouse habitats to become degraded, or even destroyed, will contribute to species-level declines.

The Wilderness Society

Nada Culver

Issue Excerpt Text: BLM has also failed to account for and analyze the destruction of vital sage grouse habitat due to wildfires. In 2018, 2,034,318 acres of sage grouse habitat on federal land was damaged by fire. 19 Of these 1,057,309 acres were on BLM land.⁵ The loss of this habitat will have a significant impact on sage grouse survival; yet, BLM simply states that these losses to fire are accounted for in the 2015 FEIS. See NV/CA Proposed RMPA/FEIS at 4-23 ("Conditions on public land have changed little since the 2015 Final EIS, and to the extent that there have been new actions or developments, the impacts associated with those actions or developments are in line with the projections in the 2015 Final EIS regarding reasonably foreseeable future actions and effects."). 2018 was one of the worst wildfire seasons on record, and it is clear that wildfires will become an increasing problem in the West. BLM must sufficiently analyze the threat of rapidly increasing fire to sage grouse.

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

and with individual leases, but has failed to do so in connection with the FEIS. BLM must incorporate these details into a compliant cumulative impacts analysis for these plan amendments.

The Wilderness Society

Nada Culver

Issue Excerpt Text: The NVCA PRMP/FEIS claims to analyze the anticipated direct, indirect, and cumulative impacts of the proposed plan amendment, but fails to admit that the built in discretion of the new plans means that implementation is uncertain and impossible to predict. It also relies on unsupported assumptions about the implementation, including implementation-level activities necessary to execute the RMP level decisions...would be subject to further environmental review, including that under NEPA." NVCA PRMP/FEIS at 4-1.

The Wilderness Society

Nada Culver

Issue Excerpt Text: The PRMP does not and cannot analyze the proposed actions in context of the proposed changes to United States Forest Service (USFS) management. The USFS is also revising the land use plan amendments for sage-grouse habitat and the implications of the proposed management in both agencies have a cumulative impact that has not yet been assessed. The failure to take a rangewide look at reasonably foreseeable changes is a violation of NEPA, and also violates the agency's policy on connected actions. See IM 2018-023 ("Connected actions are those proposed Federal actions that are "closely related" and "should be discussed" in the same NEPA document (40 CFR 1508.25 (a)(1)).")

The Wilderness Society

Nada Culver

Issue Excerpt Text: BLM fails to analyze the impacts of large-scale oil and gas projects that are occurring within several states. These projects will result in drilling and construction of wells and related infrastructure, including new roads and pipelines, all of which will have significant impacts on sage-grouse habitat. Although BLM claims the cumulative effects from these projects 18 were considered in previous NEPA documents, changes to other BLM policies will affect their impacts.

The Wilderness Society

Nada Culver

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

Summary: The BLM failed to analyze the adverse cumulative effects of a number of rangewide issues, including:

- Sagebrush “restoration” projects on various species’ habitat
- Land use plan amendments from other agencies
- Allowances for wind farms and geothermal plants
- The full range of required design features impacts in the area
- Climate change
- Wildfire
- Changes in compensatory mitigation policy, and changes in mitigation requirements, between the 2015 and 2018 plans
- Oil and gas sales projected from increased oil and gas leasing since 2017

- Uncertainties about discretionary protections under the Proposed RMP Amendment/Final EIS
- The change in purpose and need between the 2015 and 2018 plans, the change regulatory circumstances

Response: The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ’s regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

As explained in Section 4.13.2 of the Proposed RMP Amendment/Final EIS, the WAFWA management zones are the appropriate unit of evaluating cumulative effects because they define habitat areas which share similar issues, threats, and vegetation communities. WAFWA management zones therefore provide a biologically meaningful unit against which to analyze broader impacts in a context that is analytically clear. Section 4.13 analyzes the effects of the proposed action on a zone-by-zone basis for all affected WAFWA zones.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. In addition to the discussion of cumulative impacts provided in Section 4.13 of the Northeastern California Greater Sage-Grouse Proposed RMP Amendment/FEIS, Appendix H details the past, present, and reasonably foreseeable actions which would affect greater sage-grouse habitat and HMAs. This tabulation provides adequate analysis of vegetation restoration treatments, wildfires, oil and gas development and leasing activities, rights-of-way and other realty actions, and other foreseeable activities. The information presented in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; this protest is denied.

NEPA—Impacts Analysis—General

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: By proposing to exempt certain projects from sage-grouse protection compliance, without analyzing the degree to which such protections would apply or the environmental impact of making such protections optional (at the discretion of the State Director), BLM violates NEPA's 'hard look' requirements regarding direct and cumulative impacts to the human environment.

Summary: The BLM failed to evaluate the impacts of exempting certain projects from Greater Sage-Grouse protection compliance.

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

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

Land use planning-level decisions are broad in scope. For this reason, analysis is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. Because the decisions the BLM considers are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level.

In this case, the exemptions and conditions around Greater Sage-Grouse protection compliance found in the proposed plan allow more discretion in the application of lek buffers and intend to provide greater flexibility of application. Further, these changes intend to provide clarification on the use and flexibility of lek buffers as a tool for analyzing impacts on leks. Under the Proposed Plan, waivers, exemptions, and modifications would be granted only when meeting specific criteria designed to advance the management goals and objectives in the RMPs. The BLM’s proposed plan balances the risk of uncertainty against the benefits of management flexibility when considering changes to the 2015 plans.

For the reasons stated above, this protest is denied.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: The proposed plan nonetheless provides a new "Allocation Exception Process" that gives the BLM State Director the opportunity to grant exceptions to allocations and stipulations. NVCA PRMP/FEIS at 2-19. This includes in places where locations are thought to be "unsuitable," lacks the ecological potential to become suitable, and would not result in direct, indirect, or cumulative impacts on GRS and its habitat. Id. The application of these exceptions is not limited in any way, all compensatory mitigation would be voluntary, and the bar is "no adverse impacts" instead of "net conservation gain" for offsets. NVCA PRMP/FEIS at 2-20. Thus, the standard for granting exceptions is really only if the action maintains the status quo, at best, and no improvement or recovery of sage-grouse habitat is provided for by the plan to mitigate the ongoing death-by-a-thousand cuts that the exceptions would cause. The outcome of this unlimited stasis or destruction is unchecked and the current NEPA documents cannot sufficiently analyze the impacts of what is unknown.

Summary: The BLM fails to adequately analyze the impacts of the proposed allocation exception process.

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

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

Land use planning-level decisions are broad in scope. For this reason, analysis is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. Because the decisions the BLM considers are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an application for a permit to drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. Any assumptions, therefore, that the planning-level decisions described in the Proposed Plan would cause unaccounted for impacts in certain areas is inaccurate.

Further, the allocation exception process proposed in the Management Alignment Alternative and Proposed Plan Amendment provides the needed flexibility to allow various projects to be implemented across the sub-region. The BLM's proposed plan balances the risk of uncertainty against the benefits of management flexibility when considering changes to the 2015 plans. Accordingly, the Proposed Plan has taken a hard look at the direct, indirect, and cumulative impacts that may occur as a result of changes made to the 2015 plan.

For the reasons stated above, this protest is denied.

NEPA—Impacts Analysis—Greater Sage-Grouse

F.I.M., Corp. Farming and Livestock

Fred Fulstone

Issue Excerpt Text: The LUPA/FEIS should describe the threat of catastrophic wildfires that burn very large areas and that have become common in the recent years. large hot fires are directly correlated to the abundance of vegetation that accumulates when livestock grazing is prohibited and the regulatory prohibition of livestock grazing correlates to the decline in sage grouse populations.

Summary: The RMPAs did not adequately analyze the impact of wildfires on Greater Sage-Grouse habitat, the effect of livestock grazing on wildfire risk, and the effect of the plan decisions on wildfire resulting from decisions on livestock grazing.

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

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

The 2015 Approved RMP Amendment/Record of Decision included management actions associated with addressing the threats to wildfire and invasives, which are not being modified through this land use

planning effort; however, fire risk has been included as an adaptive management warning for Greater Sage-Grouse habitat within Appendix D, consistent with the adaptive management strategy contained in the State of Nevada’s Greater Sage-Grouse Conservation Plan (2014 as amended). Funding associated with implementation-level activities is outside the scope of this planning effort. Also, as noted on page 14 of the executive summary, impacts of new decisions on livestock grazing would be negligible, and thus effects on fire risk resulting from grazing will be commensurately negligible.

For the reasons stated above, this protest is denied.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Thus, the new proposed PRMP/FEIS willingness to allow site-specific adjustments to indicator values is inconsistent with the scientific recommendations that it claims as objectives. But habitat objectives are preemptively declared not achievable in all areas.

Summary: Site-specific adjustments to indicator values are inconsistent with scientific recommendations and in conflict with the use of best available science.

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

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

The Proposed RMP Amendment does not propose site-specific adjustments to indicator values. The BLM used the best available local science and worked in coordination with state agencies, the USFWS, the Forest Service, and the USGS to develop the most appropriate indicators and metrics. All citations are referenced in Table 2-2 of the 2015 Approved RMP Amendment/Record of Decision. Within the Management Alignment Alternative and Proposed Plan Amendment, the habitat objectives table (Table 2-2) were revised to incorporate best available science in coordination with representatives from the SETT, USFWS, Nevada Department of Wildlife (NDOW), California Department of Fish and Wildlife (CDFW), Forest Service, USGS, University of Nevada-Reno (UNR), University of California, appropriate local agencies, and the BLM. The team would review and incorporate the best available science and recommend adjustments based on regionally and locally derived data if deemed appropriate.

For the reasons stated above, this protest is denied.

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: WWP et al . (2018) commented that the agency's reliance on and analysis of the recent studies regarding grass height and nest success was flawed. See WWP et al . 2018 at 40 et seq . We provided more information for the agency to consider regarding the need for better analysis and to include Habitat Objectives for forbs, based on the scientific support for the sage-grouse's nutritional need for forbs. Id . And yet, the agency did not address this oversight as it revised its habitat objectives, despite NEPA's instructions to incorporate scientific analysis of impacts.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: Thus, the PRMP/FEIS claim to need to modify the habitat objectives is based less on the science and more on the concern that livestock grazing is incompatible with maintaining what grouse truly need to thrive. Moreover, the focus on nest success misses the point that grass height may be significant for nest-site selection or brood success or nutritional opportunities for the hen and her chicks.

Summary: Basing habitat objectives on nesting success fails to account for nest-site selection, brood success, and nutritional opportunities for hen and chicks.

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

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

The habitat objectives highlight the integration of best available science, and the Proposed RMP Amendment/Final EIS does not change the habitat metrics from the 2015 plans. The BLM used the best available local science and worked in coordination with state agencies, the USFWS, the Forest Service, and the USGS to develop the most appropriate indicators and metrics. The habitat objectives incorporate nesting success, nest-site selection, brood success, nutritional opportunities for hen and chicks, and other factors. All citations are referenced in Table 2-2 of the 2015 Approved RMP Amendment/Record of Decision.

Within the Management Alignment Alternative and Proposed Plan Amendment, the habitat objectives table (Table 2-2) would be revised to incorporate best available science in coordination with representatives from the SETT, USFWS, NDOW, CDFW, Forest Service, USGS, UNR, University of California, appropriate local agencies, and the BLM. The team would review and incorporate the best available science and recommend adjustments based on regionally and locally derived data if deemed appropriate.

For the reason stated above, the protest is denied.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: However, there is no analysis of outcome-based grazing in the ARMPA and BLM includes only a few vague, conclusory explanatory sentences in the PRMP/FEIS. Outcome-based grazing is a concept that BLM came up with well after 2015, so it could not have been considered in the 2015 ARMPA process. Therefore, in reality BLM will implement a new management paradigm for grazing outside the planning process, with virtually no public input or analysis.

Western Watersheds Project**Greta Anderson**

Issue Excerpt Text: Thus, the BLM has not provided enough information about the new "desired outcomes" that will be applied to livestock grazing management. By simply citing to Coates et al. 2017(a), the BLM is not addressing which parameters it is adopting in the new amendment.

Summary: The Proposed RMP Amendment/Final EIS fails to provide analysis to support statements about the effects of outcome-based grazing.

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

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

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

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

Outcome-based grazing is a component of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS only as a clarification topic that falls under the scope of implementation. Site-specific NEPA is currently underway for approximately five grazing allotment permit renewal environmental assessments in the Nevada and Northeastern California sub-region to incorporate and analyze outcome-based grazing systems. Site-specific analysis and public scoping will be conducted on all of the environmental assessments and are not required by the Proposed RMP Amendment/Final EIS. Adaptive management is encouraged by BLM regulations (e.g., 43 CFR 46.145) and, where appropriate, analyzed at the implementation level. Because outcome-based grazing responds to the attainment of desired conditions and their maintenance, corrective actions ensure that long-term effects are negligible. Impacts are speculative, and where possible, would be immaterial on the time scales relevant to land use planning.

The Nevada and Northeastern California Proposed RMP Amendment/Final EIS does not include new desired conditions (or habitat objectives) for grazing. The habitat objectives highlight the integration of best available science, and the Proposed RMP Amendment/Final EIS does not change the habitat indicators or metrics from the 2015 plans. Within the Management Alignment Alternative and Proposed Plan Amendment, the habitat objectives table (Table 2-2) would be revised to incorporate best available science in coordination with representatives from the SETT, USFWS, NDOW, CDFW, Forest Service, USGS, UNR, University of California, appropriate local agencies, and the BLM. The team would review and incorporate the best available science and recommend adjustments based on regionally and locally derived data if deemed appropriate.

The Coates et al. 2017a citation that the protest cites as an inadequate basis for establishing “parameters” is not referenced as a stand-alone support for any desired condition, nor is it used in lieu of types of conditions or measurable outcomes adopted from 2015 (e.g., Table 2-2, page 2-25, and page 3-3). The 2015 habitat objectives table contains broad goals and specific, usually quantifiable or measurable outcomes, which meet the BLM’s policy for describing desired outcomes.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts on Greater Sage-Grouse in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; therefore, the protest is denied.

NEPA—Impacts Analysis—Oil and Gas

The Wilderness Society

Nada Culver

Issue Excerpt Text: Accordingly, the Final EIS should, but does not, provide and evaluate the following information: The number of parcels and number of acres leased for oil and gas development in sage-grouse habitat since 2015; Historical data showing the number of parcels and acres leased in sage-grouse habitat such that post-2015 data may be contextualized and trends may be observed. This information’s absence renders the Proposed RMPA and Final EIS unlawful.

Summary: The BLM has not provided or analyzed sufficient information regarding the number of parcels and number of acres leased for oil and gas development in Greater Sage-Grouse habitat.

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

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

In Section 4.13 and Appendix H of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the analysis discusses recent oil and gas leasing development and provides a detailed tabulation of recent leasing activity, which in combination with the foreseeable development outlined in the RFD (adopted in large part from 2015), provides an appropriate estimation of foreseeable effects. The relationship of the 2018 plans to the 2015 plans, as it relates to the RFD, is discussed throughout the analysis (e.g. Section 4.2 and Section 4.13.1), and notes that conditions have changed negligibly in relation to foreseeable development.

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

Because the decisions the BLM considers are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground

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

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts on oil and gas in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; therefore, the protest is denied.

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

Issue Excerpt Text: BLM must "make clear that such information is lacking" and explain why it is either exorbitantly costly or impossible to obtain. 40 C.F.R. § 1502.22(b).

Summary: The BLM failed to adequately examine the environmental impacts of removing SFAs (including indirect effects from mineral development).

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

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. The BLM began a NEPA analysis on the SFA recommendation and determined in the DEIS that less than 10,000 acres range-wide would be impacted by hard rock mining and thus determined that the withdrawal was not necessary and cancelled the application.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

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

The BLM adequately analyzed the impacts of removing SFAs in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; therefore, this protest is denied.

[NEPA—Impacts Analysis—Other](#)

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: As a result, the RMPA fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions. It may be that BLM's position will be that this analysis/disclosure will occur at the project level, and that the RMPA provides only broad programmatic guidance that will not cause restrictions to recreational access at the site-specific level. This recognition may be acceptable to BRC, but at a minimum we would like to see such an interpretation confirmed through the protest process. Alternatively, impacts to recreation must be disclosed and more thoroughly analyzed.

BlueRibbon Coalition

Paul Turcke

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

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: The proposed buffer sizes seem to primarily affect recreation through inclusion of distance prescriptions for "linear features (roads)..." RMPA at Appx. B-1. Neither BLM nor any other agency has ever properly analyzed the impacts of differing types of "linear structures" and their associated uses. A paved road, an all-weather county road, a dirt two-track, and dirt single track trail all represent vastly different scenarios, use patterns, nature of use, and associated impacts.

Summary: The BLM has failed to analyze the impacts of certain proposed lek buffer sizes on recreation.

Response: NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15). NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Proposed Plan. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The BLM analyzed the effects of the recreation planning decisions in detail in the 2015 Final EIS and Approved RMP Amendment/Record of Decision. In that analysis, the BLM evaluated the direct, indirect, and cumulative effects of recreation planning decisions on recreation use and opportunities in the decision area. It did not identify any new potentially significant impacts on recreation to warrant new disclosure in the Proposed RMP Amendment/Final EIS (see p. 1-13).

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

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

It is not necessary to carry an issue or impact topic forward for detailed analysis simply because a resource is affected. Detailed analysis under each alternative should be reserved for significant issues (an issue associated with a significant direct, indirect, or cumulative impact, or where analysis is necessary to determine the significance of impacts; see BLM NEPA Handbook H-1790-1).

During the planning process, the BLM determined that the actions proposed in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS would not have any impacts on recreation. As such, recreation was not a significant issue; consequently, there was no need for the BLM to analyze the impacts on recreation in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS, and the BLM properly dismissed recreation from detailed analysis.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts on recreation in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; the protest is denied.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: However, without more specific detail on some issues to provide guidance this leaves too much room for interpretation/application that jeopardizes existing rights - such as travel and transportation management restrictions which can be critical to development of a mine (and, thus, a VER).I

Summary: The BLM failed to provide and adequately examine information relating to activities that may jeopardize existing rights.

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

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

Section 1.4 of the Nevada and Northeastern California Proposed RMP Amendment/Final EIS recognizes valid existing rights. The Proposed RMP Amendment/Final EIS does not diminish any rights afforded by previously authorized leases, permits, or other land use authorizations.

The Nevada and Northeastern California Proposed RMP Amendment/Final EIS does not violate valid existing rights; consequently, the BLM did not fail to provide and adequately examine information relating to activities that may jeopardize existing rights. The protest is denied.

NEPA—Mitigation

The Wilderness Society

Nada Culver

Issue Excerpt Text: Based on BLM's lack of commitment to enforcing compensatory mitigation, the agency cannot rely on the effectiveness of this tool to address harm to habitat, under the standards set out by NEPA and related case law. By statute and regulation, an environmental impact statement must include a discussion of possible mitigation measures to avoid adverse environmental impacts. See 40 C.F.R. §§ 1502.14(f), 1502.16(h); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

The Wilderness Society

Nada Culver

Issue Excerpt Text: Of course, to the extent states require or permit payment of funds, it is unclear how BLM will reconcile this with the prohibition on accepting a monetary contribution for implementing compensatory mitigation set out in IM 2019-18. Overall, in fact, it is unclear how if BLM cannot enforce compensatory mitigation under its own authority, it can then enforce compensatory mitigation that states require - and BLM does not provide an explanation.

Summary: The BLM's compensatory mitigation tool as outlined in the Proposed Plan is so uncertain and undefined that it is not enforceable/effective under the standards set out by NEPA and the related case law.

Response: NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f) and 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-018, the BLM will evaluate any compensatory mitigation measures the state requires in all action alternatives in its NEPA analysis, and incorporate those measures as an enforceable condition of the BLM's authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent

does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

On pages 2-13 to 2-19 of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment, the BLM makes the following commitment: “In all Greater Sage-Grouse habitat, before authorizing third-party actions that result in habitat loss and degradation within the State of Nevada, the BLM will complete the following steps, in alignment with the State of Nevada’s Greater Sage-Grouse Conservation Plan (2014, as amended), including avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions:…2) Incorporate state required or recommended mitigation into the BLM’s NEPA decision-making process, if the State of Nevada’s Sagebrush Ecosystem Technical determines that there are unacceptable residual impacts on Greater Sage-Grouse or its habitat and compensatory mitigation is required as a part of State policy or authorization, or if a proponent voluntarily offers mitigation.” On December 6, 2018, Nevada Governor Brian Sandoval signed Executive Order 2018-32, requiring the use of the State’s Conservation Credit System to mitigate impacts from projects within Greater Sage-Grouse habitat on state and federal lands in Nevada.

For the reasons stated above, this protest is denied.

The Wilderness Society

Nada Culver

Issue Excerpt Text: The function of the 2015 Sage-grouse Plans depends on the agency's commitment to carrying out compensatory mitigation. The states' plans, incorporated into the BLM plans, rely on compensatory mitigation to address residual impacts and/or to justify waivers, exceptions or modifications from oil and gas lease stipulations. In addition, the FWS cited compensatory mitigation as one of the "regulatory mechanisms and conservation efforts" that justified its finding the 2015 Sage-grouse 23 Plans provided sufficient certainty the greater sage-grouse no longer warranted listing under the ESA.

Summary: Removal of compensatory mitigation standards in the Proposed Plan will affect the USFWS finding that listing of Greater Sage-Grouse under the ESA was not warranted.

Response: The policy objectives of Manual 6840 include the initiation of “proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA” (6840.02(B)).

The manual further states that “The BLM should provide technical assistance to, and coordinate with, appropriate state agencies and other agencies, organizations, or private landowners developing and implementing conservation plans,” and that “The BLM should seek partnerships and cooperative relationships with other agencies, organizations, governments, and interested parties for the purposes of conservation of sensitive species and compliance with the ESA.” These include “State and local governments, such as governor’s offices, County commissioners, and City councils; County extension units, watershed councils, and resource conservation districts; and interested landowners.”

The DOI’s fish and wildlife policy, codified at 43 CFR Part 24, describes coordination and cooperation between federal and state governments relating to the management of fish and wildlife. It recognizes that states generally “possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State” (43 CFR 24.3).

On pages 2-13 to 2-19 of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the BLM makes the following commitment: “In all Greater Sage-Grouse habitat, before authorizing third-party actions that result in habitat loss and degradation within the State of

Nevada, the BLM will complete the following steps, in alignment with the State of Nevada’s Greater Sage-Grouse Conservation Plan (2014, as amended), including avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions:…2) Incorporate state required or recommended mitigation into the BLM’s NEPA decision-making process, if the State of Nevada’s Sagebrush Ecosystem Technical determines that there are unacceptable residual impacts on Greater Sage-Grouse or its habitat and compensatory mitigation is required as a part of State policy or authorization, or if a proponent voluntarily offers mitigation.” On December 6, 2018, Nevada Governor Brian Sandoval signed Executive Order 2018-32, requiring the use of the State’s Conservation Credit System to mitigate impacts from projects within Greater Sage-Grouse habitat on state and federal lands in Nevada.

For the reasons stated above, this protest is denied.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Thus, the BLM may not require that WEX or others with non-discretionary authorization rights provide for mitigation to improve habitat or provide for a net gain. *Robertson v. Citizens to Preserve Methow Valley*, 490 U.S. 332, 358 (1989).

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: While WEX strongly supports the Management Alignment Alternative, WEX remains concerned with continuing reference to requiring "Net Conservation Gain" for reasons noted above. Continued application of this standard is unsupported by law. In addition, it is inconsistent with national policies (rescinding compensatory mitigation requirements and policies for landscape level planning).

Summary: The BLM’s continued reference to net conservation gain would violate FLPMA and other applicable laws.

Response: Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”

BLM land use planning decisions must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with the purposes, policies, and programs of federal laws and regulations (43 CFR 1610.3-2(a)).

The DOI’s fish and wildlife policy, codified at 43 CFR Part 24, describes coordination and cooperation between federal and state governments relating to the management of fish and wildlife. It recognizes that states generally “possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State” (43 CFR 24.3).

On pages 2-13 to 2-19 of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment, the BLM makes the following commitment: “In all Greater Sage-Grouse habitat, before authorizing third-party actions that result in habitat loss and degradation within the State of Nevada, the BLM will complete the following steps, in alignment with the State of Nevada’s Greater Sage-Grouse Conservation Plan (2014, as amended), including avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions:…2) Incorporate state required or recommended mitigation into the BLM’s NEPA decision-making process, if the State of Nevada’s Sagebrush Ecosystem Technical determines that there are unacceptable residual impacts on Greater Sage-Grouse or its habitat and compensatory mitigation is required as a part of State policy or authorization, or if a proponent

voluntarily offers mitigation.” On December 6, 2018, Nevada Governor Brian Sandoval signed Executive Order 2018-32, requiring the use of the State’s Conservation Credit System to mitigate impacts from projects within Greater Sage-Grouse habitat on state and federal lands in Nevada.

To the extent the protestor is objecting to the language of the Proposed Plan as in conflict with the Mining Law of 1872, the BLM recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law through land use planning decisions. Accordingly, the BLM will apply management actions in the Proposed RMP Amendment only to the extent they are consistent with the Mining Law and BLM’s regulations.

For the reasons stated above, this protest is denied.

NEPA—Public Participation

The Wilderness Society

Nada Culver

Issue Excerpt Text: The Proposed RMPA, along with the other proposed amendments, as discussed in detail in Section III, below, and similar to the language in IM 2019-018, set out conflicting provisions regarding whether BLM can or will enforce federal, voluntary or state requirements for compensatory mitigation. Further, they rely on state guidance that has yet to be issued or is likely to be challenged as unenforceable, making it even more difficult for the public to discern what the mitigation approach in each plan could be, as well as how it could function across the range of the greater sage-grouse, which is vital for analyzing the cumulative impacts of mitigation measures for this species.

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

Summary: The BLM’s Proposed RMP Amendment is not clear enough for the public to understand the intended action and its effectiveness. The BLM has also failed to provide the public an opportunity to comment on changes to the Proposed Plan between the draft and final document.

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

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

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

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

The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS complies with the requirements of 40 CFR 1500.2(b). This protest is denied.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: The other remaining restrictions and designations in the LUPA continue to impose harm and were based on erroneous and incomplete data injected at the eleventh hour without providing for proper public participation.

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

Response: 40 CFR 1506.6(a) states that federal agencies shall “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.”

In compliance with 40 CFR 1506.6(a), the BLM involved the public to the extent required and necessary in preparing the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Chapter 5 outlines the efforts undertaken by the BLM throughout the process of developing the Proposed RMP Amendment/Final EIS to ensure the process remained open and inclusive, to the extent possible.

The BLM met its obligations to involve the public in the planning process to the extent possible. This protest is denied.

NEPA—Purpose and Need

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

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

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

The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project.

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

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

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

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

Finally, states are not "project proponents" who have applied to the BLM to use the public lands. Section 202(c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with federal law and the purposes of this act." The DOI's fish and wildlife policy, codified at 43 CFR Part 24, describes coordination and cooperation between federal and state governments relating to the management of fish and wildlife. It recognizes that states generally "possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State" (43 CFR 24.3). Moreover, this effort builds upon the comprehensive effort BLM completed in 2015, which considered a wide range of alternatives for conservation of Greater-Sage Grouse and its habitat. This

planning effort is not intended to re-consider the entirety of BLM's 2015 decisions but rather to consider targeted changes in consideration of the state's primary role in management of wildlife.

The BLM properly established the purpose and need for the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

***F.I.M., Corp. Farming and Livestock
Fred Fulstone***

Issue Excerpt Text: LUPA/FEIS is an excellent opportunity to clearly state that the goal of your plan is to have more sage grouse in the future; LUPA/FEIS failed to do that and consequently has no measure of success of agency management actions.

Summary: The BLM failed to include a measure of success for agency management actions in the purpose and need.

Response: In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). A carefully crafted purpose and need statement can be an effective tool in controlling the scope of the analysis, which dictates the range of alternatives. The purpose and need statement also provides the framework for issue identification (i.e., range of alternatives developed; BLM Manual H-1790-1).

While the purpose and need does not include a measure of success for agency management actions in the purpose and need, the purpose and need adequately described the agency's objectives and provided a framework for issue identification (i.e., the range of alternatives developed; BLM Manual H-1790-1). These alternatives not only address the purpose and need but also include means to evaluate and monitor the Proposed Plan in order to "draw conclusions on whether management actions are meeting stated objectives, and if not, why. Conclusions are then used to make recommendations on whether to continue current management or to identify what changes need to be made in management practices to meet objectives" (Section 2.6 of the Nevada and Northeastern California Proposed RMP Amendment/Final EIS). The BLM, therefore, has properly established the purpose and need for the Proposed Plan, despite the exclusion of a specific measure of success from the purpose and need.

The BLM properly established the purpose and need for the Nevada and Northeastern California Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

NEPA—Range of Alternatives

Western Watersheds Project

Greta Anderson

Issue Excerpt Text: Based on these inadequacies, we recommended that BLM create and fully analyze a Conservation Alternative based on the best available science to correct the myriad deficiencies in the 2015 Nevada - Northeastern California ARMPA. WWP et al . 2018. This is an eminently reasonable alternative, as it follows the recommendations of the agency's own scientific advisory team (NTT 2011), would implement habitat protections based on the best available science, and maximize the potential to recover greater sage-grouse to healthy population levels such that ESA listing becomes unnecessary, a key part of the purpose and need for the original ARMPAs. Yet BLM failed to even consider such an alternative, even though it would be eminently reasonable and implementable. In failing to consider a range of reasonable alternatives, BLM's PRMP EIS for Nevada-Northeastern California violates NEPA's 'range of alternatives' requirement.

The Wilderness Society**Nada Culver**

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

WildLands Defense**Katie Fite**

Issue Excerpt Text: We Protest the failure to consider a reasonable range of alternatives. There are only two alternatives- No Action and Management Alignment Alternative (MAA). A broad range of alternatives must be addressed, especially those significantly add and strengthen habitat and population protections. WLD suggested alternative and mitigation actions to minimize harm, allow for passive restoration, and better buffer lands from the adverse effects of climate change., The FEIS egregiously fails to address each of these very important issues.

Summary: The BLM failed to propose and fully analyze other alternatives, including a conservation alternative aimed at maximizing the potential for Greater Sage-Grouse population recovery to avoid ESA listing or alternatives proposed by organizations such as the Wilderness Society.

Response: When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives. For alternatives eliminated from detailed study, NEPA requires an agency to briefly discuss the reasons for eliminating these alternatives (40 CFR 1502.14(a)).

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives in detail, which are described in Section 2.3. The alternatives analyzed in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS cover the full spectrum by varying in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

A conservation-based alternative would not enhance coordination with the state or improve alignment with state management of Greater Sage-Grouse, and would therefore fail to meet the purpose and need of the RMP Amendment. By failing to meet the purpose and need, the recommended alternative for a conservation-based plan is unreasonable. In the 2015 Great Basin Plan Amendments, which the 2018 Proposed Plan/Final EIS incorporates elements of by reference, several conservation-oriented alternatives were analyzed (namely the National Technical Team Report Alternative and Citizen Groups' Recommended Alternative One). These two alternatives would provide more stringent protections than the existing and proposed sage-grouse plan amendments. Under each of those alternatives, land uses such as ROW development, oil and gas development, and vegetation treatments for fire reduction would be restricted more than the existing or proposed plan amendments. The scope of that planning effort was broader than the current proposal, which specifically interrogates the potential for stronger alignment between state and federal species management strategies.

The BLM considered a range of reasonable alternatives in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA; accordingly, this protest is denied.

WildLands Defense**Katie Fite**

Issue Excerpt Text: BLM did not even fairly evaluate the No Action alternative - let alone the Zinke EIS alternative. We Protest this.

Summary: The BLM did not adequately evaluate the no action alternative.

Response: Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14). The agency must briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if it is determined not to meet the proposed action's purpose and need; determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook, H-1790-I, Section 6.6.3).

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives in detail, which are described in Section 2.3. The alternatives analyzed cover the full spectrum by varying in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration. The BLM may choose to adopt one of these alternative or a combination of alternatives.

The suggestion that an alternative is “fairly” or “unfairly” evaluated is too vague an assertion; the agency cannot constructively respond to it. The BLM analyzed issues commensurate with the importance and complexity of impact for both the no action and the action alternative.

The BLM considered a range of reasonable alternatives in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA; accordingly, this protest is denied.

WildLands Defense**Katie Fite**

See also: *FLPMA—ACECs/RNAs*

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

Summary: In its range of alternatives, the BLM failed to consider including ACEC protections necessary to protect Greater Sage-Grouse from irreparable harm.

Response: When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives. For alternatives eliminated from detailed study, NEPA requires an agency to briefly discuss the reasons for eliminating them (40 CFR 1502.14(a)).

The BLM must analyze a range of reasonable of alternatives, but not every possible alternative to a proposed action: “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable’ alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the

applicant” (BLM NEPA Handbook, H-1790-1, at 50 [citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981]; see also 40 CFR 1502.14).

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives in detail, which are described in Section 2.3. The alternatives analyzed cover the full spectrum by varying in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

ACEC nomination would not meet the purpose and need of the proposed plan and is, therefore, an unreasonable alternative.

The BLM appropriately eliminated ACECs from detailed consideration in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA; therefore, this protest is denied.

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: The RMPA offers only "limited" designation management options and thus goes too far in eliminating the prospect or continuation of appropriate "open" travel areas.

Summary: The BLM fails to consider a range of alternatives by only offering “limited” designated management options, rather than continuing to consider appropriate “open” travel areas.

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

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

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS analyzed two alternatives, which are described in Section 2.3. The alternatives analyzed cover the full spectrum by varying in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Designating areas as open to off-highway vehicle use would not enhance coordination with the state or improve alignment with state management of Greater Sage-Grouse, and would therefore fail to meet the purpose and need of the RMP Amendment. By failing to meet the purpose and need, the recommended alternative for road designation changes is unreasonable. Furthermore, a travel management plan is already in place in northeastern California and it was outside of the scope of the 2015 land use plan amendment as well.

The BLM considered a range of reasonable alternatives in the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA; accordingly, this protest is denied.

NEPA—Response to Public Comments

WildLands Defense

Katie Fite

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

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: The BLM failed to adequately respond to Eureka County's comments and, while the introduction references the BLM's efforts in the 2018 Plan to incorporate additional and new information that is considered the best available and current science, further detail and analysis of the science available in 2015 as well as the new science available is important to document the basis for certain changes.

Eureka County, Nevada

Jake Tibbitts

Issue Excerpt Text: BLM failed to address Eureka County's comments and the 2018 Plan includes inconsistencies with Eureka County plans and policies that must be addressed including but not limited to: 1- We requested BLM address lek buffers not automatically be applied to or a forum for "justifiable departures" is not required in flat or rolling terrain, based on the best available science; 2- We requested analysis of the effects of predators and predator control; 3- We requested that the EIS address Wild Horse and Burros and Wildland Fire issues as we are continuing to see significant impacts since 2015 (i.e., an additional 10,000 horses have been born in Nevada and almost 2 million acres of rangeland have burned since 2015 with additional impacts); 4- We requested consideration of the inconsistencies and problems created with Eureka County's Water Management Planning and potential for solar development as well as adequate socioeconomic analysis; 5- We requested numerous revisions to Appendix C which were not addressed and include important components related to resource management, site-specific analysis, current ecological state, existing uses including roads; 6- The NTT Report has been discredited and criticized and includes information inconsistent with the best available science (both in 2015 and significant science since then). Any continued reliance on Page 4 of 11 the NTT Report is inconsistent with Eureka County's plans and policies to use the best available science and data to support land use planning decisions. Restrictions that were based on the NTT Report and conflict with best available science and Eureka County's plans and policies include lek buffers; vegetation objectives; disturbance caps and noise limits. 7- The BLM mitigation standard requiring a Net Conservation Gain is inconsistent with the plain language of FLPMA. Mitigation must be based on ground-truthing and site-specific data as the maps still are based on modeling and already are outdated given they do not include the latest information on destruction of habitat that occurred in the 2018 wildfires.

Jake Tibbitts

Issue Excerpt Text: Eureka County commented previously that many lands previously identified as suitable for disposal in prior RMPS do not contain GRSG habitat and should be retained on the maps as available and this would be borne out through ground truthing and also allow for mitigation as an option to allow land tenure changes even in GRSG habitat. This comment was not adequately addressed and creates significant issues and inconsistencies with Eureka County plans and policies.

Eureka County, Nevada**Jake Tibbitts**

Issue Excerpt Text: The BLM's generalized response that "BLM's goal is to promote consistency and alignment with each State's management for Greater Sage-Grouse, including the approach to implementing actions to reduce threats to sage-grouse" does not address specific issues Eureka County raised in its comments that highlighted the inconsistencies of the 2018 Plan with the statutory framework and Eureka County's plan and policies.

Summary: The BLM failed to meet its obligations in responding to public comments because it did not respond to or incorporate any mitigation measures or alternatives suggested in scoping by various organizations and agencies.

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

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

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

The BLM adequately responded to public comments on the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

The Wilderness Society**Nada Culver**

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

BlueRibbon Coalition**Paul Turcke**

Issue Excerpt Text: The method of responding to comments here does not comply with NEPA and its implementing regulations. The approach chosen fails to identify individual comments and the response

to them. The agency's method of responding to comments here does not comply with governing regulations or other applicable law.

Summary: The BLM failed to meet its obligations in responding to public comments because its summary and response to those comments is so broad that they do not accurately represent the comments submitted.

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

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

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

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

The BLM adequately responded to public comments on the Nevada and Northeastern California Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

NEPA—Supplemental EIS

Western Watersheds Project

Greta Anderson

See also: FLPMA—General

Issue Excerpt Text: We protest that the PRMP/FEIS makes a number of substantive changes to the 2015 ARMPA through various extra-planning actions. BLM will implement several "clarifications" of previous management decisions regarding livestock grazing through plan maintenance or unspecified plan implementation. These clarifications defy legitimate planning processes because they are unclear, defer actual decisions, lack analysis of their impacts, do not allow appropriate public input, and are inaccurate.

The Wilderness Society

Nada Culver

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

The Wilderness Society
Nada Culver

See also: *FLPMA—General*

Issue Excerpt Text: We protest that the PRMP/FEIS makes a number of substantive changes to the 2015 ARMPA through various extra-planning actions. BLM will implement several "clarifications" of previous management decisions regarding livestock grazing through plan maintenance or unspecified plan implementation. These clarifications defy legitimate planning processes because they are unclear, defer actual decisions, lack analysis of their impacts, do not allow appropriate public input, and are inaccurate.

Summary: Changes made regarding compensatory mitigation and lease stipulation exemption and modification determinations between the Draft EIS and Final EIS warrant preparation of a supplemental EIS.

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

The clarification to BLM's mitigation policy does not represent a substantial change from the Draft EIS. Rather, the BLM is clarifying the role that state requirements play in guiding the BLM's decision to evaluate compensatory mitigation as part of proposed actions. The BLM will still evaluate compensatory mitigation in the same way it will include other state requirements as part of a proposed action in the BLM's NEPA analysis. In addition, many of the conservation objectives and management restrictions in the Proposed Plan were carried forward from the Approved 2015 RMP Amendments. Compensatory mitigation to a "net gain" standard was but a small part of the comprehensive sage-grouse planning framework. Seven components are outlined under section ES 3.3, which are not affected by the changes in the Propose Plan and which will remain in place. Many of the other modifications made by this planning efforts are adjustments, which build upon, 2015 decisions. Moreover, in fiscal year 2018, the BLM funded approximately \$29 million in Greater Sage-Grouse management actions resulting in approximately 500,000 acres of treated Greater Sage-Grouse habitat and expects to invest another \$17 million of habitat management projects in fiscal year 2019.

Further, the BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.13) identifies all actions that were considered in the cumulative impacts analysis, on range- and zone-wide bases and including the in-progress Forest Service plans. It provides a basis for the cumulative impacts analysis for each affected resource.

Because the clarification to the BLM's mitigation policy does not represent a substantial change from the Draft EIS and effects have been adequately disclosed in the Proposed RMP Amendment/Final EIS, the BLM does not need to prepare a supplemental EIS; accordingly, this protest is denied.

WildLands Defense**Katie Fite**

See also: NEPA—Best Available Science

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

Summary: The BLM has failed to provide adequate citations, sources, and data in Chapter 2 and in the tables and analyses throughout the EIS, which warrants a supplemental EIS.

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

Citations were included where appropriate throughout Chapter 2, and all tables in Chapter 2 include data sources at the bottom of each table.

The BLM has provided citations and sources to the data contained in the Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

NEPA—Tiering/Incorporation by Reference**The Wilderness Society****Nada Culver**

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

The Wilderness Society**Nada Culver**

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

The Wilderness Society**Nada Culver**

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

Summary: It is insufficient for the BLM to rely on the analysis and alternative in the 2015 plans for the analysis of the Proposed RMP Amendment/Final EIS because there are major differences in plan components between the amendments from 2015 and this planning effort.

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

The BLM is using incorporation by reference, not tiering, to streamline its analysis consistent with administrative priorities. Incorporation of the 2015 EIS by reference is allowable under BLM regulations and is appropriate in this circumstance, because the purpose of this action builds on the goals and objectives of the 2015 EIS. Further, the CEQ 40 Questions, Question 24c, states that, “Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa.” The BLM has summarized and referenced applicable aspects of the 2015 EIS throughout the 2018 EIS, but especially in Chapters 2 and 4.

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

For the reasons stated above, this protest is denied.

Other Laws

American Exploration & Mining Association

Laura Skaer

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

American Exploration & Mining Association**Laura Skaer**

Issue Excerpt Text: The Proposed Plan fails to comply with the National Materials and Minerals Policy, Research and Development Act. The 2015 restrictions incorporated by reference and retained in the Proposed Plan that place an overly restrictive burden on locatable mineral operations conflict with the National Materials and Minerals Policy, Research and Development Act of 1980 (30 USC § 1601 et seq., "MMPRDA"), which Congress enacted four years after passing FLPMA to reiterate and reinforce the mineral policies established in FLPMA and the Mining and Mineral Policy Act.

American Exploration & Mining Association**Laura Skaer**

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

American Exploration & Mining Association**Laura Skaer**

Issue Excerpt Text: BLM needs to clarify how it will handle situations when the State requires compensatory mitigation, in light of rights granted under the Mining Law to develop and occupy both unpatented and patented mineral claims.

American Exploration & Mining Association**Laura Skaer**

See also: *FLPMA—Locatable Minerals*

Issue Excerpt Text: Prohibiting or restricting mineral exploration and development on lands co-located with sage-grouse habitat, by way of limits placed upon surface disturbance,⁶ travel and transportation management (roads),⁷ application of lek buffers,⁸ seasonal timing restrictions,⁹ and compensatory mitigation ¹⁰ is contrary to the rights granted by § 22 of the Mining Law, and therefore the Proposed Plan is in violation of the Mining Law and FLPMA, and cannot be implemented.

American Exploration & Mining Association**Laura Skaer**

See also: *FLPMA—Multiple Use*

Issue Excerpt Text: The Proposed Plan fails to comply with FLPMA's multiple use and sustained yield mandate under § 102(a)(7), and in the land use planning title of FLPMA at §202(c)(1), and the directive under § 102(a)(12), to recognize the Nation's need for domestic sources of AEMA Protest of the Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendments and Final Environmental Impact Statement Page 21 of 28 minerals. Further, the multiple and cumulative restrictions on surface use retained from the 2015 Amendments in the Proposed Plan creates widespread, and cumulative de facto withdrawals across the entire planning area, which violate the multiple-use mandates under FLPMA §102(a)(7), and the directive under § 1732(b) that clearly establishes that FLPMA does not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including but not limited to, rights of ingress and egress.

American Exploration & Mining Association**Laura Skaer**

See also: *FLPMA—Locatable Minerals*

Issue Excerpt Text: Despite, and in direct conflict with this legal obligation, BLM nevertheless has retained severe restrictions and prohibitions from the 2015 Amendments including: Section 2.6.2, Action SSS 2; Section 2.6.3, GRS-GEN-DC-002, GRS-GEN-ST-004-Standard (2015 PLUPA/DEIS);

Sections 2.6.2 and 2.6.3: Action CTTM 2, Action CTTM 3, Action CTTM 5, Action CTTM 6, GRSG-RT-ST-081-Standard, GRSG-RT-ST-083-Standard, GRSG-RT-GL-089-Guideline; Action SSS 2; Appendix B; Section 2.6.2, Action CTTM 2, Action CTTM 3; Section 2.6.3, GRSG-RT-ST-081-Standard (2015 PLUPA/DEIS).

American Exploration & Mining Association

Laura Skaer

Issue Excerpt Text: Throughout the PRMPA/FEIS, BLM refers to "Valid Existing Rights" (hereinafter "VERs") with the implication that the impact of certain restrictions, guidelines, and objectives would be mitigated because the VER would be protected. For example, BLM in Appendix G: Response to Substantive Public Comments makes the following statement numerous times: "All proposed actions contained in RMPA will be subject to valid existing rights, including those associated with the 1872 Mining Law." As another example, BLM refers to VERs two times in discussing the Proposed mitigation protocol/standard in Table 2-2 (2-13 to 2-19). For locatable minerals the term "valid existing right," is a specific term that is reserved for those claims after a "discovery" of a valuable mineral deposit has been made. Therefore, the proposal to honor VERs does not clearly encompass and protect the Mining Law Section 22 rights associated with claims prior to a discovery of a valuable mineral deposit. In the context of the PRMPA, VERs must clearly mean all mining claims in good standing - with or without a discovery.

American Exploration & Mining Association

Laura Skaer

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

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Limitations inherent in PHMA, GHMA, and OHMA under the 2018 plan threaten to interfere with WEX's property and legal rights under the 1872 mining law including the potential threat of the economic viability of projects, and thus the long-term economic impacts of the local communities who rely on the projects.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Proposals such as the No Action Alternative to limit development now not only violate the US Mining Law, they provide no meaningful benefit to the greater sage-grouse or its habitat in the area.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Such restrictions are inconsistent with the MMPDA of 1980.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: Thus, any mandate for compensatory mitigation or net conservation gain is unlawful and would interfere with federal rights under the 1872 Mining Law.

Western Exploration LLC

Darcy Marud

Issue Excerpt Text: That standard is used to impose costly compensatory mitigation on a proponent such as WEX is an unlawful interference with WEX's rights under the 1872 Mining Law, existign authorized uses and its VERs.

Summary: The 2018 restrictions on mining and mineral development and those 2015 amendments retained in the Proposed RMP Amendment/Final EIS that contain provisions that restrict mining exploration and development all violate the Mining Law (30 USC 21a et seq); the Mining and Minerals Policy Act (30 USC 21a); NEPA; the National Materials and Minerals Policy, Research and Development Act; and the DQA and their attendant rights (i.e., valid existing rights).

Response: The BLM implements land use planning decisions differently with respect to authorizing uses related to or authorized under the Mining Law of 1872. This difference is in how land use planning applies to authorizations under the Mining Law is not tied to “valid existing rights” in a particular mining claim or site, or the existence of a mining claim or site. Rather, it stems from the language of Section 302(b) of FLPMA, which specifically states that it does not amend the Mining Law, except in four ways stated, none which is land use planning (see 43 USC 1732(b)). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws.

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

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

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

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent they are consistent with the Mining Law of 1872, other relevant statutes, regulations, and Department policy, this protest is denied.