



*Bureau of Land Management and
Forest Service
Protest Resolution Report*

**Nevada and Northeastern
California
Sub-Regional Greater Sage-Grouse
Land Use Plan Amendment / Final
Environmental Impact Statement**

September 15, 2015

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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-NVNORTHEASTERNCA-GRSG-15-XX (Protest issue number)

Organization: The Forest Initiative (Protesting organization)

Protester: John Smith (Protester's name)

Issue Excerpt Text: (Direct quote taken from the submission)

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

Summary (General statement summarizing the issue excerpts (optional).)

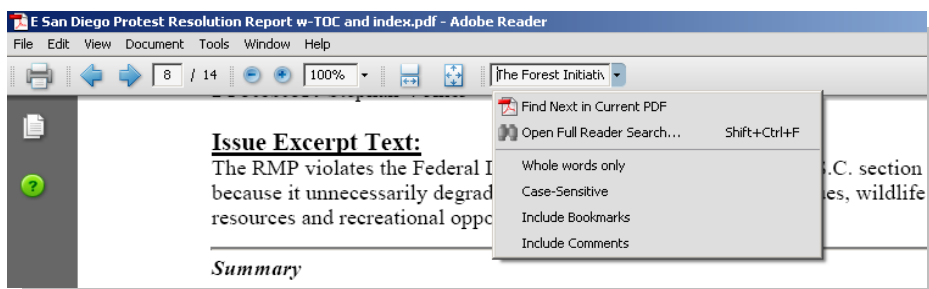
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

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

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission Number	Determination
Vance Spalding	PilotGold USA, Inc.	PP-NVNORTHEASTCA-GRSG-15-01	Denied – Issues and Comments
Patrick Malone	Assistant General Counsel for Barrick Gold, USA	PP-NVNORTHEASTCA-GRSG-15-02	Denied – Issues and Comments
Zane Marshall	Southern Nevada Water Authority	PP-NVNORTHEASTCA-GRSG-15-03	Denied – Issues and Comments
Dennis Bryan	Western Lithium Corporation	PP-NVNORTHEASTCA-GRSG-15-04	Denied – Issues and Comments
Ron Torell	Nevada Cattlemen’s Association	PP-NVNORTHEASTCA-GRSG-15-05	Denied – Issues and Comments
Demar Dahl	Elko County Commission	PP-NVNORTHEASTCA-GRSG-15-06	Denied – Issues and Comments
Erik Molvar	WildEarth Guardians	PP-NVNORTHEASTCA-GRSG-15-07	Denied – Issues and Comments
Laura Skaer	American Exploration & Mining Association	PP-NVNORTHEASTCA-GRSG-15-08	Denied – Issues and Comments
Chris Coley	EP Minerals, LLC	PP-NVNORTHEASTCA-GRSG-15-09	Denied – Issues and Comments
Tom Williams	Midway Gold	PP-NVNORTHEASTCA-GRSG-15-10	Denied – Issues and Comments
James Martin	Beatty & Wozniak for Noble Energy	PP-NVNORTHEASTCA-GRSG-15-11	Denied – Issues and Comments
Richard Ranger	American Petroleum Institute	PP-NVNORTHEASTCA-GRSG-15-12	Denied – Issues and Comments
Carmen Fimiani	Western Exploration, LLC	PP-NVNORTHEASTCA-GRSG-15-13	Denied – Issues and Comments
Kevin Phillips	Lincoln County Commission	PP-NVNORTHEASTCA-GRSG-15-14	Denied – Issues and Comments
Laura Granier	Davis, Graham & Stubbs for Nevada Mineral Resources Alliance	PP-NVNORTHEASTCA-GRSG-15-15	Denied – Issues and Comments
Laura Granier	Davis, Graham & Stubbs for Carlin Resources, LLC	PP-NVNORTHEASTCA-GRSG-15-16	Denied – Issues and Comments
Mark Ellis	Industrial Minerals Association – North America	PP-NVNORTHEASTCA-GRSG-15-17	Denied – Issues and Comments
Michael Connor	Western Watersheds Project	PP-NVNORTHEASTCA-GRSG-15-18	Denied – Issues and Comments
No name	Public Lands Council / National Cattlemen’s Beef Association / CA and NV Cattlemen’s Association	PP-NVNORTHEASTCA-GRSG-15-19	Denied – Issues and Comments

Salman Al-Rashid	Coral Reef Capital	PP-NVNORTHEASTCA-GRSG-15-20	Denied – Issues and Comments
Darcy Helmick	Simplot Livestock	PP-NVNORTHEASTCA-GRSG-15-21	Denied – Issues and Comments
Gary Perea	White Pine County Commission	PP-NVNORTHEASTCA-GRSG-15-22	Denied – Issues and Comments
Mike Best	Avian Power Line Interaction Committee	PP-NVNORTHEASTCA-GRSG-15-23	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-NVNORTHEASTCA-GRSG-15-24	Dismissed – Comments Only
Ken Wilbur	California Cattlemen’s Association	PP-NVNORTHEASTCA-GRSG-15-25	Denied – Issues and Comments
Mark Salvo	Defenders of Wildlife	PP-NVNORTHEASTCA-GRSG-15-26	Denied – Issues and Comments
Kacey KC	Sagebrush Ecosystem Program	PP-NVNORTHEASTCA-GRSG-15-27	Denied – Issues and Comments
Everett Gustin	Quantum Minerals, LLC	PP-NVNORTHEASTCA-GRSG-15-28	Denied – Issues and Comments
Christopher Clark	Y-3 II Ranch	PP-NVNORTHEASTCA-GRSG-15-29	Denied – Issues and Comments
Don Amador	Blue Ribbon Coalition	PP-NVNORTHEASTCA-GRSG-15-30	Denied – Issues and Comments
Dana Bennett	Nevada Mining Association	PP-NVNORTHEASTCA-GRSG-15-31	Denied – Issues and Comments
Fred Fulstone	FIM Corporation, Farming and Livestock	PP-NVNORTHEASTCA-GRSG-15-32	Denied – Issues and Comments
Edward Bartell	Bartell Ranch, LLC	PP-NVNORTHEASTCA-GRSG-15-33	Denied – Issues and Comments
JJ Goicoechea	Eureka County Commission	PP-NVNORTHEASTCA-GRSG-15-34	Denied – Issues and Comments
Robert Schweigert	Intermountain Range Consultants for multiple parties	PP-NVNORTHEASTCA-GRSG-15-35	Denied – Issues and Comments
Kathleen Yhip	Southern California Edison	PP-NVNORTHEASTCA-GRSG-15-36	Dismissed – Comments Only
Jeff Fontaine	Nevada Association of Counties	PP-NVNORTHEASTCA-GRSG-15-37	Denied – Issues and Comments
Bobby Sanchez	Walker River Paiute Tribe	PP-NVNORTHEASTCA-GRSG-15-38	Denied – Issues and Comments
Tom Kerr	Newmont Mining Corporation	PP-NVNORTHEASTCA-GRSG-15-39	Denied – Issues and Comments
Lorinda Wichman	Nye County Commission	PP-NVNORTHEASTCA-GRSG-15-40	Denied – Issues and Comments

Issue Topics and Responses

FLPMA-General

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-12

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: Action SSS 9a: Consultation with the Nevada SETT should not be required in all instances. BLM cannot delegate its federal responsibility to consider and approve proposed uses of the public lands. Action 9a requires the BLM to “consult with the Nevada Sagebrush Ecosystem Technical Team for application of the ‘avoid, minimize, and compensatory mitigation’ strategy and the Conservation Credit System developed by the Nevada Natural Heritage Program and the SETT or other applicable mitigation system such as outlined in Appendix” (LUPA at 2-26). While the BLM may wish to consult with the SETT on issues related to GRSG mitigation, consultation should not be required when a project will achieve a net conservation gain through another “applicable mitigation system”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-7

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The technical team consists of representatives of the BLM, the USFWS, and the Nevada Department of Wildlife (NDOW). The BLM cannot approve disturbance in excess of the 3% cap unless all three agencies concur that there will be a net conservation gain at the BSU level. This provides NDOW and USFWS with veto authority over projects on federal

land. The BLM, however, cannot delegate its responsibility and authority to consider and approve proposed uses of the public lands to a sister agency, or for that matter, an agency of state government. The BLM, which is charged with management of the public lands, should retain ultimate authority to determine whether the project applicant can demonstrate a net conservation gain.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The ability to adopt post-leasing mitigation measures (see 43 CFR § 3101.1-2) is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by the BLM. This is particularly true given that the BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation (43 USC §1732(b)). Put simply, the failure of the BLM to study and adopt these types of mitigation measures, especially when feasible and economic, means that the agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The agencies do not propose to seek withdrawal of GRSG Priority Habitats from locatable mineral entry outside Focal Areas. FEIS at 2-50, 2-84, 2-108. Given that the agencies’ position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining

claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of federal agencies failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, the BLM and the Forest Service fail to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA, NFMA viability standards, and BLM and Forest Service Sensitive Species policy.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-42

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that full implementation of existing regulatory tools, including required conservation and mitigation measures, are adequate to ensure environmentally sound mineral development that is compatible with GRSG conservation; which has been proven by the recent decision by the Secretary of the Interior to withdraw the Bi-State Distinct Population Segment from consideration for listing under the ESA, primarily as a result of conservation measures taken by the State of Nevada, local area working groups, and stakeholders.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-11-3

Organization: Beatty & Wozniak for Noble Energy

Protestor: James Martin

Issue Excerpt Text: The BLM has sole authority to determine whether an exception to a lease stipulation is warranted and the

BLM cannot delegate that authority to another agency. See 43 CFR § 3101.1-4. The GRSG is not a listed species, and therefore FWS does not have any statutory authority to determine whether an exception is warranted. BLM has sole legal authority to review and decide whether an exception is warranted, in consultation with the State's wildlife agency which has primary jurisdiction over non-listed species. Similarly, Noble does not believe that the BLM has the authority to cede oil and gas development decisions to FWS. For as long as GRSG remains unlisted, the Nevada Department of Wildlife (NDOW) has primary jurisdiction over the management of the GRSG and its habitat, and could be consulted regarding any exception application.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-33

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The provision of the Proposed LUPA requiring FWS to find that criteria related to the GRSG are met before the BLM may grant an exception to an NSO stipulation is inconsistent with congressional policy regarding management of unlisted wildlife on the public and National Forest System lands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-42

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades maintain the Proposed LUPA's proposal to prioritize leasing outside of PHMA and to make PHMA open for leasing with NSO stipulations that cannot be waived or

modified constitutes a de facto withdrawal under FLPMA. See 43 USC § 1702(j) (defining “withdrawal”), 1714(l)(1) (referencing withdrawals resulting from closure of lands to leasing under the Mineral Leasing Act of 1920). FLPMA requires that the Secretary of the Interior notify both houses of Congress of withdrawals of five thousand acres or more no later than the effective date of the withdrawal; as part of this notification, FLPMA also imposes additional procedural requirements (*Id.* § 1713(g)). At a minimum, the Secretary of the Interior must report its decision to exclude a principal or major use of the public lands (mineral leasing) from tracts of land more than 100,000 acres to the House of Representatives and Senate, and complete additional procedural requirements (*Id.* § 1712(e)). Accordingly, the Secretary of the Interior must comply with FLPMA and notify Congress of the de facto withdrawals of PHMA from mineral leasing.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-5

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA confirms that a “net conservation gain” is beyond the BLM’s authority under FLPMA. BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the “net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore [GRSG] and its habitat” (Proposed LUPA at 2-5). BLM’s stated goal of “enhance, conserve, and restore” is beyond BLM’s authority under FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-2

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: At least two aspects of the Proposed LUPA are inconsistent with this FLPMA mandate to manage public lands in a manner that recognizes the Nation’s needs for domestic sources of minerals from public lands. First, the Proposed Plan to withdraw roughly 2.8 million acres of lands from mineral entry in areas designated as Sagebrush Focal Areas (SFA) as shown on Figure 2.5 of the FEIS is inconsistent with this mandate. Secondly, the proposed travel restrictions, which affect over 16 million acres of public lands in the planning area with GRSG habitat as shown on Figure 2-14 of the FEIS, is a de facto roadless rule and will significantly interfere with exploration and development of mineral resources on these lands. These restrictions have such a large footprint, include seasonal restrictions throughout much of the practical exploration and development season, and include large No Surface Occupancy (NSO) buffer zones that they constitute a de facto withdrawal from mineral entry on lands with GRSG habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-5

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The proposed inclusion of disturbances on private lands in a cap calculation further endangers future projects by a multitude of stakeholders on public lands, as projects undertaken on private lands are not subject to the same planning and permitting processes and could

quickly and capriciously deplete available cap space.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-27

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The document states, “Lands addressed in the LUPAs will be BLM- and Forest Service-administered land in GRSG habitats, including surface and split-estate lands with BLM subsurface mineral rights. Any decisions in the LUPAs will apply only to BLM- and Forest Service-administered lands.” This is not accurate. The LUPA will have major impacts and bearing upon private lands. The BLM and

Forest Service routinely extend federal land management policies to private lands through the connected action concept. Further, the disturbance caps will take into account activities on private lands, which has the possibility of creating additional regulatory requirement upon private land through State or local governments that want to preserve disturbance cap space in other locations. Further, the ability for private land owners to use their lands in the future according to the landowners' needs or desires will be severely limited, especially due to the fact that nearly all of the private lands in Eureka County are adjacent to sagebrush areas that will have the LUPA criteria attached.

Summary:

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

- Abrogates the BLM’s authority over federal land and the state of Nevada’s authority over wildlife by instituting a three-party approval group (BLM, USFWS, Nevada) for projects in PHMAs that exceed an arbitrary disturbance cap and to determine whether an exception to a lease stipulation is warranted;
- Abrogates the BLM’s authority by requiring consultation with the Nevada SETT;
- Through the disturbance cap, encourages development and prescribes management of state and private lands; and
- Uses a non-legislated standard of “net conservation gain”, creating a de facto recovery plan that exceeds the “unnecessary or undue degradation” standard.

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

The BLM failed to give notice to Congress and satisfy other procedural requirements when it implemented restrictions in PHMAs, including for oil and gas development, mining and grazing management, creating a de facto withdrawal and exclusion of a major uses of public lands over 100,000 acres.

Response:

The Federal Land Policy and Management Act (FLPMA) details the BLM’s broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment

decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy and Forest Service Sensitive Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B; Forest Service Manual 2672.1 (“Sensitive species... must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”)).

The Nevada and Northeastern California GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.3, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

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

The first Special Status Species goal of the Nevada and Northeastern California GRSG PLUPA/FEIS, detailed on Page 2-17, is to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners.”

The net conservation gain mitigation standard is fully consistent with the BLM’s authority under FLPMA. The proposed plan provides that, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. As described further in the Mitigation section of this protest response report, this is consistent with BLM Manual 6840 and Forest Service Manual 2672.1, mentioned above, by reducing or eliminating threats to the GRSG and its habitat.

The proposed LUPA/FEIS does not improperly delegate BLM authority. Action UFM-3 (pages 2-48 through 2-49) details the process the BLM, the applicable state wildlife agency, and USFWS will use to approve exceptions to lease stipulations such as No Surface Occupancy (NSO) for new leases in PHMAs. The lease stipulations outlined in UFM-3 (and the process for getting exemptions from them, if any) will be incorporated into any new lease at the time the leases are issued. Section XI of Onshore Order #1 details the process for seeking exceptions, modifications, and waivers from stipulations included in a Federal oil and gas lease. Rather than a delegation, the BLM will appropriately seek input from the state wildlife agency and USFWS in an area of their expertise (biological impacts on a sensitive species). There is a reasonable

connection between BLM's determination as to whether to grant a waiver [and an exception to the disturbance cap] and the biological input of those agencies. The same principle applies to the BLM's consultation with the SETT regarding mitigation.

Action SSS-2, pages 2-20 to 2-24, provides details on how the disturbance cap concept will be applied within Biologically-Significant Units (BSUs). This regime does not prescribe prohibitions or management actions on state and private land; it only applies to projects that would disturb federal lands or federal mineral estate. While the disturbance cap would count all applicable disturbances within a BSU, including those on non-federal lands, the BLM would have no authority under the plan to limit development outside of Federal lands or Federal mineral estate.

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

In Section 2.4, the Nevada and Northeastern California GRS G PLUPA/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM and the Forest Service considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 9.7 million acres from mineral entry. The BLM's decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-25, is based on the value of the habitat to the GRS G. Also, actions LOC-1 through LOC-5, detailed on pages 2-50 and 2-51, provide additional information on how the BLM would manage mineral resources in PHMA and GHMA areas to avoid, minimize, and mitigate impacts of that resource use on the GRS G habitat.

For the development of fluid minerals under existing leases, the Nevada and Northeastern California GRS G PLUPA/FEIS details the BLM's objectives in FM-2 (page 2-48) to "work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources." Actions Lease FM-1 through Lease FM-7 detail the BLM's approach for managing existing fluid mineral leases in GRS G habitats, including unitization, mitigation, master development plans, Conditions of Approval, and other tools that the agency can use to minimize impacts while respecting valid, existing rights. Any conditions of approval for permits to drill on existing leases, including measures necessary to prevent unnecessary or undue degradation, will be evaluated at the project level.

The Nevada and Northeastern California GRS G PLUPA/FEIS will not result in "unnecessary or undue degradation" of public lands.

The Federal Land Policy and Management Act requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning. Specifically, Section 202(e)(2) states “[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate.” Upon approval of the PLUPA, the BLM will comply with the applicable reporting requirements set forth in FLPMA Section 202 as necessary and appropriate.

The PLUPA/FEIS does not withdraw any lands that would trigger the reporting requirements of Section 204 of FLPMA. The proposed plan’s actions invoke BLM’s planning authority under Section 202 of FLPMA, not the withdrawal authority of section 204. There is no “de facto” withdrawal. The PLUPA/FEIS does recommend the withdrawal of approximately 2.79 million acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all applicable requirements in law, regulation, and policy.

Finally, the PLUPA/FEIS does not violation the statement of Congressional policy contained in FLPMA section 102 (a)(12), simply recognizing that minerals, food, timber and fiber are all part of BLM’s multiple use mission.

Valid Existing Rights

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-12

Organization: Assistant General Counsel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: The LUPA includes a number of actions related to linear rights-of-way (ROWs) and access roads that are lacking in clarity and are difficult to reconcile. BLM should clarify that these restrictions are not applicable to activities authorized by the Mining Laws.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-43

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Agencies have not adequately explained or justified the

proposal to designate all PHMA as right-of-way avoidance areas. Lessee’ ability to develop their leases could be significantly impacted if the Agencies inappropriately limit access to these leases. The Agencies must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of an oil and gas lease does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance (43 CFR § 3101.1-2 (2006)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-14

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.
Protestor: Patrick Malone

Issue Excerpt Text: The LUPA should clarify that, with respect to road ROWs to access to valid existing rights through PHMAs, Action LR-LUA 21 governs.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-16

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.
Protestor: Patrick Malone

Issue Excerpt Text: Action LR-LUA 21 provides: “In PHMAs and GHMAs, address access to valid existing rights to provide the minimum access necessary to exercise the right and maintain or enhance PHMAs and GHMAs” (*Id.* at 2-48). In its discussion of Action LR-LUA 21, the LUPA should expressly state that access roads to locatable mineral exploration and development projects through PHMAs and GHMAs: (1) are not subject to the 3% disturbance cap, (2) are an exception to the designation of PHMAs as an avoidance area, and (3) need not be sited in designated corridors or collocated with existing linear features. If access to mining claims is made infeasible by requiring avoidance of PHMAs and/or limiting access through PHMAs and GHMAs to designated corridors or collocation with existing features, those mining claims would be de facto withdrawn from mineral entry, contrary to FLPMA, 43 USC § 1712(e)(3).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-18

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.
Protestor: Patrick Malone

Issue Excerpt Text: First, it is not clear what is meant by “work with the proponent/applicant, whether in accordance with a valid existing right or not”. This language could be read to imply that the priorities identified in the action override any valid existing rights, which would be contrary to law. The BLM should revise this to say “work with the proponent/applicant, consistent with any valid existing rights and statutory rights”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-2

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.
Protestor: Patrick Malone

Issue Excerpt Text: The LUPA must be revised to fully account for rights under the Mining Laws. The LUPA does not adequately recognize the full extent of locatable mineral rights granted by federal mineral policies and statutes. Rights under the Mining Laws are not limited only to valid and existing rights as defined by the LUPA FEIS. The rights include the right to explore, stake claims, and seek a discovery of a valuable mineral. These rights and policies are acknowledged by existing BLM land use plans on lands open to location in Nevada and should be incorporated into the proposed amendments.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-20

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.
Protestor: Patrick Malone

Issue Excerpt Text: These actions should include an express reference to the Mining Laws so that the application of lek buffers does not interfere with mining claimants’ statutory rights to access and develop their claims or Barrick’s rights under the BEA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-22

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: Action SSS 2 imposes seasonal restrictions that are very difficult to follow. These restrictions must be clarified to understand their scope and revised to accommodate valid existing rights and rights under the Mining Laws. First, Action SSS 2 states “Seasonal restrictions will be applied during the period specified below to manage discretionary surface- disturbing activities and uses on public lands to prevent disturbances to GRSG during seasonal life-cycle periods” (LUPA at 2-23). It is not clear whether this language means that any use or disturbance of the surface will be prohibited in the locations and time periods specified or whether some other level of restrictions may be imposed. Regardless of the intent of this language, it must be revised to accommodate explicitly valid existing rights and rights under the Mining Laws.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-3

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: Barrick’s concern with the way in which the LUPA refers to rights under the Mining Laws is driven in part by the multiplicity of ways in which the LUPA uses short-hand descriptions to characterize the scope and sources of those rights...the BLM should revise the LUPA to standardize language throughout the document referencing rights under the Mining Laws.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-14

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: A portion of the northern segment of the power line will be on BLM-managed land in Steptoe Valley, and will cross over PHMA and GHMA, both designated as avoidance areas for high-voltage transmission (Action LR-LUA 4, LUPA at 2-46), and within 2 miles of a lek. Thus, the same concerns SNWA has already discussed in Sections IV., V.C., V.D., and V.G. above, regarding the 3% disturbance cap and no surface occupancy lek buffers, would apply to the construction of the GWD Project power line in Steptoe Valley.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-16

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: Without exception, action LR-LUA 16 requires that any new linear feature in PHMA and GHMA be within a designated corridor, or at a minimum be collocated with existing features (LUPA at 2-47). This action does not include an exception for instances in which the use of designated corridors is infeasible or collocation is not possible due to a lack of existing infrastructure. Failure to allow exceptions to this requirement could interfere with the exercise of valid existing rights, which may require linear features such as power lines, water pipelines, and access roads.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-6

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: A 3% cap within the BSU or project areas would constrain the optimal spacing of wells and likely cause greater effects on other environmental resources. Such environmental effects were not considered in the Final EIS. The BLM's multiple use and environmental stewardship obligations require it to consider and balance all uses and impacts, and not to allow a singular focus on sage-grouse result in unintended and unnecessary environmental impacts. A 3% cap could also affect SNWA's ability to fully withdraw its permitted water rights and complete critical water resource development for southern Nevada. This would be incompatible with prior BLM authorization and Federal legislation. The impact analysis did not consider the effects of the 3% cap on the provision of municipal water to southern Nevada, or the economy of southern Nevada and the State.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-12

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Finally, exempting the few claims that do have a discovery of a valuable mineral deposit that constitutes a valid existing right that must be respected by the federal government is a hollow gesture because the right would be restricted to the four corners of that mining claim. The land use restrictions would apply to the surrounding lands without a discovery and VERs. Thus, the valid claims would become isolated islands essentially withdrawn on a de facto basis because access to them and the rights to use adjacent lands for mining facilities would be constrained or eliminated. In this manner the additional

requirement of a VER to these management actions is in fact a restriction, not an expansion of rights to use the land for mining purposes under the General Mining Law.

The BLM must evaluate the substantially adverse consequences of making it impossible to explore and develop pre-discovery unpatented mining claims and lands that are currently open to location on which there are no unpatented mining claims and lands on which there are claims without a discovery that would be severely restricted or withdrawn from mineral entry and location of mining claims. The BLM must recognize the rights granted in §22 of the General Mining Law and the § 22 statutory rights associated with access to and use and occupancy of pre-discovery claims and unclaimed lands open to mineral entry. These rights cannot be extinguished by executive fiat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-17

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Similarly, the BLM's and USFS' proposal to authorize new roads only for administrative access, public safety or access to VERs (Section 2.6.2 and Section 2.6.3 Action LR- LUA 19, GRSG-RT-ST-081-Standard), does not go far enough to maintain access, use and occupancy associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs the agencies fail to maintain

access and thus, conflict with § 22 of the General Mining Law.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-19

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: By limiting approval of ROWs to existing corridors or VERs could make exploration and development of a claim prior to discovery impossible. Access roads, water supply pipelines, and power or utility services are necessary to develop a mine. Unless a claim is located adjacent to, or is relatively close to a utility corridor these restrictions could preclude development of minerals. Again, BLM's proposal to honor VERs in the context of the ROW restrictions does not ensure pre-discovery access to public lands. Maintaining lands "available" for mineral entry is disingenuous if the claims cannot be developed because they inaccessible or surrounded by lands on which infrastructure, cannot be located. These ROW restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-29

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: As such, BLM/USFS cannot in any way impair the rights of

locators or mining claimants or interfere with ingress and egress rights through the land use planning process. Therefore, the PLUPA/FEIS' mineral withdrawals, prohibitions, and restrictions are contrary to explicit statutory language in and MUSYA, and § 22 of the General Mining Law.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-5

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: If public lands needed for ROWs for roads, power lines, pipelines, etc. are no longer available for development, as described throughout the PLUPA/FEIS, and listed above, including "limited" areas, or avoidance/exclusion areas in SFAs, PHMA and GHMA, the unpatented mining claims, patented claims, fee lands, and associated private property rights could be rendered worthless and could subject the federal government to a Fifth Amendment takings claim. To that end, the BLM's numerous references to VERs has the potential to interfere with the access, use and occupancy of lands open to location for mineral purposes, which are rights granted under the General Mining Law and Surface Use Act (30 USC § 612(b)). These rights apply both to unpatented mining claims prior to discovery and to unclaimed lands open to mineral entry, independent of the discovery status of these lands. The numerous references to VER to these management actions is in fact a restriction, not an expansion of rights to use land for mineral purposes under the General Mining Law and Surface Use Act.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-56

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The proposed travel restrictions shown in Figure 2-14 in Nevada’s “checkerboard lands” where the odd-numbered sections are private lands, have significant potential to expose the federal government to private property takings claim. These travel restrictions are likely to result in land-locked segments of roads on the private land sections in the Nevada checkerboard. Restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections inaccessible and therefore without economic value.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-9

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: 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 fails to protect the rights associated with claims prior to a discovery of a valuable mineral deposit. Very few mining claims can withstand the rigorous economic evaluation, required by a claim validity examination (hereinafter “validity examination”) to which they would be subjected as a result of this constraint. Validity examinations are used to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the federal government must exclude from the various restrictions, prohibitions and withdrawals. Thus, the many references to VERs in the PLUPA/FEIS are misleading because they create the false impression that the rights of mining claimants with claims in areas

subject to restrictions, prohibitions, withdrawals and de facto withdrawals from future mineral entry would be respected and that claimants could continue to explore and develop their claims. Only after a claim is found to be valid as a result of a validity examination is it considered a VER. But mineral validity examinations create such a high threshold of proof that a claim can be mined at a profit that very few claims can demonstrate sufficient profitability to satisfy the criteria for a valid claim and a VER. Generally speaking, some (but not all) claims at operating mines may meet the claim validity examination test and be treated as having a VER. However, claims that are being actively explored almost never qualify as valid claims with a VER. Even claims at advanced exploration projects that are being proposed for mine development may not qualify as VERs. The repeated and incorrect use of the term “Valid Existing Rights” when discussing the applicability of the conservation measures that restrict and prohibit land uses actually has the exact opposite effect on mining claims. It can be read to mean that the proposed land use restrictions apply to all mining claims in the planning area except those few claims that have a valuable discovery that can meet the economic tests to create a VER. Thus, rather than limiting or exempting mining claims from the draconian land use restrictions, the references to VERs throughout the PLUPA/FEIS broaden the impact of these restrictions to nearly all mining claims in the planning area.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-4

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The Ashe Memo contemplates that roughly 16.5 million acres of high-priority GRSG habitat on public

land comprised in the western United States need to be withdrawn from mineral entry and operation of the Mining Law. The vast majority of claim holders with claims in GRSG strongholds face almost certain invalidation and forfeiture of their mining claims because very few mining claims can withstand the rigorous economic evaluation, known as a claim validity examination, to which they would be subjected. The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PLUPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-11-2

Organization: Beatty & Wozniak for Noble Energy

Protestor: James Martin

Issue Excerpt Text: The FEIS requires offset mitigation for all disturbances in GRSG habitat, priority or otherwise. Noble has been unable to discern the basis for limiting surface disturbance in PHMAs for the mere sake of reducing surface disturbance. Moreover, these restrictions likely are inconsistent with valid existing lease rights, and would work to limit or even preclude operators' development. In addition, specific and seemingly arbitrary restrictions based on disturbance thresholds are inconsistent with the BLM's own regulations that authorize a lessee to use as much of the surface as is reasonably

necessary to develop its minerals. 43 CFR § 3101.1-2.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-25

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-26

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-27

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-28

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” Thus, judicial and administrative authorities recognize that a federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-29

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The terms of federal leases do not authorize the BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See, e.g., BLM Form 3110-11, Offer to Lease and Lease for Oil and Gas (Oct. 2008). Although lease rights are subject to “applicable laws, the terms, conditions, and attached stipulations of [the] lease, the Secretary of the Interior’s regulations and formal orders in effect as of lease issuance,” see BLM Form 3110-11, neither BLM’s planning regulations nor its leasing regulations contain any requirement to provide compensatory mitigation and do not authorize BLM to require compensatory mitigation. See 43 CFR pts. 1600, 3100. Moreover, no BLM or Department of the Interior order requires compensatory mitigation of oil and gas lessees. In fact, for nearly two decades, BLM has consistently taken the position that it would not require compensatory mitigation of lessees. See BLM Instruction Memorandum No. 2008-204, Offsite Mitigation (Oct. 3, 2008); BLM Instruction Memorandum No. 2005-069, Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal, and Energy Rights-of-Way Authorizations (Feb. 20, 2005); Wyoming BLM Instruction Memorandum No. WY-96-21, Statement of Policy Regarding Compensation Mitigation (Dec. 14, 1995). Additionally, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a “net conservation gain” is not contemplated in any regulations or formal departmental policy. Accordingly, the terms of federal oil and gas leases do not

contemplate the Proposed LUPA's requirement that lessees provide compensatory mitigation to provide a net conservation gain.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-30

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Moreover, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a "net conservation gain" is not contemplated anywhere within a federal oil and gas lease. Because compensatory mitigation that yields a net conservation gain is inconsistent with the terms of existing oil and gas leases, the BLM cannot require such mitigation without breaching or repudiating its oil and gas leases.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-32

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The BLM lacks authority to impose the new lek buffer distance requirement under 43 CFR § 3101.1-2. Furthermore, the lek buffer distance is inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO and CSU stipulations. Similarly, some of the existing timing limitation stipulations are inconsistent with the Proposed LUPA's seasonal restrictions. Timing limitation stipulations in the Battle Mountain District Office, for example, prohibit mineral and energy activities within 2 miles of leks from March 1 to May 15, while in the Proposed

LUPA, these activities within 4 miles of leks from March 1 to May 15.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-20

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The broad application of a Valid Existing Rights threshold on mining claims throughout the planning area violates FLPMA and claimants' rights pursuant to the General Mining Laws which are not limited to Valid Existing Rights in the manner the BLM is proposing here. As such, all references to Valid Existing Rights, except for the obligation to respect Valid Existing Rights on claims with a discovery of a valid mineral deposit in the SFA, must be eliminated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-21

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: NVMRA's concerns about Valid Existing Rights extend beyond the use of this term in the SFA context. The FEIS incorrectly and repeatedly uses the term "Valid Existing Right" as a qualifier to limit the application of many of the land use restrictions in the FEIS/Proposed LUPA including but not limited to the 3% disturbance cap. The current document is unclear as to whether the proposed land use restrictions will interfere with mining claims in the planning area except those few claims that have a valuable discovery that can meet the economic tests to create a Valid Existing Right.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-3

Organization: David, Graham & Stubbs
for Nevada Mineral Resources Alliance
Protestor: Laura Granier

Issue Excerpt Text: The sweeping travel restrictions shown in Figure 2-14, discussed in Section 2.12 and presented in Table 2-17 in the Proposed Plan conflict with the rights on claims and of locators including rights of ingress and egress. The travel restrictions in the FEIS/Proposed LUPA, which include limiting travel to existing and designated routes, prohibiting upgrades of existing routes, and imposing potentially substantial seasonal constraints are completely unworkable restrictions that will substantially interfere with (and in many cases thwart) orderly exploration and development of existing mining claims. Moreover, the inability to create new roads will make exploration and development of existing claims and claims located in the future and access to even some private lands that are not adjacent to existing roads impossible.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-4

Organization: David, Graham & Stubbs
for Nevada Mineral Resources Alliance
Protestor: Laura Granier

Issue Excerpt Text: These travel restrictions substantially impair the rights of locators (i.e., claim holders) to access their claims and are thus inconsistent with FLPMA Section 1732(b). In addition to impairing the rights of locators, the travel restrictions also illegally constrain access to claims (i.e., access to the land on which a claim is located) and, in some cases, to private lands. These illegal travel restrictions constitute a de facto and unlawful withdrawal from mineral entry of more than 16 million acres of land in the planning area and an unlawful taking of property rights.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-9

Organization: David, Graham & Stubbs
for Nevada Mineral Resources Alliance
Protestor: Laura Granier

Issue Excerpt Text: Finally, we note that the proposed travel restrictions shown in Figure 2-14 in Nevada's "checkerboard lands" where the odd-numbered sections are private lands, have significant potential to expose the federal government to private property taking claims. These travel restrictions are likely to result in land-locked segments of roads on the private land sections in the Nevada checkerboard. Restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections inaccessible and therefore without economic value.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-6

Organization: Industrial Minerals
Association – North America
Protestor: Mark Ellis

Issue Excerpt Text: The vast majority of claim holders with claims in GRSG strongholds face almost certain invalidation and forfeiture of their mining claims because very few mining claims can withstand the rigorous economic evaluation, known as a claim validity examination, to which they would be subjected. The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PLUPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be

withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, legitimate exploration activity will cease on lands withdrawn pursuant to the Proposed Plan.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-3

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: While the LUPA claims that there will be recognition of valid existing rights, the management restrictions in the LUPA for GRSG could wholly or partially deny rightful usage of water rights, rights-of-way, and mineral rights. The LUPA fails to outline procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless valid existing rights (e.g., RS 2477 roads).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-4

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The disturbance cap concept proposed in the LUPA could result in the denial of projects and impairment of valid existing rights simply because other disturbances have decreased available cap space, ultimately denying valid existing mineral rights or water resource developments required to keep water rights whole. The BLM and USFS have no authority to deny valid existing rights; consequently, decisions made by entities with valid existing rights would affect what the BLM and the USFS can authorize for other potential users of land it administers in the management

zone. In other words, by using the disturbance cap concept, valid existing rights for one user could be recognized at the expense of another. This would also be a domino effect on all users with mining claims, grazing allotments, recreational use, rights-of-way, etc. The agencies have not provided sufficient scientific data to support the disturbance cap concept or its effectiveness, and the calculation methodology is fraught with challenges that will prevent consistent and clear implementation. Further, the agencies have not adequately explained several crucial details about the application of the concept in protecting valid existing rights.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-6

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The LUPA fails to recognize grazing permits among the valid existing rights. These permits have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted AUMs to remain viable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-7

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The LUPA leaves in limbo water rights, water conveyances (RS 2339), and rights-of-way (RS2477) as recognized valid existing rights. RS 2477 and RS 2339 rights are overlooked and not even acknowledged. The LUPA has actions to remove range improvements in certain circumstances. Many of these improvements

are part of the bundle of valid existing rights, including water storage facilities and conveyances. The LUPA further seeks to impose travel restrictions but fails to acknowledge how this will be completed over RS 2477 roads in which the BLM nor the USFS have no authority.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-8

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: We have major concerns about the adequacy and accuracy of the maps used to identify and designate GRSG habitat namely PHMA, GHMA, and SFA. While we appreciate the pairing of the LUPA habitat maps with the Nevada habitat map, even a cursory review of the maps with some local, on-the-ground knowledge highlights the huge areas of discrepancy between actual and mapped GRSG habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-5

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: The term Valid Existing Rights is vague and not clearly defined in law or in the LUPA/FEIS. The proposed actions in the LUPA/FEIS will result in the improper forfeiture of mining claims in SFA's and imposes unrealistic, burdensome and untimely thresholds for acquiring the designation of Valid Existing Rights. Furthermore, this determination can only be made by the BLM, which does not have the resources to evaluate claims in a timely fashion.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-11

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: While the LUPA claims there will be recognition of valid existing rights, the management restrictions in the LUPA for GRSG could wholly or partially deny rightful usage of water rights, rights-of-way, and mineral rights. The LUPA fails to outline procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless valid existing rights (e.g., RS 2477 roads).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-12

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The LUPA fails to recognize grazing permits among the valid existing rights. These permits have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted AUMs to remain viable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-13

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The LUPA leaves in limbo water rights, water conveyances (RS 2339), and rights-of-way (RS 2477) as recognized valid existing rights. RS 2477 and RS 2339 rights are overlooked and not even acknowledged. The LUPA has actions to remove range improvements in certain circumstances. Many of these improvements are part of the bundle of valid existing rights, including water storage facilities and conveyances. The LUPA further seeks to impose travel restrictions but fails to acknowledge how this will be completed

over RS 2477 roads in which the BLM nor the USFS have no authority.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-39-1

Organization: Newmont Mining Corporation

Protestor: Tom Kerr

Issue Excerpt Text: In its previous submittals, in particular its comments on the Draft LUPA, Newmont expressed concerns that management restrictions, as drafted, could wholly or partially deny operators the rights established in and protected by the laws referenced above. Unfortunately that

potential persists in the approach presented in the Proposed LUPA. The Proposed LUPA contains language that appears to attempt to maintain and protect access to minerals (see, e.g. 2-21); however, it sets out only “valid existing rights” as the rights to be protected. In relation to locatable minerals, the term “valid existing right” refers to a post-discovery claim to a specific deposit. Thus, use of that term in the Proposed LUPA may have the practical effect of protecting only claims to already-discovered minerals, potentially compromising other rights (including, without limitation, exploration rights).

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS violates valid existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, travel restrictions, and requiring compensatory mitigation.

Response:

The Nevada and Northeastern California GRSG PLUPA/FEIS is subject to valid existing rights, (FLPMA, Section 701(h)). Indeed, in Chapter 1 on p. 1-25 the PLUPA/FEIS states that “The LUPA will recognize valid existing rights”. Additionally, in Chapter 2 on p. 2-47 Action LR-LUA 6 states: “Issue ROWs only after documenting that they would not adversely affect or disrupt GRSG habitat (independent of disturbance cap), except where such limitation would make accessing valid existing rights impracticable in PHMAs and GHMAs”. On p. 2-48, Objective FM 2 states that “Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources.”

In the Disturbance Cap Guidance Appendix the following direction would be applied for lands in Northeastern California (Disturbance Cap Guidance p. F-1):

“If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) within GRSG Priority Habitat Management Areas (PHMA) in any given Biologically Significant Unit (BSU), then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 hard rock mining law, valid existing rights, etc.) will be permitted by BLM within GRSG PHMAs in any given BSU until the disturbance has been reduced to less than the cap.”

In the Disturbance Cap Guidance Appendix the following direction would be applied for lands in Nevada and Northeastern California (Disturbance Cap Guidance p. F-2):

“Although locatable mine sites are included in the degradation calculation, mining activities under the 1872 mining law may not be subject to the 3% disturbance cap. Details about locatable mining activities will be fully disclosed and analyzed in the NEPA process to assess impacts to GRSG and their habitat as well as to BLM goals and objectives, and other BLM programs and activities [A1].”

With respect to oil and gas development specifically, the BLM and FS may restrict development of an existing oil and gas lease through Conditions of Approval (COA) consistent with the rights granted in the lease. When making a decision regarding discrete surface-disturbing activities (e.g. Application for Permit to Drill) following site-specific environmental review, the BLM and USFS have the authority to impose reasonable measures (e.g. COA) to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200, 36 CFR 228). In their LUPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Nevada and Northeastern California GRSG PLUPA/FEIS provides management direction for conditions of approval on valid existing leases (see Objective FM 2), it does so only consistent with lessees’ valid existing rights.

One protest suggested that provisions for valid existing rights would not protect most mining claims which would therefore chill investment, effects of the proposed actions on locatable minerals and economics are discussed further in Chapter 4 of the PLUPA/FEIS.

Other protests that suggest valid existing rights are violated by travel management restrictions such as right-of-way and access provisions; these issues are discussed further in the Travel Management section of this document.

The Nevada and Northeastern California GRSG PLUPA/FEIS does not violate valid existing rights.

Multiple Use Mandate

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-19

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: SNWA protests the violation of both the letter and spirit of the Taylor Grazing Act mandates and the multiple-use mandates of both FLPMA and the Multiple Use Sustained Yield Act and the congressionally-mandated system of the

public lands use in Nevada for the production of food and fiber.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-8

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The BLM's multiple use and environmental stewardship obligations require it to consider and balance all uses and impacts, and not to allow a

singular focus on GRSG result in unintended and unnecessary environmental impacts. Thus, in granting exceptions to the 3% disturbance cap and lek buffers, BLM must consider whether adhering to the GRSG standards may have unintended negative effects on the sagebrush ecosystem and other important environmental resources.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-11

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The PHMA and Sagebrush Focal Area designations, the restrictions and limitations for actions and use within these zones (FEIS, Chapter 2), and the violation of BLM's mandate for multiple use by imposing such restrictions that potentially impair exploration and development of the Nation's minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-12

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: In compliance with FLPMA, management [must] be on the basis of multiple use and sustained yield (43 USC 1701(a)(7)). Multiple use includes mineral extraction. The imposed restrictions within the PHMA and Sagebrush Focal Areas; including avoidance areas, seasonal restrictions, noise limitations, etc. may be so strict, that they prohibit development, and thus do not allow for multiple use of public land. Wildlife conservation should not be the BLM's exclusive management consideration. Mineral extraction and other productive uses must be considered equally with GRSG management. Multiple use management requires “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” (43 USC § 1702(c)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-24

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Sections 2.6.2 and 2.6.3 at 2-25, 2-45, 2-50; and 2-63, respectively),²⁵ and the widespread travel and transportation restrictions (Sections 2.6.2 and 2.6.3 at 2-52, 53, 54; and 2-70, 71, respectively) are not consistent with FLPMA’s or NFMA/MUSYA’s multiple use mandate and raise sage-grouse conservation and aesthetics above all other resources in the planning area, and without providing rationale for placing protection GRSG above all other uses.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-25

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Moreover, the cumulative or “layering” of these management actions imposes severe restrictions on all Federal land and split estate land in the planning area. The total amount of habitat located on Federal land in the planning area is 23,310,800 acres (see Table ES-1). That means that 42% of the decision area (Federal lands within the

planning area), are effectively withdrawn as a result of the numerous and cumulative management actions presented in the PLUPA/FEIS. Therefore AEMA objects to the above cited sections of the PLUPA, because they do not comply with § 102(a)(7) and § 202(c)(1) of FLPMA, §1604(e)(1) of NFMA, and § 531 of MUSYA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-6

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: By withdrawing over 9 million acres of land from location under the General Mining Law and imposing exhaustive restrictions on mineral leasing, the PLUPA violates the multiple-use mandate of FLPMA and must be significantly revised.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-15

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: The Proposed LUPA/FEIS promotes conservation and management to the detriment of mineral development and, thus, conflicts with FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-17

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: The Proposed LUPA/FEIS is not balanced in its consideration of land uses and proposed restrictions, particularly those likely to limit physical access to mining exploration and development locations. Such limits threaten the economic prosperity of surrounding communities. Moreover, the Proposed

LUPA/FEIS lacks a comprehensive, detailed discussion of impacts to mining operations or the likelihood of successful mineral development in impacted areas, such that it prioritizes GRSG above all else without duly considering economic impact and the need for domestic sources of certain minerals. In this way, the Proposed LUPA is one dimensional and directly counter to multiple use management as expressly described in FLPMA. Without an informed discussion of mineral impacts and a clear explanation of why conservation is being promoted to the exclusion of development potential, the BLM's Proposed Plan is legally untenable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-13

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: The Proposed LUPA/FEIS is not balanced in its consideration of land uses and proposed restrictions, particularly those likely to limit physical access to mining exploration and development locations. Such limits threaten WEX's rights under the General Mining Law and significant reasonable investment-backed expectations amounting to more than \$30 million to date as well as the economic prosperity of surrounding communities. Moreover, the Proposed LUPA/FEIS lacks a comprehensive, detailed discussion of impacts to mining operations or the likelihood of successful mineral development in impacted areas, such that it prioritizes GRSG above all else without duly considering economic impact, and the need for domestic sources of certain minerals. In this way, the Proposed LUPA is one dimensional and directly counter to multiple use management as expressly defined in FLPMA. Without an informed discussion of mineral impacts and a clear explanation of why conservation (based on questionable

science rather than site-specific data and a superior State Conservation Plan) is being promoted to the exclusion of development potential, BLM's Proposed Plan is legally untenable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-1

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The Proposed LUPA/FEIS violates this FLPMA multiple use and sustained yield mandate because it prioritizes GRSG habitat conservation without regard to and to the exclusion of other uses. FLPMA does not authorize any single-use purpose in determining management of the Nation's public lands. Rather, FLPMA requires balancing a variety of public land uses in order to achieve the overarching principle of multiple use.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-23

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The FEIS appears to focus on a singular purpose: to justify the pre-decisional policy objective to implement the unlawful conservation measures and land use restrictions recommended in the NTT Report many of which improperly elevate GRSG conservation over all other multiple uses of public and National Forest System lands. The EIS Purpose and Need statement in Section 1.3 is at odds with the Proposed Plan. The Purpose and Need Statement appropriately acknowledges the FLPMA and NFMA mandates to manage public lands and National Forest System lands for multiple use and sustained yield:

“The purpose for the LUPAs is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat. The BLM will consider such measures in the context of its multiple use and sustained yield mandates under FLPMA. The USFS will consider such measures in the context of its mandates pursuant to NFMA” (FEIS, Page 1-15). However, the Proposed Plan does not consider the mandates pursuant to FLPMA and NFMA. Moreover, the FEIS utterly fails to disclose that substantial elements of the Proposed Plan are inconsistent with the FLPMA and NFMA mandates.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-36

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The Proposed LUPA unlawfully prefers conservation of GRSG 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 MMPA) rather than subordinate all other uses of public land and make GRSG conservation the dominant use of public lands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-12

Organization: David, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: The Proposed LUPA/FEIS promotes conservation and management to the detriment of mineral development and, thus, conflicts with FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-10

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: By withdrawing over 9 million acres of land from location under the General Mining Law and imposing exhaustive restrictions on mineral leasing, the PLUPA violates the multiple-use mandate of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-13

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: Whatever mandate, or authority, the Forest Service believes it can derive from the laws it administers generally for activities that affect surface resources within the National Forest Service System, they do not supersede, or override, the more specific mandates and requirements of the mineral laws. Likewise, the disposition of solid minerals subject to the leasing laws cannot be impaired by unilateral action by the Forest Service under the guise of its general authority to manage surface resources within the National Forest System.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-9

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Sections 2.6.2 and 2.6.3 at 2-25, 2-45, 2-50; and 2-63, respectively), and the widespread travel and transportation restrictions (Sections 2.6.2 and 2.6.3 at 2-52, 53, 54; and 2-70, 71, respectively) are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102 (a)(12).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-19-2

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

Issue Excerpt Text: Reducing grazing for the sole benefit of the GRSG is inconsistent with the multi-use mandate of NFMA, FLPMA and the balanced grazing program outlined in the Taylor Grazing Act, as it prioritizes wildlife use over other productive uses.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-11

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The disturbance cap also violates the definition of "multiple use" as defined in FLPMA Sec 103(c) (43 USC 1702).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-8

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: Exclusion of these land uses over vast expanses of public lands violates the definition of "multiple use" as

defined in FLPMA Sec I03(c) (43 USC 1702) and fails to take into account “the long-term needs of future generations for renewable and non-renewable resources”. Where there are competing resource uses and values in the same area, Section 103(c) of FLPMA (43 USC 1702) requires that the BLM manage the public lands and their various resource values so that they are utilized in the combination that will best meet multiple use and sustained yield mandates. Similar provisions are provided under the National Forest Management Act (16 U.S.C. 1600) for multiple-use management of Forest Service lands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-12

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Y-3 II protests the violation of both the letter and spirit of the Taylor Grazing Act mandates and the multiple-use mandates of both FLPMA and the Multiple Use Sustained Yield Act and the congressionally-mandated system of the public lands use in Nevada for the production of food and fiber. Y-3 H's extensive experience managing 85,000 acres of BLM allotments has proven the value of grazing management based on field observations and data, pursuant to the terms and conditions of the grazing permit, as the most effective way to conserve and enhance sage-grouse habitat. The prescriptive measures in the LUPA/FEIS significantly limit the options of both the Agencies and the private ranching community in the management of these lands that must, by definition, be conducted on very localized sites and conditions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-9

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Even if the Agencies intended to apply their multiple-use mandates consistent with FLPMA and NFMA, the Agencies' Proposed Plan to significantly restrict livestock grazing without providing reasoned explanation of how such restrictions will provide benefits to the GRSG that otherwise could not be achieved in conjunction with ranching (e.g., through mitigation or other conservation measures), establishes that these alternatives are inconsistent with and do not meet the multiple-use requirements of the purpose and need for the environmental review process by failing to provide for a combination of “balance and diverse resource uses”. The Agencies' failure to comply with their multiple-use requirements violates FLPMA, NFMA, MUSYA, and NEPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-2

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: FLPMA at Section 103(c) (43 USC 1702) requires lands under management of the BLM adhere to the definition of multiple use, and a process for resolution when conflicting uses exist. Under these provisions, the BLM must manage the land to allow a variety of uses. The unilateral denial of certain land uses in the event of a 3% trigger is a clear violation of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-4

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: FLPMA at Section 103(c) (43 USC 1702) requires lands under

management of the BLM adhere to the definition of multiple use. Under these provisions, the BLM must manage the land to allow a variety of uses. Additionally, the wholesale withdrawal of land uses in the absence of a coherent and comprehensive environmental and economic analysis is a clear violation of NEPA and FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-7

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: FLPMA Section 202(c) states that: “In the development and revision of land use plans, the Secretary shall- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law.” As described in detail in our comments on the DEIS, the Proposed LUPA fails to comply with FLPMA multiple use and sustained yield requirements. Despite the fact that the Purpose and Need and Planning Criteria established for the FEIS note a requirement to comply with FLPMA’s multiple use

mandate, the Proposed LUPA utterly fails to do so. Moreover, the FEIS does not disclose the lack of compliance with FLPMA or the inconsistency with the Purpose and Need and Planning Criteria. The Proposed LUPA unlawfully prefers conservation of GRSG 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 Taylor Grazing Act, Public Rangelands Improvement Act, General Mining Law and Mining and Mineral Policy Act) rather than subordinate all other uses of public land and make GRSG the dominant use of public lands. The BLM must reconcile inconsistencies in the Proposed LUPA and provide additional public review for substantial changes and prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(1).

Summary:

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

- Prioritizing wildlife over other uses (e.g., livestock grazing, agriculture, mineral development); and
- Recommending withdrawals from mineral entry, restrictions on travel and transportation, and a disturbance cap [FLPMA Section 102(a)(12)].

Response:

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

FLPMA's multiple use mandate does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, including conservation values, and to employ the mechanism of land use allocations to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation. Similarly, the TGA does not require the BLM to allow grazing or particular levels of grazing on all public lands and provides wide discretion to protect other resource values. Likewise, the PLUPA/FEIS does not violate the statement of Congressional policy contained in FLPMA section 102(a)(12) simply recognizing that minerals, food, timber and fiber are part of BLM's multiple use mission.

Consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA)(16 USC 528–531), the Forest Service manages National Forest System land to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas. The Forest Service is required by statute to have a national planning rule: the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, requires the Secretary of Agriculture to issue regulations under the principles of MUSYA for the development and revision of land management plans.

Both the BLM's and Forest Service's planning processes allowed for analysis and consideration of a range of alternatives in the Nevada and Northeastern California GRSG PLUPA/FEIS that identified and incorporated appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat, and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was recommended. The Nevada and Northeastern California GRSG PLUPA/FEIS includes alternatives that provide a greater and lesser degree of restrictions in various use programs, but would not eliminate or invalidate any valid existing development rights.

All alternatives considered in the Nevada and Northeastern California GRSG PLUPA/FEIS, as described in Chapter 2 (Vol.1, p. 2-1 through 2-488), provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Nevada and Northeastern California GRSG PLUPA/FEIS is consistent with FLPMA's and MUSYA's multiple use mandates.

Consistency with State and Local Plans (FLPMA)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-1

Organization: Assistant General Consuel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: The LUPA should more expressly integrate the Barrick Nevada

GRSG Bank Enabling Agreement. The LUPA does not reference the Barrick Nevada GRSG Bank. Omission of any reference to the bank or the agreement that established the bank (the BEA) exacerbates the interpretive issues described elsewhere by Barrick in this Protest.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-13

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: In addition, the proposed Sagebrush Focal Area and Withdrawals and any restrictions that would interfere with mineral exploration and development conflict with the State of Nevada's Conservation Plan which allows for mitigation where avoidance and minimizing cannot fully resolve any habitat disturbance. Where, as here, State and local conservation plans are in place and consistent with Federal law, FLPMA requires the Secretary ensure the Federal plan is consistent with such State and local plans. Accordingly, the LUPA EIS must be revised for consistency with the State Plan as set forth in the previously submitted comments and any protest comments filed by the Nevada Sagebrush Ecosystem Council.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-14

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: WLC protests the LUPA as inconsistent with the State Conservation Plan and requests that all inconsistencies as set forth in the protest submitted by the Sagebrush Ecosystem Council be upheld and the LUPA be revised

for consistency with the State Plan as required under Section 202 of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-1

Organization: Elko County Commission
Protestor: Demar Dahl

Issue Excerpt Text: Our review of the Nevada and Northeastern California GRSG Land Use Plan Amendments and Final Environmental Impact Statement (GRSG LUPA/FEIS) illustrates the failure to incorporate the State, Local and Elko County plans. In the GRSG LUPA/FEIS, our policies and controls were briefly "explained away". There are only two short paragraphs with obligatory statements about inconsistencies with county plans, policies, and procedures and one specific to the Elko County plan. The GRSG LUPA/FEIS states that "The BLM is aware that there are specific...local plans relevant to aspects of public land management that are discrete from, and independent of, federal law. However, the BLM is bound by federal law. As a consequence, there may be inconsistencies that cannot be reconciled" (p. 6-28). Yet, the GRSG LUPA/FEIS nowhere identifies how any of the inconsistencies with Elko County's plans, policies, or controls is not in accordance with federal law. There continues to be no analysis that can conclude or determine that our plans, policies, and proposals will not benefit and conserve GRSG in Elko County. If this analysis exists, the BLM has made no effort to describe why it can defend that position.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-2

Organization: Elko County Commission
Protestor: Demar Dahl

Issue Excerpt Text: FLPMA 202(c)(9) requires the Secretary to develop a federal LUPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Nevada GRSG Conservation Plan and Elko County GRSG Management and Conservation Plan are consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the Proposed LUPA. Consequently, the Secretary must revise the Proposed LUPA to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the multiple use and sustained yield FLPMA mandates.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-3

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: NEPA regulations highlight in 40 CFR 1502.16 that the environmental consequences section of any EIS “shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)....” We note that there is no discussion of these possible conflicts in the environmental consequences section of the LUPA/FEIS. Further, 40 CFR 1506.2 states that “(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law... (d) To better integrate environmental impact statements into State

or local planning processes, statements shall 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.” The LUPA/FEIS inadequately addresses inconsistencies and does not have any language describing “the extent to which the agency would reconcile its proposed action with the [local] plan or law”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-31

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS also failed to comply with § 202(c)(6). As described in detail elsewhere in this Protest Letter infra VII.B, the PLUPA/FEIS does not give adequate consideration to alternative approaches to GRSG conservation. The superficial and perfunctory consideration of the Nevada GRSG Conservation Plan (as Alternative E in the FEIS) is a glaring example of the failure to comply with this specific FLPMA Section 202 land use planning requirement. As described below, the Nevada GRSG Conservation Plan is consistent with the multiple-use objectives under FLPMA (which the PLUPA is not) and achieves superior GRSG habitat conservation than the PLUPA. BLM must give serious consideration to the Nevada GRSG Conservation Plan as an alternative means to realize FLPMA values as well as provide for GRSG habitat conservation in order to comply with FLPMA § 202(c)(6). BLM must prepare a Supplemental EIS and a Revised PLUPA in order to comply with

FLPMA § 202(c)(6).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-33

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The PLUPA/FEIS is wildly inconsistent with the Nevada GRSG Conservation Plan and thus does not comply with FLPMA 202(c)(9). The utter failure of the PLUPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the PLUPA/FEIS. BLM/USFS must address the inconsistencies identified by the State and local governments with the PLUPA and provide appropriate public notice and comment on such changes.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-34

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: FLPMA 202(c)(9) requires the Secretary to develop a federal LUPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Nevada GRSG Conservation Plan is consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the Proposed LUPA. Consequently, the Secretary must revise the Proposed LUPA to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the multiple-use and sustained yield FLPMA mandates.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-16

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Failure to reconcile inconsistencies between the Proposed LUPA and the State Plan (which have been identified in the State SEC's comments on the draft EIS and will again be identified through the SEC protest to the Proposed LUPA) violates FLPMA Section 202(c)(9)'s consistency review requirements and imposes significant harm on numerous users of public lands, including Midway.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-12-1

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the significant inconsistencies between the Proposed LUPA and the Nevada GRSG Conservation Plan (2014) (“Nevada Plan”). See Proposed LUPA, app. O (Nevada Plan). See also State of Nevada Executive Order 2012-09 (undated). These inconsistencies are the result of BLM’s choice to impose a national, one-size-fits-all approach to GRSG conservation in violation of FLPMA’s requirement for BLM to coordinate land use planning with state and local governments. The Proposed LUPA diverges from the Nevada Plan in many important respects. For example, the Nevada Plan has no disturbance cap percentage, Nevada Plan at 64, Management Action 1.1.2, while the Proposed LUPA proposes a 3% disturbance cap in priority habitat management areas (PHMA), general habitat management areas, (GHMA), and GRSG focal areas (SFA), Proposed LUPA at 2-48, Action UFM 1; 2-59, Action FM 1. The Nevada Plan proposes a “no net unmitigated loss” standard for

conserving GRSG, see Proposed LUPA, app. O at 12, while the Proposed LUPA requires a “net conservation gain” for actions requiring mitigation, see Proposed LUPA at 2-22, Action SSS 2; 2-23, Action SSS 3.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-14

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: Failure to reconcile inconsistencies between the Proposed LUPA and the State Plan (which have been identified in the State SEC's comments on the draft EIS and will again be identified through the SEC protest to the Proposed LUPA) would violate FLPMA and impose significant harm on numerous users of public lands, including WEX.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-14-6

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: The designation of SFAs is in stark contrast to the State of Nevada Plan, and the County does NOT support this action. While no SFAs are proposed for the County, there is grave concern that resources will be diverted out of the County that would otherwise be available to address threats to GRSG habitat. In particular, expansion and infill of Pinyon-Juniper and expansion and overgrazing by wild horses. Both issues have been identified as key threats to GRSG in the County and both require significant investments to address as soon as possible.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-34

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The FEIS/Proposed LUPA does not adequately explain why the agencies have not selected Alternative E, the Nevada Plan, as the Proposed Plan; discuss why the Proposed Plan needs to be different than the Nevada Plan; or demonstrate that the Proposed Plan will result in superior GRSG habitat conservation compared to the Nevada Plan. Without this discussion, the agencies' selection of the Proposed Plan is arbitrary and capricious and, not based on the best available science which is the foundation for the Nevada Plan and contained in site-specific data available.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-35

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: FLPMA 202(c)(9) requires the Secretary to develop a federal LUPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Nevada Plan is consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the Proposed LUPA. Consequently, the Secretary must revise the Proposed LUPA to eliminate its inconsistencies with the Nevada Plan in compliance with FLPMA 202(c)(9) and the multiple use and sustained yield FLPMA mandates.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-13

Organization: David, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: Failure to reconcile inconsistencies between the Proposed LUPA and the State Plan (which have been identified in the State SEC’s comments on the draft EIS and will again be identified through the SEC protest to the Proposed LUPA) violates FLPMA Section 202(c)(9)’s consistency review requirements⁴ and imposes significant harm on numerous users of public lands. The Proposed LUPA/FEIS is not balanced in its consideration of land uses and proposed restrictions, particularly those likely to limit physical access to mining exploration and development locations. Such limits threaten the economic prosperity of projects as well as surrounding communities. Moreover, the Proposed LUPA/FEIS lacks a comprehensive, detailed discussion of impacts to mining operations or the likelihood of successful mineral development in impacted areas, such that it prioritizes GRSG above all else without duly considering economic impact, and the need for domestic sources of certain minerals. Without an informed discussion of mineral impacts and a clear explanation of why conservation is being promoted to the exclusion of development potential, BLM’s Proposed Plan is legally untenable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-2

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: Federal Land Policy and Management Act (FLPMA), 43 USC 1712 (c)(9), requires that:

“(c) In the development and revision of land use plans, the Secretary shall--(9) to the extent consistent with the laws governing the administration of the public lands,

coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of...agencies and of the States and local governments within which the lands are located...In implementing this directive, the Secretary shall, to the extent [s]he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands...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” (*emphasis added*).

Many if not most of the provisions related to consistency with local plans identified above apply to the Nevada GRSG Conservation Plan and will not be repeated here. We note that the Nevada Plan has elevated coordination protocols with Nevada counties to ensure consistency between the State Plan and county plans to benefit GRSG and is built on the foundation of local efforts rather than top-down approaches have a proven track record of resource conservation balanced with sustainable use.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-10

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: These actions are in direct conflict and inconsistent with the State Plan. The State Plan does not include disturbance caps, but instead provides a[n] “avoid, minimize, mitigate” process to address impacts from anthropogenic disturbances (pages 12 - 18, 61 - 66, 69 - 70, State Plan). The additional disturbance cap restriction is not needed due to the “avoid, minimize, mitigate” process, including the complete adoption of the Conservation Credit System.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-5

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: According to 43 CFR 1610.3-l(d) and 43 CFR 1610.3-2(a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments; however the proposed action is inconsistent with the State Plan, specifically as it relates to the use of the CCS. The BLM has failed to follow 43 CFR 1610.3-l(d) by failing to identify where inconsistencies exist between the proposed action and the State Plan and “provide reasons why the inconsistencies exist and cannot be remedied”. The State has provided written comments throughout the planning process detailing this inconsistency between the State Plan and the LUPA. The BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-l(f) and FLPMA Sec 202(c) (9) (43 USC 1712).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-9

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: These actions are in direct conflict and inconsistent with the Plan, inconsistent with best science, and inconsistent with the threats and objectives identified in the Conservation Objectives Team (COT) report. The State Plan does not identify exclusion zones, but instead provides a[n] “avoid, minimize, mitigate” process to address impacts to achieve net conservation gain from anthropogenic disturbances (pages 12 - 18, 61 - 66, 69 - 70, State Plan). The State contends that the proposed land use allocations are not needed if the “avoid, minimize, mitigate” process is adhered to, including the complete adoption of the Conservation Credit System which assures a net conservation gain.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-3

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: SFA’s are inconsistent with the State Plan, which utilizes economic incentives and the concepts of avoid, minimize and mitigate to ensure habitat protection and improvement. The BLM is obligated under 43 CFR 1610.3-l(d) and 1610.3-2(a) to provide management plans that are consistent with state plans. The BLM has not provided a rationale why these inconsistencies exist or why they cannot be remedied as required above.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-32-3

Organization: FIM Corporation, Farming and Livestock

Protestor: Fred Fulstone

Issue Excerpt Text: LUPA/FEIS fails to

specify what if any effort has been completed to fulfill the lawful requirement to resolve inconsistencies between local plans and this federal proposal through the process of coordination. FLPMA and NEPA both have clear requirements for federal officials to complete coordination.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-3

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: 40 CFR 1506.2 states that “(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law... (d) To better integrate environmental impact statements into State or local planning processes, statements shall 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”. The FEIS inadequately addresses inconsistencies and has no description on “the extent to which the agency would reconcile its proposed action with the [local] plan or law”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-5

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: Most egregiously, the FEIS states that “...while State, County and Federal planning processes, under FLPMA, are required to be as integrated and consistent as practical, the Federal agency

planning process is not bound by or subject to County plans, planning processes, or planning stipulations. While the BLM is not obligated to seek consistency, the agency is required to describe the inconsistencies between the proposed action and the other plans, policies, and/or controls within the EIS....” (*emphasis added*) (Appendix C, p. C-24). BLM is obligated to seek consistency but only when federal law would not be subverted. Yet, the FEIS nowhere identifies any specific inconsistencies with Eureka County’s plans, policies, or controls let alone how any of Eureka County’s plans, policies, or controls are not in accord with federal law. One statement in the EIS notes that “However, the counties’ plans may not be consistent with the BLM’s National GRSG Strategy....”, but there is no discussion on how Eureka County’s plans or policies are inconsistent with this Strategy and we argue that our plans, policies, and controls are not inconsistent with the Strategy. Further, the Strategy itself was developed without proper coordination and consistency review. There continues to be no analysis that can conclude or determine that our plans, policies, and proposals will not benefit and conserve GRSG in Eureka County. If this analysis exists, BLM has made no effort to describe why or how BLM can defend that position.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-6

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: In December 2011, former Secretary of the Interior, Ken Salazar, complied with the FLPMA Section 202(c)(9) requirement to coordinate the land use planning process with State governments when he asked the western governors to develop GRSG conservation plans. Secretary Salazar’s December 2011

request recognized the States' authority to furnish advice during the federal land use planning process pursuant to Section 202(c)(9).

The June 2015 Northeastern California FEIS/Proposed LUPA is wildly inconsistent with the Nevada GRSG Conservation Plan and thus does not comply with FLPMA 202(c)(9). The utter failure of the Proposed LUPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the FEIS/Proposed LUPA. BLM and USFS must address the inconsistencies identified by the State and its local governments with the Proposed LUPA and provide appropriate coordination to reach consistency.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-9

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: As described above, the Nevada GRSG Conservation Plan is consistent with the multiple use objectives in FLPMA (which the Proposed LUPA is not) and achieves superior GRSG habitat conservation than the Proposed LUPA. BLM must give serious consideration to the Nevada GRSG Conservation Plan as an alternative means to realize FLPMA values as well as provide for GRSG habitat conservation in order to comply with FLPMA Section 202(c)(6). The BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(6).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-37-1

Summary:

The PLUPA/FEIS is inconsistent with several state and county plans and orders, including the Nevada GRSG Conservation Plan, Barrick Nevada GRSG Bank Enabling Agreement, and Elko

Organization: Nevada Association of Counties

Protestor: Jeff Fontaine

Issue Excerpt Text: The BLM is obligated to seek consistency but only when federal law would not be subverted. Yet, the FEIS nowhere identifies any specific inconsistencies with any county plan, policy, or controls let alone how any of these county plans, policies, or controls are not in accordance with federal law. NACO contends that additional consistency, and explanations of inconsistencies, are required to be provided in the Proposed Plan; for the purposes of this protest, it is clear that the lack of this provision in the Plan is a violation of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-40-2

Organization: Nye County Commission

Protestor: Lorinda Wichman

Issue Excerpt Text: There continues to be no analysis that can conclude or determine that our plans, policies, and proposals will not benefit and conserve GRSG in Nye County.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-40-3

Organization: Nye County Commission

Protestor: Lorinda Wichman

Issue Excerpt Text: The BLM's attempt to write a plan in a vacuum without considering our plans and then force the State and Counties to prove them wrong is inconsistent with federal law, and demonstrates the arrogance of many federal agency land managers.

County plans, policies, and controls. Additionally, the BLM has inadequately acknowledged the inconsistencies in the PLUPA/FEIS and inadequately explained why the state and county plans do not comply with federal law. Therefore, the BLM is in violation of FLPMA (43 USC 1712(c)(9)).

Response:

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

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Nevada and Northeastern California GRSG PLUPA/FEIS, including the Nevada GRSG Conservation Plan and other related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS. Chapter 6 describes the coordination that has occurred throughout the development of the Nevada and Northeastern California GRSG PLUPA/FEIS and discusses known inconsistencies with officially approved state, local, and Tribal plans. A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.6. The BLM seeks to be consistent with or complementary to other management actions and plans whenever possible.

The agency will discuss why any remaining inconsistencies between the Nevada and Northeastern California GRSG PLUPA/FEIS and relevant local, state, and Tribal plans, such as those that may be identified by local governments, cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions will undergo a 60-day Governor’s consistency review prior to final approval. BLM’s procedures for the Governor’s consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Please reference the response for NFMA Coordination with State and Local Governments for Forest Service requirements.

[Viability \(Forest Service\)](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-14

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM proposes to remove livestock within 3-7 days of reaching allowable use levels based on percentage of forage used. FEIS at 2-40. In order to provide an adequate regulatory

mechanism to prevent serious impacts from livestock grazing, this Action should be applied regardless of whether or not land use standards are being met, and should also include Desired Conditions for GRSG habitat features as a criterion for removal of livestock grazing. It is important to note that based on the agencies’ own models, not only does GRSG habitat condition and trend not meet Desired Conditions in 50 years (only

70-71% of lands meet these targets), but the proportion lands meeting these Desired Conditions and trends is lower in 50 years than it is under present-day conditions. FEIS at 4-52. This means that not only is the proposed plan amendment inadequate to return sage grouse habitats to healthy conditions, it is not even capable of maintaining today's impaired conditions without further degradation. This is indicative of a violation of FLPMA undue degradation standards for the BLM and a violation of NFMA viability regulations for the Forest Service.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The agencies do not propose to seek withdrawal of sage grouse Priority Habitats from locatable mineral entry outside Focal Areas. FEIS at 2-50, 2-84, 2-108. Given that the agencies' position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to sage grouse (at least in the future) will be dealt with. This represents yet another example of federal agencies failing to provide adequate regulatory mechanisms to address a threat to sage grouse habitats and populations in the areas where that threat is most extreme. In effect, BLM and the Forest Service fail to address the threats of locatable mineral

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS did not adequately address viability requirements of the 1982 Planning Rule (implementing NFMA) because it did not:

- Provide direction that would return sage grouse habitats to healthy conditions, or even maintain today's impaired conditions without further degradation.

development in areas where that threat is greatest. This violates FLPMA, NFMA viability standards, and BLM and Forest Service Sensitive Species policy.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-18

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: Garton et al., 2015 have identified substantial concerns regarding the viability of sage- grouse populations across the planning region, with many of the populations showing declines and increased risks of extirpation. It is therefore imperative that the LUPAs incorporate all measures necessary to prevent any further population declines due to activities or projects permitted and authorized under the Forest Plan amendment. This includes authorizing livestock grazing. As we have explained above, the proposed actions with respect to livestock grazing are not just insufficient to prevent significant impacts to sage grouse populations and their habitats, but in many cases will increase habitat loss. This will result directly in significant population declines of sage grouse on National Forest lands, threatening the viability of sage grouse populations both across the region and across the species' range, in contravention of NFMA viability requirements and Sensitive Species requirements.

- Address the threats of locatable mineral development in areas where that threat is greatest (in PHMAs and GHMAs) .
- Incorporate all measures necessary to prevent any further population declines due to activities or projects permitted and authorized under the Forest Plan amendment including authorizing livestock grazing.

Response:

The 1982 National Forest Management Act regulations at 219.19 state that, “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” Sensitive species are identified by Regional Foresters as one of several approaches supporting species conservation (Forest Service 2670). Forest Service Manual 2672.1 provides the following direction on sensitive species management: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. ”

The Forest Service documents the analysis of viability and sensitive species in a biological evaluation. According to the Forest Service Manual at 2672.4, “The objectives of the biological evaluation are:

1. To ensure that Forest Service actions do not contribute to loss of viability of any native or desired non-native plant or contribute to animal species or trends toward Federal listing of any species.
2. To comply with the requirements of the Endangered Species Act that actions of Federal agencies not jeopardize or adversely modify critical habitat of Federally listed species.
3. To provide a process and standard by which to ensure that threatened, endangered, proposed, and sensitive species receive full consideration in the decision-making process.”

The FEIS demonstrates that the proposed plan amendment represents a substantial shift in management direction and consequently, in habitat conditions that represent improvements in conditions for GRSG in the plan area. Table 4-7 on page 4-52 of the FEIS, compares the No Action alternative and Proposed Plan in regard to the amount of land meeting the desired condition (70% of the analysis area meeting 10%-30% sagebrush cover) as a result of planned vegetation treatments. This table projects that the proposed plan will meet the desired condition after 10 and 50 years.

The Biological Evaluation (see Appendix Q) completed reflects the positive outcomes displayed in Table 4-7 of the FEIS (pg 4-52). It evaluates the effects of implementing the proposed management direction for the proposed plan alternative as described in Chapter 2 pages 2-56 thru 2-75 of the FEIS. The Biological Evaluation’s determination for the GRSG is that “under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. Therefore, the Proposed Plan may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the GRSG in the plan area.” Adverse impacts from implementing some actions (such as vegetation and soils management treatments and providing new livestock water sites) under

the plan amendment are expected to be short-term, but overall management actions would result in long term benefits for sage grouse habitat.

The Biological Evaluation and associated FEIS together provide the ecological rationale for this determination based on a careful consideration of the direct, indirect, and cumulative effects of the proposed plan, in light of existing understanding of the GRSB biology and ecology, threats to that species, and its current population trends.

Specifically in regard to effects of minerals development, the Biological Evaluation concluded that energy development is currently a minor threat but geothermal energy development potential is high in the northern part of Nevada (Chapter 5 of the FEIS). Mining is common in Nevada and occurs at a variety of scales. Under the Proposed Plan some of the current management direction associated with energy and locatable minerals development would continue; however, additional emphasis on protecting GRSB and GRSB habitat would be included. The proposed plan amendment includes buffers around leks and seasonal timing and noise restrictions. Therefore, the direct and indirect effects of energy and locatable minerals development to GRSB from the added management actions under the Proposed Plan amendment would be largely beneficial for GRSB.

Specifically in regard to effects of livestock grazing, the Biological Evaluation concluded that under the Proposed Plan amendment, no change in the acres currently available for livestock grazing would be required and wild horse and burro territories would be managed for Appropriate Management Level. However, additional emphasis on protecting existing sagebrush and riparian habitat under the Proposed Plan amendment would provide an added benefit to GRSB habitat. Therefore, the direct and indirect effects of livestock grazing and wild horse and burro management to GRSB from the management actions under the Proposed Plan amendment would be largely beneficial for GRSB.

This determination in the Biological Evaluation for the GRSB, reflects a careful analysis of the potential negative influences of livestock grazing in light of the GRSB amendments that are designed to ensure that, even with grazing, GRSB habitat conditions would be sufficient to maintain the species. See, in particular, the standards and guidelines at p. 2-64 through 2-67 of the FEIS. This management direction addresses threats to greater sage-grouse in the plan areas and the consequences of this direction are reflected in the determination in the Biological Evaluation.

The PLUPA/FEIS provides direction to improve habitat conditions for greater sage-grouse, contributing to habitat conditions suitable to support a viable population. The FEIS, particularly the Biological Evaluation of greater sage-grouse in Appendix Q, with its careful consideration of the scientific analysis of population trends and evaluation of the effects of proposed management direction, adequately demonstrate that the proposed plan amendment met the requirements of the 1982 planning regulation regarding managing habitat to maintain viable populations of vertebrate species and the Forest Service policy on sensitive species.

NFMA Coordination with State and Local Governments

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-2

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The disregard for the provisions of the Nevada Plan evidenced in the Proposed LUPA is inconsistent with the

NFMA and Forest Service regulations. Although the Forest Service is not required to ensure absolute consistency with state and local plans, 36 CFR § 219.4(b)(3), the Forest Service is required to coordinate its planning efforts with equivalent efforts of state and local governments. 16 USC § 1604(a); 36 CFR § 219.4(b)(1).

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS violates NFMA and Forest Service regulations because it did not coordinate its planning efforts with the equivalent efforts of state and local governments.

Response:

NFMA requires the Forest Service to coordinate land management planning for the National Forest System with land management planning conducted by state and local governments and other Federal agencies (16 USC 1604(a)). The applicable 1982 planning rule echoes these coordination requirements (36 CFR 219.7(a)). However, the Forest Service is not required to adopt recommendations made by state and local governmental entities. In particular, the Forest Service is not required to incorporate specific provisions of county ordinances or resolutions into land management plans or to comply with procedural requirements, such as a requirement to obtain county approval before amending or revising a land management plan. The statutes governing Forest Service land management planning and their implementing regulations provide for an advisory role for state and local governments.

In accordance with these requirements, the BLM and Forest Service have given consideration to state, local and Tribal plans that are germane to the development of the Nevada and Northeastern California GRSG PLUPA/FEIS. The BLM and Forest Service have worked closely with state, local, and Tribal governments during preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Wyoming PRMPA/FEIS. A list of the local, state, and Tribal plans that the BLM and Forest Service considered can be found in Chapter 1, Section 1.6. Therefore, the Forest Service satisfied the coordination requirements under NFMA and Forest Service regulations in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS.

Range of Alternatives

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-10

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: As described in detail, the GRSG LUPA/FEIS does not give

adequate consideration to alternative approaches to GRSG conservation. The superficial and perfunctory consideration of the Nevada GRSG Conservation Plan and Local Plans is a flagrant example of the failure to comply with this specific NEPA and FLPMA land use planning

requirements. The Nevada GRSG Conservation Plan, Elko County GRSG Management and Conservation Plan and Elko County Public Land Use & Natural Resource Management Plan are consistent with the multiple use objectives of NEPA and FLPMA and achieves superior GRSG habitat conservation than the GRSG LUPA/FEIS. The BLM/USFS must give serious consideration to the Nevada GRSG Conservation Plan and Local Government Plans as an alternative means to realize NEPA and FLPMA values as well as provide for GRSG habitat preservation, restoration and conservation.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-41

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that in order for the alternatives to be considered a “reasonable range” of alternatives, then the alternatives must provide a reasonable range of area-specific conservation measures appropriate for the planning area and not rely almost entirely on the conservation measures (including RDFs and BMPs) recommended in the NTT Report. Moreover the alternatives must consist of management actions that comply with all public land statutes including the General Mining Law, and the Mining and Minerals Policy Act, and that are supported by the “Best Available Science.” AEMA contends that the NTT Report does not constitute the Best Available Science discussed infra VII.F. In addition, the primary purpose of NEPA is the principle of informed decision-making, and is intended to be used as a tool during the planning and decision-making process. As such, an EIS should not be used to justify decisions that have already been made and “[a]gencies shall not commit resources

prejudicing selection of alternatives before making a final decision” (40 CFR §1502.2(f)). AEMA maintains that BLM/USFS failed to develop an alternative or Proposed Plan that supports responsible resource development in the planning area, and failed to include due consideration or detailed analysis of conservation measures other than those in the NTT Report. As such, the Proposed Plan represents a pre-determined decision by the BLM to implement the conservation measures found in the NTT Report without giving proper and detailed analysis to alternative conservation measures which may produce equal or better results for GRSG conservation, while complying with the General Mining Law, Mining and Minerals Policy Act, FLPMA and NFMA/MUSYA. The narrow range of alternatives in the PLUPA/FEIS constitutes a serious shortcoming that must be addressed. Consequently, the PLUPA/FEIS is “inadequate as to preclude meaningful analysis” (40 CFR §1502.9(a)); therefore, the PLUPA violates NEPA, and is thus, a fatal flaw that can only be cured by publishing a Revised PLUPA and a Supplemental EIS. The BLM must uphold AEMA’s protest of the PLUPA because it “does not comply with applicable laws, regulations, policies and planning procedures.” To that end, failing to analyze full and consistent implementation of existing policies and conservation measures, like those contained in Manual 6840, IM-2005-024: National GRSG Habitat Conservation Strategy (2004 Strategy), Fundamentals for Standards for Rangeland Health (43 CFR §4180.1), existing Best Management Practices (BMPs) as an alternative (a “Manual 6840 Alternative”), and an alternative which complies with USFWS “Warranted but Precluded” finding for GRSG in the EIS documents is arbitrary and capricious and does not comply with

NEPA requirements. Consequently, the BLM must revise and supplement PLUPA/FEIS to include a detailed analysis of the alternatives described herein and provide the public with an opportunity to review and comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-45

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM fails to fully explain or analyze adequately how existing regulatory mechanisms are either adequate to conserve GRSG or inadequate to conserve GRSG, and therefore provides no useful baseline against which each of the proposed alternatives can be compared. The continuation of existing management and conservation measures and existing regulatory policies including the directives contained in BLM Manual 6840 must define the “No Action” Alternative and provide a baseline upon which useful analysis may take place. It seems apparent that BLM has prematurely concluded that these existing regulatory policies are inadequate. However, the BLM provides no discussion based upon on-the-ground data that this is the case. BLM should not presume that using the existing tools or better implementation of the existing regulatory tools would not provide adequate GRSG and sagebrush habitat conservation. Instead it should be analyzed as an additional alternative as AEMA recommended in our DLUPA/DEIS Comment Letter (DLUPA/DEIS Comment Letter at 12, 15-22), and continues to recommend in this Protest Letter. The “No Action” Alternative analysis in the DLUPA/DEIS should quantify the impacts associated with ongoing implementation of the many existing local, state, and federal conservation measures and the existing

BLM policies to protect GRSG habitat. Some of the impacts that could result from continuation of the existing regulatory framework and conservation measures that should be evaluated in the PLUPA/FEIS include the future, long-term habitat improvements that could occur with ongoing implementation of the existing GRSG habitat conservation measures in the planning area. For example, any Federal, state, local, private, and Tribal efforts to conserve GRSG through voluntary conservation agreements and/or strategies, and BMPs should be thoroughly analyzed. However, BLM fails to take a “hard-look” at other management actions or conservation measures currently in effect in the planning area that would have a positive impact on wildlife, such as habitat conservation improvements and the various conservation measures implemented on a local scale. In addition, the BLM/USFS should discuss and quantify the number of acres, projects, that are subject to the §3809/§ 228A regulations currently in the planning area, and their effectiveness.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-12

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed LUPA. First, the Final EIS does not analyze alternatives to the adaptive management triggers and responses. Second, the Final EIS does not analyze alternatives to the lek buffers. Importantly, the adaptive management triggers and responses and lek buffers are new components of the Proposed LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-23

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Third, the Agencies cannot implement the “responses” to the soft and hard triggers because they did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS accompanying the Proposed LUPA. See Proposed LUPA 2-81 – 2-86. FLPMA, NFMA and NEPA require the Agencies to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 36 CFR § 219.14(b)(2); 40 CFR § 1502.14, 1502.16; and 43 CFR § 1610.4-5, 1610.4-6. Therefore, the Agencies must consider alternatives to the soft and hard trigger responses and analyze their potential environmental impacts before it may implement them. Because the Agencies have neither analyzed alternatives to the trigger responses nor analyzed their potential impacts, the Agencies may not implement the trigger responses without amending the Proposed LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-60

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The only rationale and justification given for this broad-scale exemption for the TransWest and similar transmission projects is that the projects have been identified by the President as being high priority renewable projects for jobs and for electric transmission infrastructure. The LUPA/FEIS does not identify, let alone analyze, the number of jobs that would be created for construction of these projects, or the number of long-term jobs that would result after construction of

the transmission line. The LUPA/FEIS fails to identify, let alone analyze, whether there are alternatives to providing this exemption in the LUPA. The LUPA/FEIS fails entirely to analyze an alternative that explains or otherwise justifies counting the significant landscape level surface disturbance of these exempted transmission projects against the cap calculation applicable to the oil and gas industry and all other industries operating on public lands where the cap is applicable against their operations and activities. The LUPA/FEIS fails to explain why such disparate treatment between industries and public land developers is warranted.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-14

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: Notably, the DEIS included full and detailed analysis of proposals from environmental groups (such as Alternative F) but failed to give full and adequate consideration to an alternative that would achieve the conservation objectives with minimal impact on other economic use of the lands including but not limited to mining, ranching, and grazing.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-24

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The No Action Alternative (Alternative A) does not present a complete discussion of the regulatory tools BLM already has to protect GRSG habitat, including Manual 6840, and the surface management regulations pertaining to locatable minerals at 43 CFR 3809. The conservation measures outlined in the

Manual 6840 and the environmental protection mandates in the 43 CFR 3809 regulations are binding upon BLM and should be considered in the context of the No Action Alternative. Astonishingly, Manual 6840 is not even included in Chapter 7, References, of the FEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-25

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The BLM should have given the State Conservation Plan careful consideration in the context of the No Action Alternative. The State Conservation Plan was finalized in October 2014, after publication of the DEIS but in time to be analyzed in detail in the FEIS/Proposed LUPA. As explained on Page 2-100 of the FEIS/Proposed LUPA, the State Conservation Plan is applicable on “all lands in the state, regardless of ownership” and is thus a binding policy applicable to BLM- and USFS-administered lands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-26

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The FEIS does not evaluate a reasonable range of alternatives because it omits analysis of Manual 6840 as an alternative which is both reasonable and that would meet the Purpose and Need statement to provide for GRSG habitat conservation while at the same time comply with statutory mandates to achieve multiple use. The BLM must prepare a Supplemental EIS to include a Manual 6840 alternative.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-27

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The sweeping land use restrictions and prohibitions in the Proposed Plan and in Alternatives B, C, D and F are inconsistent with current law and policy including but not limited to the multiple use mandates in FLPMA, NMFA, the Multiple Use and Sustained Yield Act of 1960, “MUSYA,” (16 U.S.C. 528-531), and rights under the General Mining Laws. As such they do not meet the criteria for a reasonable alternative, which must be practical or feasible from legal, technical and economic standpoints. Alternatives that are inconsistent with existing law cannot be deemed reasonable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-14

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The LUPA fails to focus on a full range of possible approaches to grazing with the end results of rangeland health, socioeconomic stability, and GRSG population improvements tied strongly together and not mutually exclusive. The LUPA focuses on restriction first rather than exhausting all other active management options first.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-25-1

Organization: California Cattlemen’s Association

Protestor: Ken Wilbur

Issue Excerpt Text: We protest the BLM’s failure to consider exclusion of northeastern

California BLM grazing allotments from the LUPA/FEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-10

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: The range of alternatives does not account for technical or economic feasibility. As noted in our comments on the draft plan, the range of alternatives in the FEIS must be both technically and economically feasible for grazing. We cited the BLM NEPA Handbook, H-1790-1 at Section 6.6.I. The LUPA/FEIS continues to disregard technical and economic feasibility in its presentation of action items. For example, Action SSS 8 requires any surface- disturbing activities to employ a BLM-approved biologist to conduct GRSG breeding surveys before the project activities begin. It is unclear whether the glossary definition of “surface-disturbing activities” includes, for instance, the placement of a water trough on a BLM allotment in order to require the hiring of an agency-approved biologist to conduct breeding surveys within four miles of the proposed trough site. See 2-25, 26. This requirement alone can easily preclude any such range improvements as uneconomical thus denying an important tool in the management of livestock and GRSG habitat through the placement of dispersed water resources on the range.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-3

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: In deciding what conservation measures should be imposed to

avoid a listing, the Agencies must consider whether the measures proposed may cost more than the ESA listing that the Agencies are attempting to avoid. Further, these restrictions are beyond what is required or adequate under the ESA and are not therefore within a reasonable range of alternatives to provide adequate regulatory mechanisms in response to the "warranted but precluded" finding. Y-3 II raised this issue in its comments on the Draft LUPA/DEIS but the Agencies did not respond with changes or in the response to comments section of the LUPA/FEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-24

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: While the EIS includes a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing is painfully missing. We acknowledge that the EIS now does contain references to some of the literature we provided during the DEIS. However, the analyses still focuses on the “worst” examples from the literature and fails to incorporate the best and most recent data and studies related to grazing being very conducive to GRSG conservation. Specifically, the document almost completely lacks references on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. We will not repeat each of the individual studies we provided during the DEIS but include them again by reference and our enclosed letter on the DEIS.

Summary:

The PLUPA/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail:

- recommended management actions or alternatives, (e.g., NV Conservation Plan, County Plans, reasonable resource development);
- the No Action alternative is not appropriately described;
- exemptions to transmission projects;
- lek buffer distances; and
- adaptive management triggers and responses,

In addition, it was stated that the Nevada and Northeastern California GRSG PLUPA/FEIS failed to include only those alternatives that are “practical or feasible from the technical and economic standpoint”.

Response:

General

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Nevada and Northeastern California GRSG PLUPA/FEIS, Section 2.11 Alternatives Eliminated from Detailed Analysis. When there are potentially a very large number of alternatives, the BLM and Forest Service 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 and Forest Service developed a range of alternatives that meet the purpose and need (Nevada and Northeastern California GRSG PLUPA/FEIS, Section 1.3, Purpose and Need) and that address resource issues identified during the scoping period. The Nevada and Northeastern California GRSG PLUPA/FEIS analyzed six alternatives, which are described in 2.8 Draft LUPA/EIS Alternatives (p.2-79). The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Unreasonable and Not Practical or Feasible

The BLM National Environmental Policy Act Handbook (H-1790) (p. 50) states, “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 (emphasis added).’” The range of alternatives considered and analyzed in the PLUPA/FEIS are reasonable with reference to the purpose and need for the PLUPA/FEIS.

Recommended Management Actions or Alternatives

During scoping, individuals and conservation groups submitted management direction recommendations for protecting and conserving GRSG and its habitat. The recommendations, in

conjunction with resource allocation opportunities and internal sub-regional BLM and Forest Service input, were reviewed to develop BLM and Forest Service management direction for GRSG under Alternative C. Also other management recommendations submitted during scoping (local groups, Elko County, and cooperating agencies) were considered but eliminated from further consideration. Section 2.11 Alternatives Eliminated from Detailed Analysis (p. 2-457 through 2-460) succinctly discusses the rationale why these were not considered or carried forwarded for detailed analysis in the Nevada and Northeastern California GRSG PLUPA/FEIS. Section 2.4.1 (p. 2-10) describes how the planning team developed the action alternatives considered in the Nevada and Northeastern California GRSG PLUPA/FEIS. Alternative B is based on the NTT Report of 2011. Alternative C is based on a proposed alternative submitted by conservation groups. Alternative D customized the goals, objectives, and actions from the NTT report (Alternative B) to develop a third action alternative, Alternative D, for balance among competing interests. Alternative E incorporated proposed GRSG protection measures recommended by the State of Nevada. Alternative F, derived from Alternative C includes similar goals, objectives, and actions as Alternative B; but contains distinct elements submitted by the conservation groups. Alternative E, described in detail in Appendix O is based on the State of Nevada's Conservation Plan for GRSG in Nevada which would apply to all BLM-administered and National Forest System lands if the federal agencies have the authority to implement them.

No Action Alternative Incorrectly Described

Section 2.8.1 Alternative A (No Action) describes the current management for resources and resource uses from existing LUPs. GRSG habitat would continue to be managed under this current management direction if not amended. In addition, Alternative A provides a baseline for comparing the other alternatives as per CEQ guidance and provides the current management direction and prevailing conditions derived from the existing RMPs. The No Action Alternative for the Nevada and Northeastern California GRSG PLUPA/FEIS therefore represents the current existing management direction that lacks the regulatory mechanisms being analyzed in the action alternatives.

Transmission Line Exemptions

The exemption identified in the Nevada and Northeastern California GRSG PLUPA/FEIS (Table 2-17, p. 2-477) is for the Trans West Express transmission line. The processing of applications for the individual project is well under way and through the respective NEPA project review process; GRSG mitigation measures are being considered and analyzed in a range of alternatives specific to the individual projects. Therefore, these individual projects are not being addressed in this PLUPA/FEIS.

Lek Buffer Distances

A variety of approaches to managing disturbances near leks, including varying buffer distances, were evaluated in the Nevada and Northeastern California GRSG PLUPA/FEIS, as documented in FEIS Table 2-16 Description of Alternative Actions.

Adaptive Management and Triggers

The identification of hard and soft triggers is a strategy to address localized GRSG population and habitat changes by providing the framework in which management would change if

monitoring identifies negative population and habitat anomalies. These triggers are essential for identifying when potential management changes are needed in order to continue meeting GRSG conservation objectives (Nevada and Northeastern California GRSG PLUPA/FEIS, Adaptive Management Plan, p. 2-75 through 2-86). The adaptive management strategies/triggers were cooperatively developed with Nevada SETT, NDOW, CDFW, and USFWS, along with GRSG research scientists from the USGS and the University of Nevada Reno in developing the adaptive management triggers, definitions, and methods of calculating population and habitat trends incorporating the best available science. A strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require the triggers to be varied between the action alternatives.

The BLM and Forest Service considered a range of reasonable alternatives in the Nevada and Northeastern California GRSG PLUPA/FEIS in full compliance with NEPA.

Purpose and Need

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, significant aspects of the proposed RMP do not conform to the best to protect GRSG habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and restore GRSG habitat.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In order to remedy the inadequacy of regulatory mechanisms identified by USFWS, BLM must address the two-pronged test under the Policy on the Effectiveness of Conservation Efforts (“PECE Policy”), which requires that conservation measures be effective according to the best available science and have certainty of implementation (68 Fed. Reg. 15115). The BLM observes, “Regulatory certainty will be an important factor in the USFWS’s decision on whether

to list the GRSG under the ESA; however, regulatory certainty alone would not be enough for USFWS to not list the species.” Oregon GRSG RMP Amendment DEIS at 2-15. The BLM’s National GRSG Planning Strategy further underscores the need to provide adequate regulatory mechanisms in these plan amendments, which the agencies have not done in this case.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-38

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The purpose and need of a proposed action helps to delineate the range of alternatives to be discussed. However, the purpose and need cannot be so narrowly defined that it precludes other reasonable alternatives (*Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073, 1086 (9th Cir. 2013); see also, *Simmons v. U.S. Army Corps of Engineers*, 120 F. 3d at 664, 27 (7th Cir.)). In other words, an agency’s purpose and need statement must be sufficiently broad so that it does not prevent the consideration of reasonable alternatives. AEMA contends

the Proposed Plan, and Alternatives B, C, D and F, are inconsistent with and do not fulfill the Purpose and NEED because they do not satisfy statutory requirements, do not balance BLM goals, objectives and policies, and are not the best fit for the purpose and need. In our comments on the DLUPA/DEIS (DLUPA Comment Letter at 7, 13-22), we discussed how the narrowly defined purpose and need resulted in action alternatives that considered only slight variance of the NTT Report (with the exception of Alternative E-State Alternative), resulting in an unreasonable range of alternatives (infra VII.B).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-39

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS have not achieved the above stated purpose, or responded to the planning issues within the framework of the planning criteria. BLM/USFS fail to provide for compliance with applicable laws, standards, implementation plans, agencies' policies and regulations, and inappropriately targets secondary threats to GRSG habitat rather than the primary threats in the region.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-40

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: As in the DLUPA/DEIS, BLM in the PLUPA/FEIS continues to characterize the "Need" for the planning effort is in response to USFWS' 2010 Warranted but Precluded (hereinafter "WBP"), Factor D, determination (See PLUPA/FEIS, Section 1.3 at 1-15; see also

DLUPA/DEIS Ch. 1 at 7). AEMA recognizes that the USFWS identified conservation measures in RMPs as BLM's primary mechanism for protecting the GRSG. However, AEMA believes BLM has misunderstood or taken out of context statements in the USFWS' March 2010 WBP determination pertaining to the adequacy of existing regulatory mechanisms and has thus mischaracterized the need, resulting in a narrowing of the possible alternatives to be analyzed. Consequently, the BLM inappropriately discards existing agency policy without ever justifying the need for an entirely new regulatory approach or the radical land management changes advanced in the Proposed Plan. The BLM characterizes the 2010 WBP determination as saying that USFWS' determination concluded that BLM lacks adequate regulatory tools to conserve GRSG, and therefore new regulatory mechanisms must be developed. Using this as a premise, BLM maintains the new conservation measures, including those found in the NTT Report are required to respond to the WBP determination. As raised in our DLUPA/DEIS Comment Letter at 15-22, USFWS did not conclude that the BLM lacked regulatory mechanisms, rather the BLM failed to implement and track existing (adequate) regulatory mechanisms like those required under Manual 6840, and the 3809 regulations in a way that allowed USFWS to determine whether they were adequate. AEMA contends that the Proposed Plan as well as, Alternatives B, C, D, and F, fail to recognize the Nation's need for domestic mineral sources (30 USC §21(a)); 43 USC §1701(a)(12)) are overly restrictive, unreasonable and contrary to law and other BLM policy. The Proposed Plan does not satisfy the purpose and need for the LUP revision, which is to identify and incorporate conservation measures which will eliminate, or minimize threats to GRSG habitat, in the

context of its multiple use and sustained yield mandate under FLPMA, and for the USFS in the context of its mandate pursuant to NFMA/MUSYA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-19-1

Organization: Public Lands Council / National Cattlemen’s Beef Association / California Cattlemen’s Association / Nevada Cattlemen’s Association

Issue Excerpt Text: As addressed in our comments, we reiterate that the purpose and need of the Proposed LUPA/FEIS is misleading and arbitrary and capricious in the context of livestock grazing and range management. The purpose and need given to augment grazing regulation is “Loss of habitat components due to improper livestock, wild horse and burro, and large wildlife use.” FEIS at ES.2 (emphasis added). However, neither the U.S. Fish and Wildlife Service (FWS) nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations. Therefore, imposing regulatory change on the grazing livestock industry is arbitrary and capricious and without factual basis.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-17

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: AML was not established with consideration of the habitat objectives in Table 2-2. The proposed action WHB 2 implies that the BLM can manage and control wild horses to meet standards for rangeland health, achieve desired habitat objectives, and manage public lands in compliance with the Wild Free-Roaming

Horses and Burros Act. Based on BLM's policy and track record, proposed action WHB 2 is not plausible, does not meet the purpose and need of the RMP amendment to "reduce, eliminate, or minimize threats to ORSO habitat" and therefore is non-compliant with NEPA (BLM NEPA Handbook H-1790-1).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-8

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: The Purpose and Need statement in the LUPA/FEIS does not ensure proper implementation of the Agencies' multiple-use obligations. The Purpose and Need statement directs the Agencies to incorporate new conservation measures into the land use plans and to consider such measures in the context of multiple-use. See LUPA/FEIS at p.1-15. This approach predetermines, however, that the affected public lands will be managed for GRSG conservation and all other uses may exist only where compatible with such conservation. In other words, the purpose and need statement improperly tips the scales in favor of one resource use over all other uses, rather than requiring the Agencies to consider each potential resource use on their merits and to provide “a combination of balanced and diverse resource uses” on BLM-managed lands. See 43 CFR § 1 702(c). Although the Agencies mention the multiple-use mandate under FLPMA, the Purpose and Need statement does not provide for the consideration of the NFMA multiple-use requirements to provide for “harmonious and coordinated management of the various resources” on National Forest System lands. See 16 USC § 53 1(a). Because the Purpose and Need statement does not recognize the Forest Service's NFMA multiple use mandate, the

LUPA/FEIS is fundamentally flawed.

Summary:

The Purpose and Need to conserve, enhance, and restore GRSG habitats for the PLUPA/FEIS is too narrowly defined or has not been met because:

- the action alternatives reflect only slight variances of the NTT Report (with the exception of Alternative E – State Alternative);
- the best available science has not been used;
- the Purpose and Need statement and its associated range of action alternatives fail to recognize the Nation’s need for domestic mineral sources;
- the action alternatives inappropriately address secondary threats to sage-grouse habitat rather than the primary threats in the region;
- protecting Greater Sage-grouse habitat from the effects of livestock grazing is without factual basis because neither FWS nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations; and
- the proposed plan does not satisfy statutory requirements nor identify and incorporate conservation measures

Response:

CEQ regulations direct that an EIS “...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13). Also, under the CEQ regulations, the BLM and the Forest Service are required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act [NEPA]” (40 CFR 1501.2(c)). The range of alternatives developed are intended to meet the purpose and need and address the issue; thereby, providing a basis for eventual selection of an alternative in a decision (BLM NEPA handbook and Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook Chapter 10 – Environmental Analysis).

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

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

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

Concern is expressed that the action alternatives reflect only slight variances of the NTT Report. As described in the PLUPA/FEIS (2.8 Draft LUPA/EIS Alternatives) Alternative B is based on the NTT Report. Alternative C is based on a proposed alternative submitted by conservation groups. Alternative D resulted from customizing Alternative B to balance among competing interests, and Alternative E incorporated proposed GRSG protection measures recommended by the state of Nevada. These four action alternatives all conform to the purpose and need statement for the PLUPA/FEIS, (1.3, Purpose and Need).

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).

The action alternatives address the purpose and need in different ways. Not all of the alternatives (i.e., Alternative E) consider nor have direction similar to the NTT Report (i.e., Alternative B). The difference between alternative B and E is more than “slight” as Alternative E addresses the purpose and need as it incorporated proposed GRSG protection measures recommended by the State of Nevada rather than using the NTT Report.

The purpose and need statement addresses the concern that the “Nation’s need for domestic mineral sources” is recognized in section 1.3 Purpose and Need (p. 1-15,) which states:

“The BLM and Forest Service will consider such [conservation] measures in the context of its multiple use and sustained yield mandates under FLPMA...and...pursuant to NFMA (emphasis added).”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the PLUPA/FEIS that address these impacts. Therefore imposing regulation on livestock grazing is discussed in the best available science, is within the range of alternatives, is not an arbitrary application, and meets the Purpose and Need for the PLUPA/FEIS.

Additionally, these management actions provide for the conservation of the species while still providing for multiple use as defined at 43 USC 1702(c) (see the Multiple Use Mandate section for additional information).

“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.”

Cumulative Effects

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-57

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM failed to identify or provide useful explanations of impacts to locatable minerals associated with each alternative as required by 40 CFR §1502.16(a)(b), 1508.7. The BLM failed to identify, quantify, or provide useful explanations of impacts to locatable minerals associated with the widespread travel and transportation restrictions, surface use restrictions, and withdrawals under each of the alternatives required by 40 CFR §1502.16(a)(b), 1508.7 (“This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 12(2)(C)(i), (ii), (iv), and (v)...and is necessary to support comparisons). A “cumulative impact” is defined 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR § 1508.7).”* AEMA contends that the impacts analysis, especially the cumulative impacts related to the travel and transportation restrictions, surface use restrictions, withdrawals, and associated acreages described throughout this Protest Letter,

were not adequately considered, analyzed and disclosed. The BLM has provided no detail regarding the extent to which the proposed restrictions would cumulatively impact access, exploration, and development of locatable mineral resources and failed entirely to consider the cumulative layering of connected, and restrictive management actions, which is an important aspect that must be considered.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-11-1

Organization: Beatty & Wozniak for Noble Energy

Protestor: James Martin

Issue Excerpt Text: The Nevada LUPA imposes management prescriptions that essentially establish a standard requiring a finding greater than no significant impact before authorizing exploration or development activity. The impact of these restrictions upon valid existing lease rights is compounded when analyzed cumulatively, which the BLM failed to do, potentially in violation of NEPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-10

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Although the Proposed LUPA includes the [Nevada] plan as Appendix O and describes its basic elements, see Proposed LUPA at 5-13 – 5-

14, the Proposed LUPA does not analyze the cumulative impacts of this plan at all.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-18

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Proposed LUPA/FEIS does not adequately analyze the cumulative impacts of the Proposed LUPA because it does not consider the impacts of the Proposed LUPA together with the impacts of the at least 13 other GRSG LUPA EISs (See 80 Fed. Reg. 30,676 (May 29, 2015)). The CEQ regulations require agencies to analyze the “incremental impact of the action” together with “other past, present, and reasonably foreseeable future actions” (40 CFR § 1508.7). In this case, the Agencies should have analyzed the cumulative impacts of the Proposed LUPA with the other 13 LUPAs. Clearly, development of the EISs was a coordinated effort by the Agencies. The Agencies announced the LUPAs and made them available on the same day. See 80 Fed. Reg. 30,718 (May 29, 2015); 80 Fed. Reg. 30,716 (May 29, 2015); 80 Fed. Reg. 30,714 (May 29, 2015); 80 Fed. Reg. 30,711 (May 29, 2015); 80 Fed. Reg. 30,709 (May 29, 2015); 80 Fed. Reg. 30,707 (May 29, 2015); 80 Fed. Reg. 30,705 (May 29, 2015); 80 Fed. Reg. 30,703 (May 29, 2015); see also Dep’t of the Interior Press Release, BLM, USFS Plans for Western Public Lands Provide for GRSG Protection, Balanced Development (May 28, 2015). Moreover, many of the Proposed LUPAs contain consistent—if not standardized—provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of the LUPAs propose to impose NSO stipulations with limited waiver and modification on new leases in PHMA. All of

them require that compensatory mitigation yield a “net conservation gain.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-19

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Agencies must analyze the cumulative impacts of these nation-wide management actions on the GRSG and, in particular, the cumulative impacts on mineral leasing and development. In the planning area for the Proposed LUPA alone, more than nine million acres are designated for leasing subject to NSO and 1,483,700 acres are closed to mineral leasing entirely. See Proposed LUPA, Table 2-14 at 2-107. Nationwide, BLM and the Forest Service propose to designate an additional 31,079,533 mineral acres as subject to NSO stipulations and close an additional 2.8 million acres to leasing.¹⁷ Throughout GRSG range, the cumulative amount of land leased with NSO (and therefore effectively rendered inaccessible) and closed to leasing could have significant impacts on the development of federal oil and natural gas resources. The Agencies have not, however, examined the cumulative impacts of their management actions on federal oil and natural gas leasing and development. See Proposed LUPA/Final EIS at Chapter 5. The Agencies must analyze these cumulative impacts in an EIS before they issue a ROD and Final LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-11

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Here, the LUPA/FEIS includes a cumulative impacts section,

Chapter 5 that purported to review past, present, and reasonably foreseeable activities in the cumulative effects area by examining specific resources that may be affected. The LUPA/FEIS, however, fails to include the required “quantified or detailed information” (See *Id.*). Instead, it provides a short, generic summary of the impacts under the Proposed Plan. NEPA requires more than this. The Agencies did not attempt to quantify the extent to which reasonably foreseeable future actions may affect grazing or to describe with any particularity the nature of those impacts. The various projects identified in the table of reasonable foreseeable actions, Table 5-37 (p.5-154), are not specifically mentioned again. The tables purport to show a selection of some of the larger projects from the reasonably foreseeable future actions in the area of WAFWA Management Zone IV that covers the Idaho/Nevada border where Y-3 II

operates. Additionally, there is no discussion in the LUPA/FEIS of the combined impacts resulting from the GRSG conservation measures provided in the alternatives with the reasonably foreseeable grazing projects. The Agencies must discuss how the proposed conservation measures will impact the environment by altering existing management of past, present, or foreseeable activities on or uses of the public lands. The Agencies' analysis of the cumulative impacts of grazing (or other uses of the public lands) is insufficient and therefore violates NEPA (See *Te-Moak Tribe*, 608 F.3d at 606). NEPA requires the Agencies to take a hard look at the cumulative impacts of the proposed LUP amendment and other projects; this, the Agencies failed to do.

Summary:

The BLM and USFS are in violation of the CEQ regulations because they have not adequately analyzed cumulative impacts related to:

- the proposed RMP amendments and revisions nationwide;
- impacts to mineral leasing and locatables, particularly with regard to access, exploration and development from restrictive management actions; and
- impacts to livestock grazing

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates that the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 5 on meaningful impacts.

The BLM and Forest Service have complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present and

reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The geographic scope for the cumulative effects analysis appropriately extends beyond the Nevada and Northeastern California Sub-region boundary, to include Western Association of Fish and Wildlife Agencies (WAFWA) Management Zones III, IV and V. These zones contain all or portions of six BLM and USFS LUPA/RMPA planning areas and sub-regions. The appropriate scope for cumulative impacts pertaining to the Nevada and Northeastern California GRSG PLUPA/FEIS would not include all fourteen planning efforts.

Chapter 5 of the PLUPA/FEIS provides analysis of impacts from implementation of GRSG conservation measures on mineral leasing, livestock grazing, and various types of development. The cumulative impacts section (Chapter 5) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. Quantitative analysis was used when possible. The analysis of BLM and Forest Service actions in Management Zones III, IV, and V is primarily based on Management Zone-wide datasets developed by the BLM National Operations Center (NOC). Where quantitative data are not available, analysis is qualitative. The information presented in the Nevada and Northeastern California GRSG PLUPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM and Forest Service adequately analyzed cumulative effects in the Nevada and Northeastern California GRSG PLUPA/FEIS.

Public Comments

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-18

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The prohibition of roads in PHMA is incompatible with Congress' direction in LCCRDA to grant ROWs for the GWD Project. SNWA identified in its comment letter on the Draft LUPA/EIS that excluding all ROWs from GRSG habitat, regardless of the type of habitat (preliminary priority or preliminary general), would be incompatible with prior BLM authorization for the GWD Project and Federal legislation. See Exhibit C Comments, at 5. These concerns were not

resolved in the final LUPA. SNWA protests the BLM's non-response to SNWA's concerns, and their failure to recognize valid existing rights and Federal legislation.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-2

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: SNWA protests the BLM's non-response to SNWA's concerns with the Draft LUPA/EIS's inadequacy of "ground-truthing" the habitat maps prior to imposing land use restrictions. For example, Required Design Features (RDFs) should not be applied to areas with heavy conifer

encroachment or recent fires. There continues to be no provision for site-specific characterization or confirmation of habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-1

Organization: American Exploration and Mining

Protestor: Laura Skaer

Issue Excerpt Text: The BLM has failed to adequately address any of these concerns or issues raised during the regional call for public comment (76 Fed. Reg. 77008, December 9, 2011; 78 Fed. Reg. 65701, Friday, November 1, 2013).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-8

Organization: American Exploration and Mining

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS have not provided this information and have not adequately responded to our comment and request during the comment period for the DLUPA/DEIS. The BLM is in violation of its own policy regarding minerals, as well as the regulations implementing NEPA regarding agency response to comments (40 CFR §1503.4). For the reasons described herein, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7), which is one of the criteria needed to uphold a protest.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-13

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: With respect to the Proposed LUPA, the Trades submitted

extensive and detailed comments on the RDFs listed in Appendix A of the Draft LUPA. The Agencies, however, made no substantive changes to the RDFs between draft and final, except to add the State of Nevada’s new RDFs submitted after the Draft LUPA was released. Compare Proposed LUPA, app. D, with Draft LUPA, app. A. Additionally, the Agencies did not acknowledge the Trades’ comments on the RDFs in appendix A of the Draft LUPA and did not “[e]xplain[] why the comments do not warrant further response.” See 40 CFR § 1503.4(a). Therefore, the Agencies have not provided the response to comments as required by the CEQ regulation.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-21

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the inclusion of new components in the Proposed LUPA is a violation of the Forest Service’s regulations. The Forest Service regulations require the public to be provided an opportunity to meaningfully participate in and comment upon preparation of land use plans. 36 CFR § 219.4(a); 219.5(a)(2)(i); 219.7(c)(1). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses were either not included in or substantially changed from the Draft LUPA, the Agencies should have prepared and released for comment a supplement to the Draft LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-41

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the RDFs listed in Appendix D of the Proposed LUPA. Although the Trades extensively commented on the RDFs in the Draft LUPA, the Agencies did not adjust any of the RDFs in response to the Trades' comments. Furthermore, as explained in section IV.C above, the Agencies did not respond to the Trades' comments as required by 40 CFR § 1503.4(a).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-5

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: In violation of FLPMA and NEPA, the FEIS/Proposed LUPA does not address NVMRA's

Summary:

The BLM did not adequately address comments that were received on the Nevada and Northeastern California RMP Amendment. The BLM received comments on the Required Design Features (RDF, called BMPs in the Draft) but did not make any substantive changes to the RDFs between draft and final and did not explain why the comments do not warrant further response.

The BLM/USFS did not respond to comments submitted related to establishment of land use restrictions. Comments identified inconsistencies of excluding all ROWs in sage-grouse habitat and observing current authorizations and existing rights. Similarly, comments regarding travel restrictions that disrupt ingress and egress were not addressed.

The BLM has failed to adequately address the comments raising concerns that proposed actions are inconsistent with FLPMA and interferes with mining claimants rights under the Mining Laws.

Response:

The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments, including:

40 CFR 1503.4: Response to Comments

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

comments in our January 2014 comments about the travel restrictions and our members' rights under the General Mining Law and FLPMA, including the rights of ingress and egress.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-40-1

Organization: Nye County Commission

Protestor: Lorinda Wichman

Issue Excerpt Text: Nye County provided many comments documenting instances where the EIS was inconsistent with County plans and policies. Some of these comments are attached and incorporated by reference, It appears the BLM has summarily dismissed our comments practical as required under FLPMA.

- (1) Modify alternatives including the proposed action.
 - (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
 - (3) Supplement, improve, or modify its analyses.
 - (4) Make factual corrections.
 - (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.
- (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.
- (c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

According to NEPA, the BLM and Forest Service are required to identify and formally respond to all substantive public comments. The BLM and Forest Service developed a systematic process for responding to comments to ensure all substantive comments were tracked and considered. Upon receipt, each comment letter was assigned an identification number and logged into a web-based database that helped the agencies categorize and respond to comments. Substantive comments from each letter were coded to appropriate categories based on content of the comment, retaining the link to the commenter. The categories generally follow the sections presented in the Draft LUPA/EIS, though some relate to the planning process or editorial concerns.

The agencies received written comments by mail, e-mail, and submitted at the public meetings. Approximately 16,920 submissions were received during the public comment period which contained 1,747 substantive comments. Using a systematic approach of labeling, reviewing, and categorizing each comment, the BLM identified and formally responded to all substantive public comments. Substantive comments were categorized based on the content of the comment. Each retained the link to the commenter.

Subsequently, the BLM and Forest Service drafted statements summarizing the issues contained in each comment category. They then developed responses to each issue statement. As part of the response statement, the BLM and Forest Service indicated whether the comments resulted in a change to the LUPA/EIS. The Comment Analysis Report in Appendix C contains the issue statements and summary response for each comment category. FEIS section 1.5.4, page 1-34.

Although each comment letter was diligently considered, the comment analysis process involved determining whether a comment was substantive or non-substantive in nature. In performing this analysis, the BLM and Forest Service relied on the CEQ's regulations to determine what constituted a substantive comment.

A substantive comment does one or more of the following:

- Questions, with a reasonable basis, the accuracy of the information and/or analysis in the EIS;
- Questions, with a reasonable basis, the adequacy of the information and/or analysis in the EIS;
- Presents reasonable alternatives other than those presented in the Draft EIS that meet the purpose and need of the proposed action and address significant issues;
- Questions, with a reasonable basis, the merits of an alternative or alternatives;
- Causes changes in or revisions to the proposed action; and/or
- Questions, with a reasonable basis, the adequacy of the planning process itself.

Opinions, feelings, and preferences for one element or one alternative over another, and comments of a personal and/or philosophical nature, were all read, analyzed, and considered. However, because such comments are not substantive in nature, the BLM and Forest Service did not include them in the report and did not respond to them. While all comments were reviewed and considered, comments were not counted as “votes”. The NEPA public comment period is neither considered an election, nor does it result in a representative sampling of the population. Therefore, public comments are not appropriate to be used as a democratic decision-making tool or as a scientific sampling mechanism.

Comments citing editorial changes to the document were reviewed and incorporated. Copies of all comment documents received on the Draft LUPA/EIS are available by request from the BLM Nevada and California State Offices. Comments received by mail, email, and at meetings, or delivered orally during the public meetings, are tracked by commenter name and submission number (Appendix C, page C3).

The Agencies adequately responded to and addressed comments received regarding actions inconsistent with established laws and rights.

Cooperating, Joint, and Lead Agencies

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-4

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: Furthermore, we believe that there is a tremendous failure by the BLM/USFS to adequately coordinate with Elko County to include our comment or evaluation to any extent and strive for consistency with our local plans, policies, and controls. Elko County offered over 160 pages of comments concerning the LUPA/DEIS and the direct impacts that the alternatives as written will have on the

County, State and Region. Many comments have been offered by entities, special interest groups and individuals concerning the many implications of GRSG populations and habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-6

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: We have continually expressed our concerns that we have not received any communication or response from BLM regarding our input. It was

apparent that when we reviewed the Draft Environmental Impact Statement (DEIS) and the Administrative Draft Final Environmental Impact Statement (ADFEIS) that the BLM was not sincere about coordinating with Elko County for consistency with our plans, policies, laws, and controls because of the voluminous amounts of inconsistent material in the DEIS and the ADFEIS. This is further evidenced by the fact that our review and comment on the preliminary drafts of the DEIS and ADFEIS affected no change. This shows that BLM did not even read or consider our previous comments and input.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-6

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Finally, there is no indication in the LUPA/FEIS that the Agencies consulted with USDA's Animal and Plant Health Inspection Service ("APHIS") and its Wildlife Services bureau on the existence of predators, predator habitat, and predator control. APHIS is not listed as having been invited to be a cooperating agency in Table 6-3. The bureau is listed in the Idaho list of cooperating

agencies as having been invited to cooperate. Wildlife Services clearly has jurisdiction and special expertise.⁴ The NEPA regulations define special expertise as statutory responsibility, agency mission, or related program experience (40 CFR § 1508.26). Wildlife Services has special expertise in predator control under all of these definitions of special expertise. The Agencies had a duty to invite Fish and Wildlife Service's comments on the DEIS (Id. at § 1503.1). USFWS had a corresponding duty to comment on the DEIS (Id. at § 1503.2). Consequently, the purpose of the regulation, to emphasize agency cooperation early in the NEPA process, was frustrated (Id. at 1501.6). These regulatory requirements are directly tied to NEPA itself which requires, to the fullest extent possible, that prior to making any EIS, the lead agency "shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved" (42 USC § 4332(C)). The Agencies' and Wildlife Service's failure to comply with NEPA and its implementing regulations on the involvement of APHIS Wildlife Services is a violation of law that must be corrected through the supplementation of the FEIS.

Summary:

The BLM and the Forest Service failed to adequately coordinate with Elko County in the development of the LUPA/EIS, did not address the county's comments, and did not achieve consistency with county plans, policies, laws and controls. The BLM also failed to coordinate with the USDA Animal and Plant Health Inspection Service ("APHIS") and its Wildlife Services Bureau, which has special expertise in predators.

Response:

Coordination and Cooperating Agency status

The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. The BLM works with cooperating agencies to develop and adopt a memorandum of understanding (MOU) that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)). The BLM has

worked with Elko County as a cooperating agency and signed an MOU.

Federal agencies are directed by the CEQ regulations (40 CFR 1501.2) to consult early “with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.” Under NEPA, the BLM as Lead Agency is encouraged to consider granting cooperating agency status to local governments, resulting in the local government having a more hands on working relationship by contributing their expertise and local knowledge to either the NEPA and/or planning process. As a Cooperating Agency, the Forest Service has worked directly with the BLM to meet coordination and cooperating agency obligations for both agencies.

All cooperating agencies, including local governments, have been given opportunities to participate during various steps of the planning process, including requests for input on draft alternatives and the administrative draft Nevada and Northeastern California GRSG LUPA/EIS, and identification of issues and data during scoping and during the draft Nevada and Northeastern California GRSG LUPA/EIS public comment period. The Nevada and Northeastern California GRSG PLUPA/FEIS further describes the participation of cooperating agencies in Chapter 6 (Consultation and Coordination).

The BLM and Forest Service addressed the impacts predators can have on GRSG in Chapter 4 of the PLUPA/FEIS. The BLM has authority to manage the habitat and has provided analysis to describe how the numerous management actions across the range of alternatives could affect the habitat and indirectly the effects of predation. Altering the sagebrush habitat of the GRSG can create an influx of predators into an area and lead to a population decline. Roads, fences, power lines, trails and other disturbances may make access easier for potential predators and increase risks to the species. The PLUPA/FEIS calls for measures that will substantially reduce disturbances in the bird’s habitat, thus reducing predation risk. The PLUPA/FEIS also calls for careful monitoring of grazing allotments within sage-grouse nesting habitat to ensure suitable grass and forb cover is reserved so we can minimize the associated predation risks. In Chapter 1 (page 1-31) of the PLUPA/FEIS, the BLM acknowledges an existing MOU with APHIS and continues to work with the agency as needed.

The BLM and Forest Service properly involved all cooperating agencies, including APHIS and local governments in the development of the Nevada and Northeastern California GRSG PLUPA/FEIS. The BLM and Forest Service appreciate the involvement of state and local government and agencies in the planning effort and will continue to coordinate as appropriate.

Consistency

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

Service requirements.

Supplemental EIS

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-1

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The habitat maps for PHMA and GHMA have changed significantly since the Draft LUPA/EIS with the addition of Sagebrush Focal Areas pursuant to an October 27, 2014 memorandum from the U.S. Fish and Wildlife Service (USFWS) to the BLM. LUPA at 1-6. The USFWS' analysis and the insertion of that information into the LUPA is significant, new information that was unavailable to the public for review in the draft documents and thus necessitates supplementation prior to issuance of a ROD, especially given the change in management of these areas from the draft documents reviewed by the public.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-2

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: In addition, the Sagebrush Focal Area boundaries were not included in the DEIS or reasonably available for public review and comment, appearing for the first time in the FEIS and, thus, require a Supplemental EIS that provides the boundaries and the scientific basis and data relied upon to establish the boundaries for public review and comment. The lack of availability of the Sagebrush Focal Area boundary maps prior to the publication of

the FEIS demonstrates that the BLM has failed to meet its obligation to “guarantee that relevant information is available to the public,” or to provide content to foster “informed decision making and informed public participation”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-43

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS must also prepare a Supplemental EIS that includes an expanded alternatives analysis and provide the public an opportunity to comment on the document. Only alternatives that will incorporate appropriate and implementable management actions that will conserve GRSG and its habitat, and at the same time recognize the nation’s needs for domestic sources of minerals can be considered as reasonable alternatives in the PLUPA/FEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-75

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Further, after reviewing the DLUPA/DEIS it was determined that the project was not co-located with either of the habitat classifications under any of the alternatives. Rather, the preferred alternative (Alternative D) affirmatively classified a large area that included the project area as Low Value

Habitat/Transitional Range. As a result of Quantum's diligent research into potential sage-grouse issues and site-specific studies, and the joint USFS-Quantum conclusion that GRSG would not affect the project, Quantum did not file comments on the DLUPA/DEIS.

Unfortunately, as a result of the changes made related to SFA designation between the DLUPA/DEIS and the PLUPA/FEIS, Quantum's project is now suddenly located in a withdrawal area. As such, Quantum is directly harmed by the failure of BLM to allow comment on these important changes made as a result of the Ashe Memo. See, CEQ, A Citizen's Guide to the NEPA at 26 "Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes. Because BLM has "seriously dilute[ed] the relevance of public comment" on the DEIS, California v. Block, 690 F.2d at 758, a Supplemental EIS is warranted. See also New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683, 707 (10th Cir. 2009) where a new alternative proposing new locations of activities required a Supplemental EIS because it affected "environmental concerns in a different manner than previous analyses," even though the general nature of the alternatives impact resembled those already analyzed.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-76

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that the specific information from the "conservation community" was not included as part of the DLUPA/DEIS, as such the public has not had an opportunity to comment upon the concept of SFAs or

review the "information." The BLM must provide the conservation community's information and prepare a Revised PLUPA and Supplemental EIS giving the public opportunity to review and comment. When a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory "meaningfulness" of this NEPA process. See 40 CFR § 1506.6(b).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-76

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that the specific information from the "conservation community" was not included as part of the DLUPA/DEIS, as such the public has not had an opportunity to comment upon the concept of SFAs or review the "information." The BLM must provide the conservation community's information and prepare a Revised PLUPA and Supplemental EIS giving the public opportunity to review and comment. When a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory "meaningfulness" of this NEPA process (40 CFR §1506.6(b)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-81

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Moreover, the details of the adaptive management plan and monitoring protocol were not contemplated in the DLUPA/DEIS and therefore BLM must allow the public to comment upon the inclusion of these concepts. In response to this Protest Letter BLM/USFS must prepare a Supplemental EIS that cures the NEPA

deficiencies in the FEIS BLM/USFS must uphold AEMA’s protest of the PLUPA because it “does not comply with applicable laws, regulations, policies and planning procedures”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-1

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: For the first time in the PLUPA/FEIS for the State of Nevada and Northeastern California, a new GRSG habitat management construct to the LUPs makes an appearance. This novel regime, “Sagebrush Focal Areas” (“SFAs”), is grounded in a pronouncement in an October 27, 2014 memorandum from Director Dan Ashe of the USFWS, entitled “Greater Sage-grouse: Additional Recommendations to R fine Land Use Allocations in Highly Important Landscapes” (“Ashe Memo”). Another element of the PLUPA/FEIS is the application of lek buffer distances identified in another document previously not available or included in the Draft Environmental Impact Statement (“DEIS”). A U.S. Geological Survey (“USGS”) report entitled, “Conservation Buffer Distance Estimates for Greater Sage-grouse-a Review”, USGS Open File Report 2014-1239 (Mainer, et al 2014) (“Lek Buffer Study”), forms the basis for newly applied GRSG buffer distances for activity on the public lands at issue. An SEIS is required under NEPA if: (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, 40 CFR § 1502.9(c)(1)(i); or (2) 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)(1)(ii).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-2

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The debut of “SFAs” in the PLUPA/FEIS constitutes a substantial change in the proposed action, 40 CFR § 1502.9(c)(1)(i), and an SEIS is required. Additionally, the Lek Buffer Study, when coupled with the Ashe Memo, collectively constitute “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 CFR § 1502.9(c)(1)(ii).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-3

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: Courts have required an SEIS when the proposed action differs “dramatically” from the alternatives described in the DEIS so that meaningful public comment on the proposed action was precluded, see *California v. Block*, 690 F.2d 753,758 (9th Cir. 1982). Here, none of the DEIS alternatives utilized all or most of the key elements found in the Proposed Action, particularly the SFAs and lek-buffer distances as applied through the new Lek Buffer Study.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-20

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Because the shape files show new areas impacted by the Proposed LUPA/FEIS' management directives that were not identified in the draft EIS, these files are new information of the type that requires a supplemental EIS. Specifically, supplemental EISs are

generally prepared in response to a specific set of circumstances or new facts; namely, “significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns” (40 CFR § 1502.9(c)(1)). Clearly, changes such as these that create significant new material impacts on Midway and similarly situated exploration and development companies require an adequate opportunity for public notice of and comment on such new information, as well as a full and adequate disclosure and analysis of associated socioeconomic and geological impacts resulting from the newly proposed restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-21

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Broadening the scope of management decisions to areas not originally identified in the draft EIS with significant restrictions including adaptive management triggers, methods for calculating disturbance caps, and the SFA, requires a supplemental EIS because operators in newly affected areas lacked notice that the management decisions would apply to their projects and those management decisions threaten to significantly impact the type and duration of activities that can occur on affected parcels.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-11

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Although the Trades appreciate the Agencies’ recognition that the

Nevada Plan exists, the Agencies still must provide the public an opportunity to comment on the updated Nevada Plan’s impacts by releasing a Supplemental Draft EIS. Because the Plan constitutes “significant new circumstances,” the Agencies must prepare a Supplemental Draft EIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-20

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The BLM’s own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information or circumstances collected during the comment period” are presented (BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05)). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses unquestionably are a “substantial change” when compared to the alternatives included in the Draft LUPA, the BLM should have prepared and released for comment a supplement to the Draft LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-7

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: None of the alternatives presented in the Draft LUPA included the requirements that mitigation produce a net conservation gain, the revised mitigation plan, the revised monitoring plan, the lek buffer distances, and the adaptive

management triggers and responses. BLM first presented the public with these components when it released the Proposed LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-8

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, revised mitigation plan, revised monitoring plan, lek buffer distances, and adaptive management triggers and responses were not incorporated into the Proposed LUPA and Final EIS in response to public comment on the Draft LUPA/Draft EIS or in response to environmental impacts disclosed in the Draft EIS. See Forty Questions, 46 Fed. Reg. at 18,035, explaining that agencies may adjust the alternatives analyzed in response to comments. Rather, the Agencies appear to have incorporated the net conservation gain requirement, revised mitigation plan, and revised monitoring plan to respond to national policies by the BLM and the FWS that were released after the Draft LUPA/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Service, “Greater Sage-Grouse Mitigation Framework” (2014); “BLM, The Greater Sage-Grouse Monitoring Framework” (2014). Similarly, the lek buffer distances and the adaptive management triggers and responses appear to have been added to make the Proposed LUPA consistent with the GRSG provisions in other land use plans. See Fact Sheet: “BLM/USFS Greater Sage-Grouse Conservation Effort” (noting that land use plans to conserve the GRSG are based on three objectives for conserving and protecting habitat). The public never

had the opportunity to review and comment on these new components.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-9

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The net conservation gain requirement, lek buffer distances, and adaptive management triggers and responses were not presented in the Draft LUPA. Although the Draft LUPA acknowledged that the Proposed LUPA/Final EIS would include more details about the revised monitoring and mitigation plans, see Draft LUPA at Chapter 2, pgs. 14, 19; Id. apps. D, E, these “placeholders” did not allow the public a meaningful opportunity to comment on the substance of the revised monitoring and mitigation plans. The inclusion of the net conservation gain requirement, revised mitigation plan, revised monitoring plan, lek buffer distances, and adaptive management triggers and responses coupled with the reformulated alternative adopting components of the alternatives analyzed in the Draft EIS, hence constitutes “substantial changes from the previously proposed actions that are relevant to environmental concerns” and should have been presented in a supplemental draft EIS for public comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-17

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: Because the shape files show new areas impacted by the Proposed LUPA/FEIS' management directives that were not identified in the draft EIS, these files are new information of the type that requires a supplemental EIS. Specifically, supplemental EISs are

generally prepared in response to a specific set of circumstances or new facts -namely, “significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns” (40 CFR § 1502.9(c)(1)). In addition, FLPMA requires adequate notice and opportunity to comment on and participate in the formulation of land use plans. 43 USC 1712; 43 CFR 1610.5-1(b), 16 USC 1612(a); 36 CFR 219.16(a). Clearly, the changes such as these that create significant new material impacts on WEX and similarly situated exploration and development companies requires an adequate opportunity for public notice of comment of such new information as well as a full an adequate disclosure and analysis of associated socioeconomic and geological impacts resulting from the newly proposed restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-18

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: Broadening the scope of management decisions to areas not originally identified in the draft EIS with significant restrictions including adaptive management triggers, methods for calculating disturbance caps and the SFA requires a supplemental EIS because operators in newly affected areas lacked notice that the management decisions would apply to their projects and those management decisions threaten to significantly impact the type and duration of activities that can occur on affected parcels.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-14-2

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: Many of the references are “in press” or “in prep”. This does NOT provide reviewers of this document, nor cooperating agencies an opportunity to review such publications to determine if context is appropriate. The County argues that a Supplemental Draft EIS should be published, rather than a Proposed LUP and FEIS, in order to provide for additional review and completion of references. Much of this information is new, or significantly different from the Draft EIS, and warrants more time for a thorough review and comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-11

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: NVMRA’s January 2014 comment letter on the DEIS objected to the mineral withdrawals proposed in Alternatives B, C, and F of the DEIS. In developing a Proposed Plan that includes 2.8 million acres of lands designated as SFA proposed for mineral withdrawal, BLM and USFS have clearly ignored our comments in violation of NEPA. As discussed in our January 2014 letter, the proposed mineral withdrawal in Alternatives B, C, and F in the DEIS threatened NVMRA members and other entities that have projects in areas with GRSG habitat identified for withdrawal. In addition, the maps have changed significantly from the DEIS to the FEIS without any opportunity for public comment as NEPA and FLPMA require. Now that the FEIS/Proposed LUPA proposes to withdraw 2.8 million acres including some lands not previously identified for withdrawal, our

interests will be directly and imminently harmed, when the Secretary issues a notice in the Federal Register to segregate the SFA pursuant to FLPMA Section 204(c)(6). Importantly, the shape files for the proposed SFAs were only made available after release of the FEIS and, therefore, provide more than just a “minor” change requiring opportunity for public comment and an SEIS. 40 CFR 1502.9(c)(1). Broadening the scope of management decisions to areas not originally identified in the DEIS requires a supplemental EIS because operators in newly affected areas lacked notice that the management decisions would apply to their projects and those on affected parcels.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-16

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: Second, the BLM acknowledges the SFAs are a new policy recommendation that is based on the October 2014 memorandum from the Director of US Fish and Wildlife Service to the Director of BLM entitled “Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes,” a copy of which is included herein as Exhibit 4. This memorandum includes habitat maps that show areas along the northern border of Nevada as Priority Habitat Management Areas (PHMA) where “the strongest levels of protection are recommended⁹.” The PHMA shown on the maps in the October 2014 memorandum are similar to the SFA shown in Figure 2-15 and the areas recommended for mineral withdrawal shown in Figure 2-34 of the FEIS. Obviously, maps that were developed or provided by a third party (described as “the conservation community” to BLM) and then analyzed by

BLM in October 2014 were not part of the DEIS, which was published in November 2013. They are new maps that BLM has improperly added to the FEIS/Proposed LUPA as part of the Proposed Plan without giving the public an opportunity to review a Supplemental EIS that included the October 2014 maps. There was ample time between October 2014 and publication of the FEIS/Proposed LUPA in June 2015 to give the public an opportunity to provide comments on the new maps. BLM’s failure to publish a Supplemental EIS and seek public comments on the new maps does not comply with NEPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-8

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The absence of any meaningful analysis of the actual impact that the travel restrictions will have on mineral exploration and development is a shortcoming that requires a Supplemental EIS with opportunity for public comment. BLM and USFS must prepare a Supplemental EIS to carefully assess the cumulative impacts of the proposed travel restrictions and how they will limit future exploration, discovery, and development of mineral deposits. Unless the FEIS is clarified to confirm that no proposed restrictions will be implemented in a manner that interferes with rights under the General Mining Laws, the Supplemental EIS must quantify the socioeconomic impacts of the lost discovery and mineral development opportunities that would result from restricting travel and access to lands situated in a region with known world-class mineral deposits and highly prospective gold trends.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-16

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: Because the shape files show new areas impacted by the Proposed LUPA/FEIS' management directives that were not identified in the draft EIS, these files are new information of the type that requires a supplemental EIS. Specifically, supplemental EISs are generally prepared in response to a specific set of circumstances or new facts, namely, "significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns" (40 CFR § 1502.9(c)(1)). Clearly, changes such as these that create significant new material impacts on Waterton and similarly situated exploration and development companies require an adequate opportunity for public notice of and comment on such new information, as well as a full and adequate disclosure and analysis of associated socioeconomic and geological impacts resulting from the newly proposed restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-17

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: Broadening the scope of management decisions to areas not originally identified in the draft EIS with significant restrictions including adaptive management triggers, methods for calculating disturbance caps, and the SFA, requires a supplemental EIS because operators in newly affected areas lacked notice that the management decisions would

apply to their projects and those management decisions threaten to significantly impact the type and duration of activities that can occur on affected parcels.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-1

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: Additionally, the USGS report "Conservation Buffer Distance Estimates for Greater Sage-grouse – A Review", USGS Open File Report 2014-1239 (Mainer, et al. 2014), coupled with the Ashe Memo, collectively constitute "significant" post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 CFR § 1502.9(c)(1)(ii).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-2

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: When two new, key and significant pieces of information come late and are not subject to fair comment, this is fatal to the mandatory "meaningfulness" of this NEPA process.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-3

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: Courts have required an SEIS when the proposed action differs "dramatically" from the alternatives described in the DEIS so that meaningful public comment on the proposed action was precluded, see California v. Block, 690 F.2d

753, 758 (9th Cir. 1982). Here, none of the DEIS alternatives utilized all or most of the key elements found in the Proposed Action, particularly the SFAs and lek-buffer distances as applied through the new Lek Buffer Study.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-4

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: Indeed, the Proposed Action amalgamated so many different elements that the Preferred Alternative could not have been fairly anticipated by reviewing the DEIS alternatives, thus “seriously diluting the relevance of public comment on the DEIS alternatives.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-5

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The Agencies must prepare a Supplemental FEIS and a Revised PLUPA. The Proposed Action differed dramatically from the DEIS preferred alternative due to its grounding in significant post-DEIS information not previously subject to public notice and comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-7

Organization: Western Watersheds Project
Protestor: Michael Connor

Issue Excerpt Text: Action LG 6: Appropriate allowable utilization levels will be defined through the grazing permit renewal process. At least one alternative in the NEPA process will consider the utilization levels identified in Action LG 5.

There are multiple problems with this action. First, to “conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat” the appropriate allowable utilization levels should be determined in this planning exercise. This failure to propose mandatory, meaningful and measurable utilization standards in GRSG habitat make this plan amendment fatally flawed.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-7

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: Broadening the scope of management decisions to areas not originally identified in the draft EIS requires a supplemental EIS because operators and investors in those operations lacked notice that the management decisions would apply to relevant projects and those management decisions threaten to significantly impact the type and duration of activities that can occur on affected parcels.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-21-5

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: The State Director's decision is wrong for the following reasons:
1 . Sage Grouse Focal Areas are a completely new concept; and
2. BSUs are a completely new concept included within the PLUPA, and based on unpublished data.
A supplemental EIS is required to adequately address these significant changes within the document.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-1

Organization: White Pine County
Commission

Protestor: Gary Perea

Issue Excerpt Text: Violation of NEPA: The Final EIS (FEIS) has substantial additions and changes from the Draft EIS (DEIS) that require a supplemental DEIS. According to 40 CFR 1503.4, the changes between the DEIS and FEIS are too substantial and contain too much new information not analyzed in the DEIS to move forward without a Supplemental DEIS that is provided for public review. This includes but is not limited to the revised habitat delineations, the proposed Sagebrush Focal Areas, and the additional information regarding disturbance caps in Biologically Significant Units. Based on 40 CFR 1503.4, supplemental analyses is required.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-2

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The additional information inserted into the FEIS is based on newly developed and highly technical analyses procedures that have not been adequately reviewed or analyzed in the FEIS. The significant new information and technology has bearing on the proposed action and its effects. Because this constitutes a significant change from the draft and because the management responses tied to hitting a trigger (Table 2-9- PHMAs and Table 2-10- GHMAs) are very specific with serious economic impact potential and questionable biological benefits to GRSG from a limiting habitat perspective, the SEP recommends a supplemental EIS be issued in order to allow for public comment and review (40 CFR 1502.9(c)(4)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-7

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text:

The delineation of SFAs also constitutes significant new information in the FEIS which justifies a supplemental EIS to provide time for meaningful public review and comment in compliance with NEPA 40 CFR 1502.9(c)4.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-1

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: Neither of the two identified Habitat classifications in the preferred alternative (Alternative D) covered any of the Project area. Further, none of the other listed alternatives included any GrSG management classifications for the Project area. Rather, Alternative D affirmatively classified a large area that included the Project area as Low Value Habitat/Transitional Range.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-2

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: Wide swaths of the Project that had previously been classified as “unmapped” and/or Low Value Habitat were arbitrarily upgraded to priority habitat area in the PRMP. There is no data or new information contained within the PRMP/FEIS to explain or support this dramatic change.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-5

Organization: Quantum Minerals, LLC
Protestor: Everett Gustin

Issue Excerpt Text: The BLM's alterations to the RMP between the DEIS and the FEIS constitute substantial changes that require a Supplemental EIS ("SEIS") and corresponding public comment period.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-6

Organization: Quantum Minerals, LLC
Protestor: Everett Gustin

Issue Excerpt Text: Therefore, if maps showing RMP areas are modified to an extent that new information is necessary to justify the action, a SEIS should be prepared.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-13

Organization: Y-3 II Ranch
Protestor: Christopher Clark

Issue Excerpt Text: Y-3 II protests the addition of a number of instances of significant, new information contained in the LUPA/FEIS that were not contained in the Draft LUPA/DEIS, thus precluding one of the main purposes of NEPA which is to foster public review and comment on the Agencies' proposed action. Perhaps the most significant new proposal, not discussed in the draft documents, is the insertion of Sagebrush Focal Areas ("SFAs"). These SFAs constitute 2.8 million acres in Nevada within PHMA based on an internal memorandum from the Fish and Wildlife Service to the BLM and Forest Service (cited as USFWS 2014 in the LUPA/FEIS). This memorandum, dated October 27, 2014, post-dated the Draft LUPA/DEIS (released November 1, 2013) by nearly one year. These are the same areas that are prioritized for management and conservation actions

and thus have the potential to significantly affect Y-3 II since all of Y-3 H's allotments are in the designated SFAs. Because SFAs only appeared in the LUPA/FEIS, Y-3 II has not been able to previously review and comment on the basis for the designation of the SFAs as to either scope or substance. The Agencies are also required to prepare a supplemental draft or final EIS if an agency makes substantial changes in the proposed action that are relevant to environmental concerns. Given the impact of the prioritized management and actions in the SFAs and the lack of analysis in the DEIS, the Agencies have made substantial changes in their proposed action that requires supplementation under NEPA. 40 CFR § 1502.9(c)(1)(i). Similarly, the Agencies must supplement their NEPA analysis if there is significant new information relevant to environmental concerns and bearing on the proposed action or its impacts (Id. at (1)(ii)). Incorporation of the USGS buffer study, cited as "Manier et al. 2014", (see p. 1-6) meets the test for significant new information relevant to environmental concerns. As stated in the LUPA/FEIS, this buffer report was not available at the time of the DEIS release and the information it contains significantly changes the proposed buffers in the Proposed Plan. Other significant changes further support the need for supplementation of the NEPA analysis. These include the addition of a "net conservation gain" strategy as part of mitigation requirements and numerous other changes in Sec. 2.1 of the LUPA/FEIS. Also, the Agencies conclude that supplementation under NEPA is not necessary based on a conclusion that the LUPA is "minor variation" of the co-preferred alternatives in the DEIS. See p.2-6. SFAs covering 2.8 million acres, the addition of significant changes in lek buffers, the change in the mitigation strategy, and the other changes made after

the Draft LUPA/DEIS as summarized in Section 2.1 cannot be reasonably termed as minor variations. They are very significant changes especially regarding the potential impacts on the Nevada ranching industry. Y-3 II protests the lack of supplemental analysis of these significant changes in the Proposed Plan and the significant new information that has not been analyzed prior to release of these documents.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-30-2

Organization: BlueRibbon Coalition

Protestor: Don Amador

Issue Excerpt Text: The Proposed LUPA/FEIS include significant components that were not previously made available to the reviewing public, and were thus not available for public comment. These changes are generally discussed in the FEIS at pages 2-1 through 2-6. Of particular concern is the eleventh hour inclusion of SFAs and entirely new “lek buffer” guidance. It is unclear what the site-specific effect of these last minute changes will be, but it appears these changes will fall beyond the “meaningful” threshold for new information that would require a supplemental NEPA document to allow the public meaningful comment on the new information. The agency appears to be suggesting that these topics were generally included within the broad parameters of the DEIS, thus making supplementation unnecessary. See FEIS at 2-6. This explanation is lacking. The public must be able to comment not just on a topic in general, like lek buffering, but on the specific information that will be considered by the agency in refining or choosing between alternatives. New information like the still unpublished “USFS lek buffer” document is significant new information relevant to “environmental concerns”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-1

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: Violation of NEPA; The Final EIS (FEIS) has substantial additions and changes from the Draft EIS (DEIS) that require a Supplemental DEIS According to 40 CFR 1503.4. The changes between the DEIS and FEIS are too substantial and contain too much new information not analyzed in the DEIS to move forward without a Supplemental EIS that is provided for public review. This includes but is not limited to the revised habitat delineations, the proposed Sagebrush Focal Areas, and the additional information regarding disturbance caps in Biologically Significant Units. Based on 40 CFR 1503.4, supplemental analyses is required.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-37-2

Organization: Nevada Association of Counties

Protestor: Jeff Fontaine

Issue Excerpt Text: NACO would also like to submit its protest based on the inclusion of Sagebrush Focal Areas SFAs into the PLUPA/FEIS (Chapter 2, p. 2-2 to 203; 2-25). SFAs were not included in the DLUPA/DEIS, neither was the information or scientific background upon which this policy is based. As such the public has not had an opportunity to comment upon the concept of SFAs or review the science used to create this policy. When a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory “meaningfulness” of the NEPA process. See 40 CFR § 1506.6(b) Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the

availability of environmental documents so as to inform those persons and the BLM who may be interested or affected by proposed actions of the United States."

Summary:

The BLM failed to provide a supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations in the following ways:

- None of the alternatives presented in the Draft LUPA/EIS included the requirements that mitigation produce a net conservation gain.
- The habitat maps for PHMA and GHMA have changed significantly with the addition of Sagebrush Focal Areas pursuant to memorandum from the U.S. Fish and Wildlife Service to the BLM.
- GIS shape files show new areas impacted by the Proposed LUPA/FEIS' management directives that were not identified in the draft EIS.
- Low priority habitat was upgraded to high priority between Draft and Final without analysis.
- Significant restrictions not originally identified in the draft EIS including lek buffer distances, adaptive management triggers, methods for calculating disturbance caps, and the SFA, requires a supplemental analysis.
- References cited were not completed and available for public review.
- BLM has not provided adequate opportunity for public comment on new information and full analysis regarding socioeconomic and geological impacts resulting from the newly proposed restrictions.
- The EIS does not provide meaningful analysis of the actual impact that the travel restrictions will have on mineral exploration and development.
- BSUs are a new concept within the Proposed LUPA.

Response:

The agency must prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- the agency makes substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- the agency adds a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); or
- there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

The Proposed Plan is a variation of the preferred alternative (Alternative D) from the Draft LUPA/EIS and includes elements of other alternatives to meet the purpose and need and to create a management strategy that meets resource values under the agencies' applicable land use planning policies (Section 1.5.4 Development of the Proposed LUPA/ Final EIS, page 1-33). The Nevada and northeastern California sub-region's Proposed Plan is a variation of the preferred alternative from the Draft LUPA/EIS but also includes elements of the other

alternatives. Chapter 2 contains the Proposed Plan's goals, objectives, and management actions.
Page 1-34

The GRSG map was revised with updated PHMA and GHMA delineations based on best available science, i.e., USGS Open File Report 2014-1163; delineated unmapped areas identified in the Draft EIS based on the USGS report. With the adoption of the USGS habitat suitability map (2014), the unmapped habitat is now mapped and identified in the Proposed LUPA/Final EIS as OHMA. A description of this mapping change was analyzed in the Draft LUPA/EIS and an explanation can be found in Appendix A (Habitat Mapping Process). The Land Use Plan Amendment identifies management actions and allocations that are applied to the specific habitat and the Draft LUPA/EIS describes the effects of the application of the management actions and allocations. The revised habitat map would not result in new decisions or environmental effects that were not considered and disclosed in the Draft LUPA/EIS.

In addition, the revised map identified priority, general, and unmapped habitat acres that are generally within the range of habitat disclosed in the Draft LUPA/EIS and encompasses the same area that was identified during the Draft LUPA/EIS public comment period. The BLM's use of the revised habitat map as to all categories of habitat identified is both quantitatively and qualitatively addressed in the alternatives analyzed in the Draft LUPA/EIS (Appendix A, at 9).

The BLM and Forest Service will manage areas totaling approximately 2,797,400 acres within the NV/CA sub-region, as Sagebrush Focal Areas (SFA) because of the importance of these areas to the conservation of the species range-wide. As noted in the Draft EIS, one of the goals/objectives of this planning effort is to protect both the habitat and the species (See, for example, the LUPA/Draft EIS Goal B-SSS 1, Goal D-SSS 1, Goal E-SSS 1, Goal F-SSS 1, and Objective D-SSS 4). SFAs include characteristics such as existing high-quality sagebrush habitat; highest breeding densities; have been identified as essential to conservation and persistence of the species; represent a preponderance of current federal ownership and in some cases are adjacent to protected areas that serve to anchor the conservation importance of the landscape. In light of the landscape level approach to GRSG conservation provided through this planning effort and as defined by the characteristics set forth above, as well as additional considerations, including potential for impacts from climate change, fire and invasives, these areas have been identified as SFAs. As noted in the DEIS, one of the goals/objectives of this planning effort is to protect both the habitat and the species. (see, for example, the LUPA/DEIS Goal B-SSS 1, Goal D-SSS 1, Goal E-SSS 1, Goal F-SSS 1, and Objective D-SSS 4. Further, as noted by the USGS Report/Coates which supports the delineation of habitat mapping for this planning effort, the potential presence of birds in these areas of the SFAs is acknowledged (see USGS Open File Report 2014-1163; page page28, habitat definitions). The management of these areas as SFAs would be consistent with the management direction for PHMAs, with the additional recommendations for withdrawal from mineral location and entry, NSO without exception for fluid mineral leasing, and prioritization for conservation actions, including processing of grazing permits. The BLM lands and realty program processes all federal withdrawal applications, including applications for withdrawal from mining law, regardless of federal land management jurisdiction, for recommendation to and after approval by the Secretary of the Interior.

The Draft EIS and the NDOW map it referenced defined the qualitative characteristics of habitat in terms of its importance to the species and as the intersection of the suitability of habitat for the species and the level of use by the bird (see NDOW document entitled “Greater Sage-Grouse Habitat Categorization White Paper”, December 2012 and Appendix A, “Greater Sage-Grouse Habitat Map for Nevada and Northeastern California Land Use Plan Amendment”). In addition, the Draft EIS noted that among the issues brought forward for analysis was the use of “sound science to determine habitat requirements and restrictions needed to protect GRSG habitat.”

Nevada and Northeastern California GRSG DLUPA/DEIS, Chapter 1 at p.16. The Draft EIS also stated that mapped habitat would be adjusted and refined based upon the best scientific tools available. Nevada and Northeastern California GRSG DLUPA/DEIS, Chapter 2, Table 2-4 at p. 61 (Goal D-SSS-AM) Table 2-5 at pages 93 (Action D-SSS-AM1), 100 (Action D-SSS-AM 9) and 119 (Action D-SSS-OPM 3). In the Draft LUPA/EIS, Alternative C proposed a recommended withdrawal for all GRSG habitat and Alternative D proposed NSO for fluid mineral leasing in all habitat. In the Proposed LUPA/DEIS, Alternative F proposed prioritization for livestock grazing. Chapter 4 analyzed the impacts of those decisions. See DEIS Chapters 2 and 4. As such, the management of these areas as SFAs and the impacts of the associated management decisions was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Page 2-2

The Proposed LUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater Sage Grouse—A Review: USGS Open File Report 2014-1239 (Manier et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft EIS release, applying these buffers was addressed in the Draft and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternatives C and F) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, elimination of grazing. The management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. Alternative D proposed a seasonal 4-mile lek buffer RDF consistent with applicable law (Appendix D) along with 1.2-mile fencing restriction RDF consistent with applicable law (Appendix D) and a 0.5 mile riparian restriction (Action D-LG 20). For any surface disturbing activity, proponents were also required to survey within a 3-mile buffer of a lek (Appendix D).

Chapter 2 of the Draft EIS identified that the BLM and Forest Service would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed Plan, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternatives C D, and F in the Draft EIS.

The Draft EIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap (Appendix F). A BLM Disturbance and Monitoring Sub-team further enhanced the two Appendices (Appendices E and F) in the Proposed LUPA/Final EIS.

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal. The overarching goal in the Draft EIS was to “Maintain and/or increase abundance and distribution of GRSG on BLM- and Forest Service-administered lands by conserving, enhancing, or restoring the sagebrush ecosystem upon which populations depend, in cooperation with other conservation partners (section 2.1, page 2-5). The purpose for the LUPAs, as described in the Purpose and Need section, is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat. The BLM will consider such measures in the context of its multiple use and sustained yield mandates under FLPMA. The USFS will consider such measures in the context of its mandates pursuant to NFMA.

The Proposed LUPA/Final EIS includes components of the alternatives analyzed in the Draft LUPA/EIS. Taken together, these components present a suite of management decisions that present a minor variation of the Preferred Alternative identified in the Draft LUPA/EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed LUPA is a minor variation of the Preferred Alternative and that the impacts of the Proposed LUPA would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed LUPA/Final EIS are similar or identical to those described Draft LUPA/EIS.

A quantitative cumulative effects analysis for GRSG is included in the Proposed LUPA/ Final EIS. This analysis was completed to analyze the effects of management actions on GRSG at a biologically significant scale or, effects of these actions in biologically significant units (BSU) which as determined to be at the WAFWA Management Zone. The Draft EIS, in Chapter 5, included a qualitative analysis at the WAFWA Management Zone scale and identified that a quantitative analysis would be completed for the Proposed LUPA/ Final EIS at the WAFWA Management Zone.

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

Best Available Science

Issue Number:: PP-NVNORTHEASTCA-GRSG-15-03-4

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The BLM has not clearly articulated why 3% is the correct quantity for a disturbance cap. It appears that the conservation measure originated

from the GRSG National Technical Team's report titled, “A Report on National Greater Sage-Grouse Conservation Measures” (2011) (NTT report). The NTT report introduces the idea of a disturbance cap, based on six professional journal articles. In the Draft LUPA/EIS the BLM selected portions of the NTT conservation measure to apply and in the final LUPA again altered the original measure. The current SSS 2

measure is distinctly different from the original measure from the NTT report that was based on scientific research. The BLM did not explain in the LUPA how they derived the current version of the measure.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-13

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM’s proposal to manage PHMAs as “avoidance areas” only for “minor” rights of way is in conflict with the best available science and the recommendations of the agency’s own experts (NTT 2011). The same goes for Forest Service guidance, which directs the agency to “restrict” issuance of new permits for transmission lines, distribution lines, cell towers, and other rights of way but allows for the granting of exceptions, which from an implementation perspective is synonymous with “avoidance.” FEIS at 2-62.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-9

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The National Technical Team (2011: 20) observed, “it should be noted that protecting even 75 to >80% of nesting hens would require a 4-mile radius buffer (Table 1). Even a 4-mile NSO buffer would not be large enough to offset all the impacts reviewed above.” Importantly, a 0.6-mile lek buffer covers by area only 2% of the nesting habitat encompassed by a 4-mile lek buffer, which takes in approximately 80% of nesting GRSG according to the best available science.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-35

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: In addition to being inconsistent with FLPMA, NFMA/MUSYA, and the General Mining Law, several of the proposed management actions, standards and guidelines are not scientifically supported as required by the regulations that implement NEPA at 40 CFR §1502.24 discussed infra VII.F.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-63

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA maintains that the PLUPA/FEIS consists of and relies upon flawed science, and flawed study methodologies used in development of the management actions (see PLUPA/FEIS, Sections 2.6; 2.8; 2.10), baseline assumptions and summary of the Affected Environment (see PLUPA/FEIS, Section 3.2), and adaptive management triggers (see PLUPA/FEIS, Section 2.7). Further, AEMA contends BLM cherry-picked what scientific papers it wished to discuss in the NTT Report, presented misleading information, presented information out of context, simply ignored large numbers of studies that refute many of its conclusions, and failed to address the limitations of the underlying data and studies (see generally Exhibit 4a).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-64

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: More specifically, the studies used in the NTT Report, COT Report, Buffer Report, and the PLUPA/FEIS (see PLUPA/FEIS, Appendix B, Appendix F, Section 3.2) are based upon:

- (1) Statistically invalid lek count data used to estimate population trends as a basis or need for management. The imprecise data, non-random sampling, and the fact that sage grouse populations are known to fluctuate, means that it is impossible to discern any pattern in the data that could be used to guide management actions, or that would be scientifically defensible;
- (2) Assumptions that even a temporary decline in lek count data is representative of a population decline;
- (3) Outdated data and opinion in reports and papers, rather than more current data and information; and
- (4) Speculations about the benefits to sage-grouse, particularly with respect to disturbance caps, and buffer distances.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-65

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA is concerned that the Proposed Plan relies too heavily on the NTT Report conservation measures and RDFs/BMPs. This reliance is particularly problematic in light of the recently filed NTT Report DQA Challenge (See Exhibit 4a), which found the NTT Report to be inaccurate, unreliable, biased, and in violation of the DQA. The NTT Report purports to “provide the latest science and best biological judgment to assist in making management decisions” (NTT Report at 5). Instead, the NTT Report represents a partial presentation of scientific information, in order to justify a narrow range of preferred

conservation measures and policies that will significantly harm AEMA members.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-70

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM failed in the NTT Report to disclose that very little is known about adequate patch size, which is the minimum range of the landscape required for the sage-grouse to persist. Scientific research has refuted the belief that there is a widely-accepted or “magic” number in terms of habitat patch size or population number that can defensibly be used to identify a “viable” population of any species, much less GRSG (See Exhibit 4a at 43-44 and citations therein).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-72

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: There is no evidence of the purported population declines nor genetic isolation that USFWS contends in the COT Report. In his recently published study (Zink 2014), Zink found no genetic evidence of population declines in sage-grouse, and data from the NDOW indicates GRSG populations have been increasing over the last three years. According to NDOW, the 2010 fall population estimate increased about 18% compared to the 2009 estimate, and the population has been increasing since 2008 (See Id at 48-49 and citations therein).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-74

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Garton et al. 2011 relied on antiquated lek count data which has long been criticized for failing to render statistically valid estimates of population numbers and trends, partially due to the non-random sampling, the fact that male GRSG move between leks, and differences in count methodology/definition of active lek. In addition, Garton et al. is not reproducible due to the unknown and subjective criteria used to select the final data sets used in the models, which is a critical component of the scientific method. Additionally, Garton et al. uses sources described as “Anonymous,” which clearly is not a credible reference that satisfies scientifically acceptable standards. BLM’s reliance on Garton et al. is particularly problematic in light of recent work conducted by Zink 2014, and more recent state population data. AEMA contends that Garton et al. 2011 fails to meet the “best available science” standard.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-80

Organization: American Exploration & Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that the PLUPA/FEIS, NTT Report, COT Report, and Buffer Report, fall under the definition of “influential information” as they meet the BLM criteria pursuant the 2012 Guidance. As such a higher degree of scrutiny in terms of quality, utility, objectivity, and integrity would be applied. AEMA further contends that the PLUPA/FEIS fails to meet the standards of “utility” and “objectivity” pursuant the DQA and subsequent guidance documents,

described in detail below.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-44

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed LUPA are largely based on the FWS GRSG (*Centrocercus urophasianus*) Conservation Objections: Final Report (Feb. 2013) (“COT Report”) and the BLM’s “Report on National Greater Sage-Grouse Conservation Measures” produced by the BLM GRSG National Technical Team (Dec. 2011) (“NTT Report”). Reliance on these reports is arbitrary and capricious under the Administrative Procedure Act (APA). 5 USC § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act (“DQA”), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-45

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the “Literature Cited” section. Megan Maxwell, BLM’s NTT Report: “Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?”, p. 13-14 (May

20, 2013) (“NWMA Review”), Attachment 6. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34% of the citations had no corresponding source available to review (Id at 14). Additionally, there are articles listed in the “Literature Cited” section that are not directly referenced and do not appear to have been used within the NTT Report itself. Id. These technical errors limit the ability of outside reviewers or the public to verify claims in the NTT Report and reduce the report’s scientific credibility.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-46

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases (NWMA Review at 14). For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15% (NTT Report at 26). However, the source cited for this proposition, John W. Connelly, et al., “Guidelines to Manage Sage-Grouse Populations & their Habitats”, Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion (NWMA Review at 14). Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. NWMA Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which

varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15% canopy cover standard. Misleading citations, failure to properly reference and list sources in the Literature Cited section, and similar technical errors render the NTT Report difficult to read, difficult to verify, and far less than the “best available science.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-47

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

recommended by the NTT report, are based upon flawed studies that relied on unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions (NTT DQA Challenge at 42-46). Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-48

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created. See NTT DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts (E.g., Ramey, Brown, & Blackgoat). As explained by Ramey, Brown, and Blackgoat, studies prior to the NTT Report’s publication were based upon older, more invasive forms of development: Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and

horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to GRSG. Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions). The NTT authors’ refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report’s recommendations for oil and gas development inapplicable to current practices.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-49

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed (Applegate & Owens at 287-89). In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70% in

Wyoming alone (Id. at 289). All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. The Agencies should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed LUPA, because the NTT Report does not represent the best available science.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-50

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to utilize the best available science, and the Agencies inappropriately relied upon it in the Proposed LUPA. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 9. The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions (COT DQA Challenge, Exhibit A at 1). For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and therefore underestimates

the significance of predation as a threat. COT DQA Challenge at 56-63. The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence (COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., “Greater Sage-Grouse Population Dynamics & Probability of Persistence, in Greater Sage-Grouse: Ecology & Conservation of a Landscape Species & Its Habitats” 293 (Steven T. Knick & John W. Connelly eds., 2011) (“Garton et al. 2011”))). This paper contains serious methodological biases and mathematical errors (COT DQA Challenge, Exhibit A at 2). Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible. *Id.* Finally, the COT Report provides a table assigning various rankings to greater sage-grouse threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks. See COT Report at 16 – 29, tbl. 2. Absent a quantifiable methodology, these rankings are subjective and the Agencies should not rely upon any conservation measures derived from them.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-51

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for Greater Sage-Grouse: A Changing Paradigm for Game Bird Mgmt., in Greater Sage-Grouse: Ecology & Conservation of a Landscape Species & Its Habitats 101, 106 tbl. 7.3 (Steven T. Knick & John W.

Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on the GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20% of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases since that time. The Agencies and the Department of the Interior have failed to discuss or reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30% in 1981 to 20 to 25 percent in 1987 to five to 10 percent in 2000 (Reese & Connelly at 110 – 11). High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-52

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA

Review at 14; NTT DQA Challenge at 25 – 26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2; BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not provided, an exceptionally rigorous robustness check was performed as required. OMB Guidelines, V(3)(b)(ii)(B)(ii), (67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8). The studies upon which the NTT Report relies are therefore unverifiable and not reproducible, which is inconsistent with the DQA guidelines. OMB Guidelines, V(3)(b)(ii)(B), (67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8). The COT Report similarly cited frequently to a study whose data and programs are not public and, therefore, not reproducible (COT DQA Challenge, Exhibit A at 7).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-53

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Both the NTT and COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate (OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459). Because the NTT and COT

Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-15

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: While the EIS includes a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing is painfully missing. We acknowledge that the EIS now does contain references to some of the literature we provided during the DEIS. However, the analyses still focuses on the “worst” examples from the literature and fails to incorporate the best and most recent data and studies related to grazing being very conducive to GRSG conservation. Specifically, the document almost completely lacks references on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. We will not repeat each of the individual studies we provided during the DEIS but include them again by reference and our enclosed letter on the DEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-7

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text:

The BLM, USFS and USFWS have failed to identify nest and youngling GRSG predation as a significant cause to loss of populations in the west. The GRSG LUPAI FEIS will not associate the loss of population with the

predation issue and has not addressed needed management practices to reduce predation occurrence to the GRSG. Nest and youngling predation has been considered by some researchers to be the primary limiting factor for GRSG populations (e.g., Batterson and Morse 1948, Autenrieth 1981, Gregg 1991, Gregg et al. 1994), and predation on eggs and youngling birds was considered by Schroeder et al. (1999) as the primary cause of mortality.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-54

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding GRSG leks. A recent review of this data showed that regional climatic variations, rather than anthropogenic threats such as oil and gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, “Hierarchical Bayesian Analyses of Greater Sage-grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012”, at 3 (Dec. 2014). Because current data demonstrates that the impacts of anthropogenic disturbances on GRSG populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-55

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by GRSG to industrial development contains serious flaws. D.E. Naugle, et al., “Energy Development & Greater Sage-Grouse, in Greater Sage-Grouse: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38” (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, “A Comprehensive Review of Greater Sage-Grouse: Ecology & Conservation of a Landscape Species & its Habitat” at 115 (Feb. 2012), Attachment 12. Naugle et al. 2011 also misrepresented the results of another study to support their claim that GRSG abandon leks due to noise and human activity (Id. at 116). Further, of the seven studies reviewed, four focused on impacts to GRSG in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin. *Id.* Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies’ results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-56

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, “Spatial Heterogeneity in Response of Male Greater Sage-Grouse Lek Attendance to Energy Development”, June 2014). This study, like many similar studies, was based on peak male lek count data (Id. at 2); see also D.H. Johnson, et al., “Influences of Env’tl & Anthropogenic Features on Greater Sage-Grouse Populations”, 1997 – 2007, in “Greater Sage- Grouse: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38”, at 407 (S.T. Knick & J.W. Connelly eds., 2011). Peak male lek count data tends to bias lek attendance estimates and therefore leads to inaccurate population trend estimates. Rob R. Ramey, et al., “Hierarchical Bayesian Analyses of Greater Sage-Grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997 – 2012”, at 2 – 3 (Dec. 2014), Attachment 13. Mean average lek counts provide a more accurate picture of population trends (See, e.g., Id).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-57

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study’s conclusions are based on well density data and lek counts from 1991 through 2011 (Gregory & Beck at 4). The

period in which GRSG reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011. *Id.* However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004 (*Id.* at 7). Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in the coming years. *Id.* This prediction assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country (See, e.g., Applegate & Owens at 287). As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time period (Applegate & Owens at 287). As Applegate and Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity (*Id.* at 288). Gregory and Beck’s study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across GRSG range.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-58

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Other papers important to the USGS Buffer Report’s

energy buffers, see USGS Buffer Report at 7, also relied on well density data from the height of Wyoming’s CBNG boom. See, e.g., B.C. Fedy et al., “Habitat Prioritization Across Large Landscapes, Multiple Seasons, & Novel Areas: An Example Using Greater Sage-Grouse in Wyoming”, 190 *Wildlife Monographs* 1, 12 (Mar. 2014) (relying on Wyoming well data from 1998 through 2008 to determine effects of various well densities on greater sage-grouse); D.H. Johnson, et al., “Influences of Env’tl & Anthropogenic Features on Greater Sage-Grouse Populations, 1997 – 2007, in *Greater Sage-Grouse: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology*”, No. 38 at 407 (S.T. Knick & J.W. Connelly eds., 2011) (relying on data from 1997 through 2007); Kevin E. Doherty, “Greater Sage-Grouse Winter Habitat Selection & Energy Development”, 72 *J. of Wildlife Mgmt.* 187, 187 (relying on data from CBNG development in the Powder River Basin). Current development is less intensive than the CBNG development that took place from 1998 through 2008. In effect, the USGS Buffer Report reviewed data from some of the most intensive developments in the country and extrapolated from these results range wide buffers applicable to future development with significantly different impacts. This data is a weak basis from which to regulate current and future oil and gas development (See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-21-3

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: There is no science showing that livestock watering facilities preclude lekking activities.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-21-4

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: The document does not speak to or otherwise recognize work done by Hausleitner et al 2005. The document continues to irrationally base objectives on landscape residual heights as opposed to nest-bush post-hatch residual height recordings. Overall, the “best available science” is not consistently used. For example, as to residual vegetation heights for nesting GRSG, the entire document is silent to the fact that the cited authors measured residual, vegetation after the hens had left their nests, not at nest initiation. Hausleitner et al 2005 is not even referenced by the document, let alone relied upon; however, Hausleitner et al 2005 established that residual heights of 3.5-.3.9 inches characterized the nest bowl and surrounding 1 meter around the nest bowl at the time of nest-initiation. Significant vegetative growth occurs between nest-initiation and post-hatch.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-4

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The FEIS fails to provide detail on the alternative mitigation systems or assurance that they incorporate the best available science. The CCS is a rigorous and vetted mitigation system created with input from the Technical Review Group comprised of leading scientific experts in Nevada. The CCS represents the best available science, which the BLM is required to use when making decisions as indicated in the BLM Land Use

Planning Handbook H-1601-1 and the BLM NEPA Handbook H-1790-1.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-6

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The BLM Land Use Planning Handbook H-1601-1 and the BLM NEPA Handbook H-1790-1 requires the use of best available science. The process for delineation of SFAs needs to be clearly defined and understandable to incorporate the best available science especially new science specific to populations in Nevada, and for duplication using the same tools.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-14

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: We previously commented extensively on the NTI and COT reports. We still contend that by relying on these two reports, the LUPA is not using the “best available science” as required by NEPA (and CEQ regulations) and are inconsistent with the Data Quality Act and BLM’s internal guidelines, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information”, disseminated by the Bureau of Land Management, February 9, 2012. Further, the two reports also fail to adhere to the U.S. Office of Management and Budget (OMB) proper peer review process Instructional Memorandum (OMB December 16, 2004, M-05-03; Final Information Quality Bulletin for Peer Review).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-15

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The use of the NTT report is extremely problematic, as it contains overly burdensome recommendations that are not based on local conditions in Nevada. The NTT report asserts that oil and natural gas and grazing “impacts are universally negative and typically severe,” but provides no scientific data to support that assertion. The report selectively presents “scientific” information to support overly burdensome conservation measures that are not based on local conditions. The LUPA relies too heavily upon a select few studies utilized by the NTT report that cannot be universally applied. An independent review of the report shows that it contains many methodological and technical errors, cherry-picks scientific information to justify the report's recommendations, and was developed by a small group of specialist advocates with narrow focus. The NTT report does not adequately represent a comprehensive and complete review of the best scientific data available, did not go through adequate peer review, and is inappropriate for primary use. (see Megan Maxwell, BLM’s NTT Report: “Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?”, at: <http://www.nwma.org/pdf/NWMA-NTTReview-Final-revised.pdf>; Rob Roy Ramey, “Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures”, Produced by the GRSG National Technical Team (NTT), September 19, 2013).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-16

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: Moving to the COT Report; while the COT Report is intended to serve as a guidance document to federal agencies, states, and others, there are several issues that need to be resolved in order for the COT Report to be an adequate non-biased guide based on the best science. The COT Report contains selective, narrow review of scientific literature and unpublished reports on GRSG, presents outdated information, overstates or misrepresents some threats to GRSG while downplaying others, and relies on a faulty threats analysis (See Rob Roy Ramey, “Data Quality Issues in the Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives: Final Report”, October 16, 2013)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-17

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The concerns about the quality of the NTT and COT Reports and their underlying studies are currently being challenged by a coalition of western land users and counties, including Eureka County, for lack of consistency with the DQA. As of the date of this Protest Letter there has been no resolution to the NTT and COT Report DQA Challenges. Eureka County incorporates by reference the findings presented in these Challenges. The challenges can be found at: <http://www.westernenergyalliance.org/knowledge-center/wildlife/greater-sage-grouse/DQA-Challenge>.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-26-1

Organization: Defenders of Wildlife

Protestor: Mark Salvo

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

Issue Number:PP-NVNORTHEASTCA-GRSG-15-35-5

Organization: Multiple Individual Protesting Parties

Issue Excerpt Text: Lek buffer distances (Appendix Bin the Nevada NE California PRMP; Appendix DD in the Idaho SW Montana PRMP) are arbitrary and capricious and do not reflect “best science”. The Nevada PRMP and Idaho PRMP impose the lower “interpreted range” suggested by Manier et al 2014, and do so universally within all sage-grouse habitat

Summary:

The Nevada and Northeastern California PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM Land Use Planning Handbook’s guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and USGS Buffer Report), which do not comply with standards of integrity, objectivity, and transparency.

(GHMA and PHMA) (Appendix B, p. B-2 of the Nevada PRMP and Appendix DD, p.DD-2 of the Idaho PRMP). Yet in Wyoming, significantly smaller buffer distances are applied, and are differentially applied within PMHA as opposed to outside PMHA The land agencies cannot simultaneously state that a 3.1 mile buffer zone is the “best science” in Nevada, NE California, Idaho, and SW Montana, while stating that a 0.25 mile buffer zone is the “best science” in Wyoming. If it is the land agency’s position that the Wyoming buffer distances are applicable due to local conditions, then the same local condition consideration should be given to the other states, and there should not be imposed the across-the-board Manier buffer distances.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-12

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It fails to address recent predicted population trends, specifically that populations in Management Zone III have almost no chance of falling below 200 males by 2037 and an 8% chance of falling below 200 males by 2107 (See Exhibit G: Manier et al., Summary of Science, Activities, Programs, and Policies that Influence the Rangeland Conservation of Greater Sage- Grouse” (Centrocercus Urophasianus) (USGS Open-File Report 2013-1098) (June 3, 2013)). Similar conclusions have been reached by Garton et al. in 2011.

In addition, the Nevada and Northeastern California PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances, habitat objectives, impacts from livestock grazing, and predation.

Response:

Before beginning the Nevada and Northeastern California PLUPA/FEIS, the BLM and Forest Service considered data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

In March 2012, the FWS initiated a collaborative approach to develop range-wide conservation objectives for the GRSG to inform the 2015 decision about the need to list the species and to inform the collective conservation efforts of the many partners working to conserve the species.

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

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

Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangewide Conservation of GRSG (also referred to as the Baseline Environmental Report [BER] or the USGS Buffer Report; Manier et al. 2013) provides complementary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM and Forest Service in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service's "warranted but precluded" finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER

provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

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

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

On November 21, 2014 the US Geological Survey (USGS) published “Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review” (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The Nevada and Northeastern California PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the report during NEPA analysis at the implementation stage (PLUPA/FEIS, Appendix B). As stated in this appendix:

Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized “that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the GRSG range”. The USGS report also states that “various protection measures have been developed and implemented...[which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands”. All variations in lek buffer-distances will require appropriate analysis and disclosure as part of activity authorization (p. B-2).

As such, the BLM has considered the best available science when determining lek buffers and has incorporated a mechanism to consider additional science as it becomes available.

The habitat objectives for GRSG in Tables 2-2 of the PLUPA/FEIS summarize the characteristics that research has found represent the seasonal habitat needs for GRSG (p. 2-19). The studies relied on for those objectives are displayed in the table. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in this subregion. Thus, the habitat objectives provide the

broad vegetative conditions to be obtained across the landscape that indicate the seasonal habitats used by GRSG. As such, the BLM has considered the best available science when determining habitat objectives.

The relationship between livestock grazing and GRSG is discussed in Section 4.2.2 of Chapter 4 of the Nevada and Northeastern California PLUPA/FEIS as in the relationship between various activities and predation on GRSG (p. 4-11). This section cites to numerous sources, including the NTT Report and Mainer, et al., 2014. As such, the BLM and Forest Service have considered the best available science when considering the impacts to GRSG from livestock grazing and predation.

Public Participation

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-1

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The methodology for developing the Sagebrush Focal Area boundaries was not fully disclosed to the public nor was it fully explained or disclosed to the public during the EIS process which is in violation of the National Environmental Policy Act (NEPA) 40 CFR 1502.24 Methodology and Scientific Accuracy. The methods for the delineation of Sagebrush Focal Areas boundaries are not outlined or readily available in the FEIS document, the methodology in developing these boundaries was not fully disclosed to the public during the EIS process, and such boundaries are subjective.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-6

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest substantial changes made between the Draft LUPA and Proposed LUPA without notice and an opportunity for public comment. In particular, the Trades protest the unexpected

adoption of the wholly new Proposed LUPA rather than one of the alternatives analyzed in the Draft EIS. Although the Agencies maintain that components of the Proposed LUPA were analyzed in other alternatives, the combination of these components in the Proposed LUPA creates a dramatically different alternative that requires notice and public comment. Furthermore, the Proposed LUPA contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the lek buffer distances, and the adaptive management triggers and responses, as well as extension revisions to the monitoring and mitigation plans. These proposed changes violate NEPA because they were not included in the Draft LUPA and because the Agencies did not allow the public an opportunity to meaningfully comment on these provisions

Issue Number: PP-NVNORTHEASTCA-GRSG-15-14-8

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: Presenting this plan in a Proposed LUPA and Final EIS is disingenuous of the NEPA process. A

supplemental Draft EIS should have been published to allow adequate time to review the Adaptive Management Plan, and its components including hard and soft triggers.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-17

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The public is entitled to disclosure of all of the considerations which should be fully and fairly disclosed but were not. This is particularly important where, as here, the DEIS promised that mapped habitat would be adjusted and refined based on the best scientific tools available. The public is entitled to review all of the science and information relied upon by the BLM in proposing the SFAs and to provide comment for consideration of the proposed SFAs which has been precluded by inclusion of new maps (that were based on input by the conservation community) for the first time in the final document in violation of NEPA and FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-28

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: 43 CFR 1601.3(i) requires that the public be provided 90 days for review of a draft EIS. Given the new elements included in the FEIS including the SFA map which is an integral part of the Plan and was not available until May 29th with the publication of the FEIS, the BLM made it impossible for state and local governments, and the public to review and comment upon all of the changes which the Plan would effect and the data upon which these actions were based. *Id.* This violates

NEPA which mandates that information necessary to allow the public to respond and to know the basis of the agency's ultimate conclusion be made available.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-23-1

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Colorado, Oregon and Idaho LUPAs state, "the BLM will apply the lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for Greater Sage-Grouse: A Review" (Open File Report 2014-1239) (Manier et al. 2014). This report was not included in the DEIS released on November 2013 and was not release to the public until November 2014. The agencies determined this change was within the scope of the EIS and would not require further public comment. Buffer distances will result in impacts to utility operations and maintenance and the use of the USGS report is a significant change from the DEIS which has not be properly analyzed. In accordance with NEPA, this change from the DEIS should be analyzed and open for public review and comments.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-1

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: We protest the adaptive management triggers in the FEIS as they include significant additions in comparison to the DEIS, which did not allow time for public review and comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-3

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: The BLM/USFS failed to follow statutory and regulatory procedure when they issued the FEIS without providing Quantum with an opportunity to comment. When the BLM changed the affected areas between the conclusion of the public comment period for the DEIS and the time it released the FEIS, it did not provide adequate notice to Quantum that the Project area would be implicated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-4

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: Over the course of almost a year, the USFS repeatedly reassured Quantum that the GRSG RMP and EIS would not involve the Project area. Despite conducting thorough environmental due diligence coordinated with the USFS, Quantum was blindsided when the FEIS implicated the Project. Not only did the DEIS fail to recognize the Project area as priority or even general habitat, Quantum's own studies, confirmed by the USFS, did not identify the Project as GRSG habitat. Without any indication that the Project would be impacted by the GRSG RMP, Quantum determined that its limited resources should not be spent commenting on a plan that had no bearing on the Company. The new designation bestowed by the FEIS on lands in and around the Project could cause the Project area to be withdrawn from mineral entry. The potential for withdrawal shows that the BLM's actions substantially changed who would be affected by the PRMP. Therefore, because the BLM and USFS significantly changed the rules in the Project area without notice, warning, or any opportunity to participate in public comments, the agencies violated the

statutory and regulatory procedures set out by NEPA, FLPMA, and NFMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-7

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: The BLM, for the first time in the FEIS, and after the public comment period ended, created the new category of SFAs and arbitrarily upgraded the Project area from low habitat/transitional to priority habitat. This is demonstrably wrong, because recent and The BLM and the USFS cannot legally make eleventh hour changes to restrict wide swaths of land that were never before identified as priority habitat or areas of concern for GRSG. Instead, these proposals need to be re-noticed, re-evaluated to account for actual science and existing studies, and re-opened for public comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-9

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: The result essentially created an impact that was outside the spectrum of alternatives analyzed in the DEIS. Therefore, because the substantial changes made to the EIS and RMP constituted new information regarding affected locations, and those changes will significantly impact the quality of the human environment for Quantum, the BLM should have prepared a SEIS and provided Quantum and other members of the public an opportunity to comment on the changes.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-33-1

Organization: Bartell Ranch, LLC

Protestor: Edward Bartell

Issue Excerpt Text: We are protesting the application of all grazing restrictions including, but not limited to: pages 2-38 through and including 2-43 associated with Table 2-2 pages 2-18 through 2-19, due to the fact Table 2-2 was not made available for public comment, and many of the grazing restrictions are new and were not open to public comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-35-1

Organization: Multiple Individual Protesting Parties

Issue Excerpt Text: Several publications are purportedly in press, which precludes the

public's review and vetting of those publications. In addition, several publications are relied upon which were not relied upon or known at the time of the publication/comment period of the DEIS's that ended on January 29, 2014. These include, but are not necessarily limited to: Stiver et al (in press); Lockyer 2015 (in press); Schmelzer et al 2015 (in press); Chambers et al (in press); Manier et al (2014); Coates et al (2014). As such, the public was precluded from vetting these publications and the veracity and/or applicability of each of them during the public comment period to the DEISs.

Summary:

The BLM and Forest Service violated NEPA because:

- The BLM did not give the public adequate time to review the FEIS given the new elements that were not found in the DEIS;
- The establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment; and
- The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed RMP or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) make diligent efforts to involve the public in preparing and implementing their NEPA procedures; and (b) provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings...or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601-1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and

national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

With input from the public, other agencies, and tribes on the Draft LUPA/EIS, the BLM and Forest Service have developed the Proposed Plan. The Proposed Plan is a variation of the preferred alternative (Alternative D) from the Draft LUPA/EIS and includes elements of other alternatives to meet the purpose and need and to create a management strategy that meets resource values under the agencies' applicable land use planning policies.

The BLM and Forest Service received written comments by mail, e-mail, and submitted at the public meetings. Approximately 16,920 submissions were received during the public comment period which contained 1,747 substantive comments. Using a systematic approach of labeling, reviewing, and categorizing each comment, the BLM identified and formally responded to all substantive public comments. Substantive comments were categorized based on the content of the comment. Each retained the link to the commenter.

Subsequently, the BLM and Forest Service drafted statements summarizing the issues contained in each comment category. They then developed responses to each issue statement. As part of the response statement, the BLM and Forest Service indicated whether the comments resulted in a change to the LUPA/EIS. The Comment Analysis Report in Appendix C contains the issue statements and summary response for each comment category.

One protest point brought up the issue of publications being "in press" and not available to the public. The agencies make any and all published reference material available on request. The agencies will make any reference material that is currently "in press" available upon request to the extent possible under agency and Departmental policy. The Stivers report carries a date of August 2010 and is available on line at:

<http://sagemap.wr.usgs.gov/docs/rs/SG%20HABITAT%20ASSESSMENT%202010.pdf>

The Nevada and northeastern California sub-region's Proposed Plan is a variation of the preferred alternative from the Draft LUPA/EIS but also includes elements of the other alternatives. Chapter 2 contains the Proposed Plan's goals, objectives, and management actions. The Proposed LUPA will fulfill the obligations set forth by the NEPA, FLPMA, and other federal regulations. In accordance with NEPA and the BLM's planning regulations in 43 CFR, Part 1610, and because there were changes between the Draft and Final EIS, the agencies issued a full text Proposed LUPA/Final EIS. This was made publicly available on the publication of a notice of availability in the Federal Register. Chapter 1, page 1-33.

The Proposed LUPA/Final EIS focuses on addressing public comments, while continuing to meet the BLM's and Forest Service's legal and regulatory mandates. The Proposed LUPA/Final EIS is a variation of the preferred alternative (Alternative D) and is within the range of alternatives analyzed in the DEIS.

Changes made to the Proposed LUPA/Final EIS from the preferred alternative (Alternative D) in Draft LUPA/EIS are well documented in Chapter 2, section 2.1, starting on page 2-1. This

section also identifies aspects of the new elements in the Proposed LUPA that were actually introduced and incorporated into various alternatives in the Draft document.

NEPA requires agencies to prepare a supplement to the draft EIS if: 1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or 2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. A supplement is not necessary if a newly formulated alternative is a minor variation of one of the alternatives and is qualitatively within the spectrum of alternatives analyzed in the Draft EIS.

As noted in the DEIS, one of the goals/objectives of this planning effort is to protect both the habitat and the species (See, for example, the LUPA/DEIS Goal B-SSS 1, Goal D-SSS 1, Goal E-SSS 1, Goal F-SSS 1, and Objective D-SSS 4). Further, as noted by the USGS Report/Coates which supports the delineation of habitat mapping for this planning effort, the potential presence of bird in these areas of the SFAs is acknowledged (see USGS Open File Report 2014-1163; page 28, Habitat Definitions). The DEIS and the NDOW map it referenced defined the qualitative characteristics of habitat in terms of its importance to the species and as the intersection of the suitability of habitat for the species and the level of use by the bird (see NDOW document entitled, “Greater Sage-Grouse Habitat Categorization White Paper”, December 2012 and Appendix A, “Greater Sage-Grouse Habitat Map for Nevada and Northeastern California Land Use Plan Amendment”).

The Proposed LUPA/Final EIS includes components of the alternatives analyzed in the Draft LUPA/EIS. Taken together, these components present a suite of management decisions that present a minor variation of the Preferred Alternative identified in the Draft LUPA/EIS and are qualitatively within the spectrum of alternatives analyzed.

As such, the BLM has determined that the Proposed LUPA is a minor variation of the Preferred Alternative and that the impacts of the Proposed LUPA would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed LUPA/Final EIS are similar or identical to those described Draft LUPA/EIS. Chapter 2, page 2-6.

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

Impacts – Greater Sage Grouse

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-16

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The EIS fails to discuss these impacts resulting from development and sagebrush removal in

winter habitat or respond to comments. Nor does it provide any sense of the long-term impact of winter habitat loss on the persistence of local GRSG in the planning area. Moreover, the fundamental failure to identify baseline winter habitat and winter concentration areas precludes any

understanding of the PRMP's impacts on wintering GRSG.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-17

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-10

Organization: Midway Gold

Protestor: Laura Skaer

Issue Excerpt Text: It contends that “[l]ong-term population declines leading to extirpation of [GRSG] in this [Population Management Unit] are likely over the next several decades due to isolation and habitat loss. This will greatly shrink [GRSG] range on the western edge and potentially eliminating them from northeastern California” (Id. at 3-35.) In the same breath, however, the BLM admits that “[n]o modeling has been completed to support this hypothesis.” Accordingly, there is no science to support this speculation that is the basis for proposed widespread withdrawals and access restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-15

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS does not adequately analyze the impacts of the three percent disturbance cap on land users. Specifically, the Agencies did not disclose the amount of current surface disturbance in GRSG habitat within the planning area. See Proposed LUPA at 4-55 – 4-56, 4-56 – 4-57. The Final EIS notifies land users that a disturbance cap will apply, but the impacts of the disturbance cap are impossible to determine without the Agencies' disclosure of current surface disturbance in the planning area.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-10

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It contends that “[l]ong-term population declines leading to extirpation of [GRSG] in this [Population Management Unit] are likely over the next several decades due to isolation and habitat loss. This will greatly shrink [GRSG] range on the western edge and potentially eliminating them from northeastern California” (Id. at 3-35.) In the same breath, however, the BLM admits that “[n]o modeling has been completed to support this hypothesis.” Accordingly, there is no science to support this speculation that is the basis for proposed widespread withdrawals and access restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-14-1

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: While the BLM did acknowledge predators as a threat factor, limiting all actions to only addressing “human uses” was a major oversight.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-10

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It contends that “[l]ong-term population declines leading to extirpation of [GRSG] in this [Population Management Unit] are likely over the next several decades due to isolation and habitat loss. This will greatly shrink [GRSG] range on the western edge and potentially eliminating them from northeastern California” (Id. at 3-35.) In the same breath, however, the BLM admits that “[n]o modeling has been completed to support this hypothesis.” Accordingly, there is no science to support this speculation that is the basis for proposed widespread withdrawals and access restrictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-1

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: The LUPA/FEIS lacks updated census information and population requirements for sustainability of the species. In its comments on the Draft LUPA/DEIS, Y-3 II noted the draft EIS's continued failure to provide current information on GRSG populations in Nevada even though population numbers were obtainable in 2004 and the further need to update the population count before determining the baseline status of the

Summary:

The PLUPA/FEIS fails to adequately analyze impacts to GRSG because:

- it fails to address comments that identify impacts from development and loss of sagebrush in winter habitat. The failure to identify baseline winter habitat and winter concentration areas precludes any understanding of impacts on local GRSG populations;
- the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;

species. Y-3 TI does not find any response to its concerns in the LUPA/FEIS and protests the lack of this information that is critical to all of the management proposals in the LUPA/FEIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-5

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: The LUPA/FEIS lacks adequate discussion of West Nile Virus. As with predators, West Nile Virus, a disease, is specifically to be considered by the Agencies in determining whether to list sage-grouse under the Endangered Species Act, 16 USC § 1533(a)(1)(C). In its comments on the draft plan, Y-3 II expressed concern about the lack of discussion on the impact of disease on GRSG populations. The LUPA/FEIS fares no better. In the response to comments, the Agencies note that Required Design Features are imposed for West Nile Virus (p.C-33). The LUPA/FEIS also calls for coordination among state agencies to monitor the disease (Objective SSS-DIS 1). The FEIS/LUPA continues, however, to fail to explain or provide information on the effects of West Nile Virus to determine its impacts on the species or in the alternative why the information could not be obtained or was too expensive to obtain and how the lack of information affects the FEIS, all required by NEPA and its implementing regulations. See 42 USC § 432(2)(c); 40 CFR § 1503.1(a)(1).

- it does not adequately analyze the impacts of disturbance caps on land users; the Agencies did not disclose the current level for surface disturbance in GRSG habitat which limits an understanding of impacts;
- it fails to provide current information on GRSG populations in Nevada; this information is critical to all the management proposals in the LUPA/FEIS;
- there is no science to support the speculations that GRSG range will shrink on the western edges and potentially eliminate them from Northeastern California that is the basis for the proposed withdrawals and access restrictions;
- it does not explain changes in recommend withdrawal acres between 1,296,100 acres (Table 2.3; DLUPA/DEIS) and PLUPA/FEIS, 521,600 acres (Table 2-14 PLUPA/FEIS);
- it did not address predators as a threat factor; and
- it fails to explain or provide information on the effects of West Nile Virus to determine impacts on the species.

Response:

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

NEPA directs that data and analysis in the EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and the 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)).

In compliance with NEPA, the BLM and Forest Service considered all public comments submitted on the Draft Nevada and Northeastern California GRSG LUPA/FEIS. The BLM and Forest Service complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix C of the Nevada and Northeastern California GRSG PLUPA/FEIS presents the agencies' responses to all substantive comments.

A land use planning-level decision is broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The LUPA/EIS data and information is presented in map and table form and is sufficient to support the broad-scale analyses required for land use planning.

The Proposed LUPA and Final EIS provides an estimate of potential surface disturbance sufficient for making a reasoned choice among the alternatives, and employs the assumption that such disturbance would affect vegetation communities proportionally to their current extent, this would include sagebrush (see Chapter 4 Section 4.1.5 beginning on page 4-286). The baseline used for analysis of impacts can be found in Chapter 3 of the Proposed Plan/FEIS. For example Table 3-50 displays acres of current geothermal leasing in GRSG habitat. However, the exact location of projects and their effects on various habitat types will not be known until projects are proposed.

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling). The analysis focuses on the direct, indirect, and cumulative impacts to GRSG habitat, which includes both summer and winter habitat, which could potentially result from on the ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. In Chapter 4 winter habitat is included in the analysis of impacts from specific resources, see example on page 4-191 impacts from Land Use and Realty. Baseline information on GRSG populations is provided in Chapter 3 on page 3-20 and 3-2. The effectiveness of these decisions on changes in GRSG populations will be evaluated based on criteria in the monitoring plan see Appendix E of the Nevada and Northeastern California GRSG PLUPA/FEIS.

The basis for the proposed withdrawals and access restrictions in the PLUPA/FEIS are designed to meet the purpose for the LUPAs and desired resource objectives. The proposed withdrawals and access restrictions are conservation measures in the LUPA to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat. The changes between the DLUPA/DEIS and PLUPA/FEIS, including those related to recommended withdrawals, are explained in section 2.1 of the proposed LUPA/Final EIS. The proposed LUPA/Final EIS was developed based on public comments, best science, cooperating agency coordination, and internal review of the Draft LUPA/EIS. Impact from withdrawals on GRSG and impacts to other programs are addressed in Chapter 4 of the Final LUPA/FEIS. Analysis of impacts to and from all mineral management programs begins on page 4-142. On page 4-169, impacts associated with development (including mining) can increase the risk of fire (Shlisky et al 2007).

The BLM and Forest Service address the impacts predators can have on GRSG in Chapter 4 of the Final EIS. The BLM and Forest Service have authority to manage the habitat and have provided analysis to describe how the numerous management actions across the range of alternatives could affect the habitat and indirectly the effects of predation. Altering the sagebrush habitat of GRSG can create an influx of predators into an area and lead to a population decline. Roads, fences, power lines, trails and other disturbances may make access easier for potential predators and increase risks to the species. The Final EIS calls for measures that will substantially reduce disturbances in the bird's habitat, thus reducing predation risk. The Final EIS also calls for careful monitoring of grazing allotments within GRSG nesting habitat to ensure suitable grass and forb cover is reserved so we can minimize the associated predation risks.

Management actions specifically to manage predators is outside the scope of the amendment, the BLM and the Forest Service have authority to manage the habitat and have provided numerous management actions across the range of alternatives. Despite concerns over impacts of the West Nile virus on GRSG, actual prevalence of the virus in wild populations remains unknown (Walker et al. 2007). The spread of the West Nile virus and impacts to GRSG in the planning area are speculative at this time and, therefore, was not included in the scope of the cumulative impact analysis in the PLUPA/FEIS. The BLM understands the potential threat to GRSG from

the West Nile virus and has made reference to it in the impact analysis for wildlife and fish in the PLUPA/FEIS. The impact analysis for Livestock, Wild Horse and Burro, Mineral Management sections in Chapter 4 of the PLUPA/FEIS discuss some potential design feature to address West Nile virus.

The FEIS in conjunction with the Biological Evaluation disclose the effects on GRSG of the various alternatives on Forest Service. As indicated in the Biological Evaluation (Appendix Q, page 85), “Under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. Therefore, the Nevada and Northeastern California GRSG PLUPA/FEIS may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the GRSG in the plan area.” The evaluation supporting this determination described in the FEIS and Biological Evaluation is based on the scientific understanding of threats and conservation measures (e.g. the COT report and NTT), long- and short-term population trends (Garton et al 2011 and Garton et al 2015) along with local information, and an understanding of the proposed plan amendments.

Impacts – Air Quality

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-12

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan revision by specifying that noise limits will be measured within 0.25 mile of the lek instead of at the periphery of occupied seasonal habitat (FEIS at 2-23). The Forest Service applies a stronger standard, applying noise restrictions within 3.1 miles of a lek. However, even a 3.1-mile buffer only covers a little over a third of the acreage of prime nesting habitat that occurs within 5.3 miles of a lek (Holloran and Anderson 2005). In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any

drilling <6.5 km [approximately 4 miles] from a sage-grouse lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations” (WBEA at 131). The 3.1-mile lek buffer covers approximately 60% of the acreage found within a 4-mile buffer. Thus, even the Forest Service is providing less protection from noise than is warranted based on the best available science. In addition, the Forest Service standard is also inadequate because it applies only during the lekking season (March 1 to April 30), leaving GRSG exposed to the impacts from excessive noise during much of the breeding and nesting season (March 1 – June 30) (FEIS at 2-61).

Summary:

The FEIS violated NEPA by failing to analyze the effects of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and failing to use the best available science when setting noise limits

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 and Forest Service 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).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM and Forest Service are required to take a "hard look" at potential environmental impacts of adopting the Nevada and Northeastern California GRSG PLUPA/FEIS.

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

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

As the decisions under consideration by the agencies are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), 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 Nevada and Northeastern California GRSG PLUPA/FEIS used the best available information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB. The PLUPA/FEIS discusses impacts from noise throughout Chapter 4 for each resource. For example in Chapter 4, page 4-16, the PLUPA/FEIS states that, "Recent research has demonstrated that noise from natural gas development negatively impacts GRSG abundance, stress levels, and behaviors (Patricelli et al. 2013)." The PLUPA/FEIS goes on to discuss research from Patricelli et al. 2013

and Blickley et al. 2013, where male GRSG produce acoustic signals in a similar frequency range, between 0.2 and 2.0 kilohertz, so the potential exists for industrial noise to mask GRSG communication and, thus, interfere with the ability of females to find and choose mates (Patricelli et al. 2013). Blickley et al. (2013) found immediate and sustained declines in male attendance on noise leks (29% decline on drilling noise leks and 73% decline on traffic noise leks relative to control leks) and evidence of similar declines in female attendance. These results suggest a strong noise avoidance in male and, possibly, female GRSG. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the PLUPA/FEIS, coupled with the mitigation of those activities and the goal of a net conservation gain. Therefore, the PLUPA/FEIS used the best available science to determine buffer and distance limits (Nevada and Northeastern California GRSG PLUPA/FEIS Chapter 4).

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

The Nevada and Northeastern California GRSG PLUPA/FEIS includes a bibliography and reference section in Chapter 7 of the FEIS, which lists information considered by the BLM and the Forest Service in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS planning effort.

The BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences/impacts to noise limits to leks in the Nevada and Northeastern California GRSG PLUPA/FEIS.

Impacts – Oil and Gas

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-14

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed LUPA's leasing and development restrictions on oil and gas development. The Proposed LUPA discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 15,329,200 acres of lands, restricts anthropogenic

disturbances with well pad density limitations and a 3% disturbance cap, imposes seasonal restrictions on existing leases, and requires that project applicants demonstrate a "net conservation gain" to GRSG and its habitat. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA and SFA and timing limitation stipulations that prohibit activity within four miles of leks in GHMA for nearly a third of the year, will cumulatively stymie oil and gas development on federal lands within the planning area.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-16

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS also fails to analyze the significantly different impacts between the Alternative E “no net unmitigated loss” standard and the Proposed LUPA’s “net conservation gain” standard. For example, in Table 2-17, the Agencies fail to discuss the actual impacts of the two different standards on fluid minerals development; rather, the Agencies simply state that the Proposed Plan requires “net conservation gain” while Alternative E would follow the Nevada Plan (including its “no net unmitigated loss” standard) (See Proposed LUPA, Table 2-17 at 2-480). Although the Agencies do state their belief that the impacts of Alternative E in general on fluid minerals development would be less than the impacts under Alternatives B, C, and D, and more than the impacts under Alternative A, the Agencies do not include any comparison of the impacts of the “net conservation gain” standard on fluid mineral development and the impacts of a “no net unmitigated loss” standard (Proposed LUPA at 4-300). Further, the Agencies do not even include a general discussion of the impacts of Alternative E as compared with those under the Proposed LUPA (Id. at 4-303

Summary:

The PLUPA/FEIS does not adequately analyze the impacts of the Proposed LUPA on oil and gas development, particularly impacts from mitigation, ROW allocations, disturbance caps and buffers.

Response:

The CEQ regulations require an environmental impact statement to succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless

through 4-404). Because the “net conservation gain” standard could have significantly different impacts from the “no net unmitigated loss” standard in Alternative E, the Agencies should have disclosed and analyzed these impacts.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-17

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Agencies have not adequately analyzed the impacts right-of-way avoidance and exclusion areas will have upon existing oil and gas leases. The Proposed LUPA would designate 15,329,200 acres as right-of-way avoidance areas and 1,483,600 acres as right-of-way exclusion areas (Proposed LUPA, Table 2-14 at 2-109). At the same time, the Draft LUPA stated the 1,586,200 acres of public lands in the planning area are currently under lease for oil and gas (Draft LUPA, Table 3-52 at 116). To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. The Agencies must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area.

bulk in statements and shall concentrate effort and attention on important issues” (40 CFR 1502.15). The BLM and Forest Service complied with these regulations in writing its environmental consequences section. The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The analysis of impacts provided in Chapter 4 of the Nevada and Northeastern California GRSG PLUPA/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the Proposed LUPA/FEIS.

For example, impacts of mitigation requirements for land use authorizations, as part of the GRSG conservation management actions, particularly Management Action SSS 2, are described on p. 4-302. Here, the PLUPA/FEIS discloses that GRSG conservation management actions (e.g. 3% disturbance cap (Appendix F), RDFs (Appendix D), lek buffers (Appendix B) and the net conservation gain (Appendix J)) would increase mitigation requirements for land use authorizations. “This would result in more complex project designs, potentially excluding infrastructure placement in the most cost-effective locations, and potentially resulting in overall greater development costs,” (p. 4-302). For further discussion of the application of proposed GRSG conservation management actions, please review each measure’s respective appendix as cited above.

In regards to the analysis of ROW exclusion or avoidance areas, the FEIS acknowledges that “management actions creating ROW/SUA exclusion or avoidance areas could indirectly reduce fluid mineral extraction by limiting the available means for transporting fluid minerals: oil and gas to processing facilities and markets; and transmitting electricity from on-site geothermal plans to markets. For example, new oil and gas pipelines or a new electrical transmission line could not be built in an ROW/SUA exclusion area. Additionally, access to leases would be limited in ROW/SUA exclusion or avoidance areas. Impacts would be mitigated where exceptions were allowed for collocation of new ROWs in existing ROWs to satisfy valid existing rights” (p. 4-290). However, it is important to note that only Alternatives B, C, and F would impose new ROW exclusion areas; the Proposed Alternative does not allocate new ROW exclusion areas.

Further discussion of the impacts of the Proposed Plan on fluid mineral development can be found on p. 4-302. For existing leases, the Proposed LUPA/FEIS is subject to valid, existing rights (FLPMA, Section 701(h)). For example, on p. 2-48, Objective FM 2 states that “Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees’ rights to drill and produce fluid mineral resources.” Additional response to issues pertaining to valid existing rights is provided in Section 1.2 of this report.

As specific actions come under consideration, the BLM and the Forest Service will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as the issuance of ROWs. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as

required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts – Socioeconomics

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-11

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: As shown on Exhibit A map, up to 60% of SNWA's groundwater exploratory area in Cave Valley would be restricted by the 3.1-mile road buffer. Large areas of southern Spring Valley, where SNWA anticipates concentrating its water wells, also fall within 3.1 miles of a lek. Thus, SNWA will be required to either concentrate its wells outside the lek buffers, or would have to apply for an exception to the lek buffers. As discussed in Section II and V.C. above, this would be technically infeasible and result in significant environmental and socioeconomic effects, all of which have not been considered or identified in the LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-17

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The prohibition of roads in PHMA, as described in Section II above, may potentially implicate the optimal configuration of SNWA's future facilities (wells, collector pipelines, roads, and transmission lines) necessary to access and develop permitted water rights in a reasonable and sustainable manner. Thus, SNWA will be required to either concentrate its wells, or apply for an exception to the road restriction. As discussed in Section II.A and V.C above, this would be technically

infeasible and result in significant environmental and socioeconomic effects, all of which have not been considered or identified in the LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-20

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: While the lek buffers contained in Appendix B extend as far as 3.1 miles for uses on public lands, the additional seasonal restrictions actually extend the buffer to 4 miles from active and pending leks from March 1, through June 30 (LUPA at 2-23). Thus, while it may be theoretically possible to conduct ranching activities on public lands within 3.1 miles, for a significant period of the year when livestock are on the public range the actual buffer is 4 miles, resulting in unreasonable and significant socioeconomic impacts.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-23

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: A similar statement of the economic impact is in Table 4-24, footnote 1, stating that there would be no change in economic activity from grazing under the Proposed Plan, even while admitting in the next sentence that management actions in the Proposed Plan would restrict livestock movement, vegetation treatments, and range improvements “which may increase ranch

operators' costs or lead to other adverse economic impacts." This footnoted point deserves full explication in the socioeconomic analysis and its absence is a fundamental flaw. As noted at page 4-409, closures, seasonal modifications, RDF, and other restrictions designed to protect leks will also impose economic burdens on ranching.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-5

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The original measure in the NTT report "allows concentrated anthropogenic disturbance to exceed recommended thresholds within a smaller area, yet still maintain an overall level at the scale to which sage-grouse respond within priority areas" (NTT, p. 8), thus eliminating the need to disperse anthropogenic disturbances. Again, by failing to adequately address this issue and the economic impact it will have on rural communities in the LUPA's impact analysis area, the Final EIS is deficient.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-9

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: Implementation of Required Design Features should be based on considerations of technical and economic feasibility. The BLM violated NEPA policy due to failure to adequately consider economic and technical feasibility, NEPA policy due to unreasonable and significant socioeconomic effects, 40 CFR §1502.16 due to inadequate consideration of such effects. All projects must adhere to RDFs

set out in Appendix D unless the RDF is not applicable due to site-specific conditions.⁷ LUPA at 2-22 and 2-23 to 2-24. The BLM is specifically authorized and required to consider economic and technical feasibility, and should consider both factors in determining which RDFs must be implemented. No RDF should be required that is not both technically, nor economically feasible, or is contrary to the purpose and need of the proposed project or activity. See BLM NEPA Handbook H-1790-1, Sec. 6.6.1 (2008 ed.) Not considering or allowing for feasibility results in unreasonable and significant socioeconomic effects.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-10

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The FEIS did not include a formal and detailed economic analysis (which aids in evaluating environmental consequences of each alternative and implements the multiple use mandates of FLPMA) that included an analysis of the economic impact to the mining industry. Although an economic impact analysis was included in the FEIS (Appendix V), it did not include an economic impact analysis of mining operations and exploration activities in Nevada (including a geologic analysis for minerals), nor was such analysis disclosed to the public during the EIS process. This is an unlawful omission and violates NEPA and FLPMA and requires preparation of a supplemental EIS unless the document will not apply to or in any way impair any rights under the General Mining Law of 1872. If that is the case then clarifying language should be included.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-8

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: It is unclear in the FEIS (and the FEIS fails to fully disclose to the public) how the 3% disturbance cap will apply to and impact proposed locatable mining and exploration operations. No economic analysis of imposing such cap (which could result in the removal of some mineral deposits from development) is provided in the FEIS which therefore violates NEPA and FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-8

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: In 2010 the Elko County Board of Commissioners addressed changes to federally managed public land use management policies in the Elko County Public Land Use and Natural Resource Management Plan and again in 2012 in the Elko County GRSG Management and Conservation Strategy Plan. These two plans along with many others, prepared by local agencies were provided to the BLM and USFS for review and consideration during preparation of the GRSG DEIS as per NEPA requirement. The plans submitted by Elko County contained accurate professionally prepared information concerning federal land management policy changes and their impacts to the local, state and regional economies; The Impact of Federal Land Policies on the Economy of Elko County, Nevada, George Learning Report 12/2010) (Harris Technical Report UCED 2006/07-11). Elko County again was disturbed that neither of these documents were given any consideration in the GRSG LUPA/FEIS.

The documents provide professionally established information that corroborates that the preferred alternative GRSG LUPA/FEIS will serve severe economic impacts not only to Elko County but the entire planning area and all western states with GRSG habitat and populations.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-9

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: The GRSG LUPA/FEIS identifies significant short and long term impacts to multiple uses including but not limited to energy, exploration, minerals, recreation and livestock grazing. These impacts are realized by not only by local and regional economies but include the national and global economy. The GRSG LUPA/FEIS fails to fully identify these specific economic and cultural impacts and how they are to be abated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-14

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: It seems clear that the proposed withdrawals are designed to obstruct use of public lands from mineral exploration and development (and many other land uses). The proposed withdrawals will harm AEMA members and other claim holders with claims in the SFAs (and other withdrawal areas), as well as the State of Nevada, and counties which benefit from and rely upon tax revenues and economic activity associated with mineral activities (discussed infra VII.E.1). The risk of exploration-stage claims to be found invalid, as a result of validity examinations, discussed supra V.A.1, is high. Further, the

fact that most Nevada mining claims are exploration-stage claims only increases the potential harm to AEMA members, other claim holders, and State and local governments.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-30

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Further, as described in detail elsewhere in this Protest Letter infra VII.E.1 the socioeconomic and cumulative analyses in the FEIS are unlawful and inadequate. The FEIS does not adequately analyze and disclose the substantial adverse economic harms that public land users, local economies, and the State will experience if the Proposed Plan in the FEIS becomes the Final LUPA. BLM must prepare a Supplemental EIS and a Revised PLUPA in order to comply with FLPMA § 202(c)(2).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-32

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: In addition, the PLUPA/FEIS is sage-grouse centric and focuses solely on GRSG habitat conservation; the document does not evaluate benefits or harms to other land users, to the public, or to local or State governments. Curiously, the document only describes benefits to GRSG habitat; it does not discuss the short- or long-term benefits (if any) to the public or adequately consider cumulative impacts to mineral development, exploration and other rights under the General Mining Law. As described in detail elsewhere in this Protest Letter infra

VII.E.1, the failure to provide an adequate socioeconomic and cumulative impacts analyses does not satisfy NEPA requirements to take a “hard look” at the impacts associated with implementing the Proposed Plan. Socioeconomic and cumulative impact analyses that satisfy the NEPA hard-look requirements would readily reveal that instead of providing any short- or long-term benefits, PLUPA/FEIS will result in substantial short- and long-term harm to the public. The Proposed Plan in the FEIS does not comply with FLPMA § 202(c)(7). BLM must prepare a Supplemental EIS and a Revised PLUPA in order to comply with FLPMA §202(c)(7).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-59

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The socioeconomic impact analysis lacks any useful discussion regarding locatable mineral development, surface use restrictions, and land withdrawals and instead comes to an overly simplistic conclusion: “Overall, economic activity associated with management of locatable minerals would be the same for Alternatives A, D, and E, and may be lower under Alternatives B, C, F and the Proposed Plan depending on site-specific and operator-specific conditions” (PLUPA/FEIS at 4-420).

Section 4.21.2 shows an extreme lack of due diligence by the BLM/USFS. The BLM could have easily obtained information to conduct a trend analysis as part of the socioeconomic analysis from Nevada’s Department of Taxation, the Nevada Bureau of Mines and Geology, the Nevada Division of Minerals, published USGS mineral reports, or County economic analyses which would have provided reliable information

that should have been used. The fact that it is “not possible to determine specific economic impacts” is a gross oversimplification, which does not excuse the BLM from providing any analysis of economic impacts, which clearly is possible based on publicly available information. The Proposed Plan will have an extremely adverse impact on the locatable mineral industry due to land withdrawals, travel and transportation restrictions, and surface use restrictions, which will in turn adversely affect the economic stability of the counties which rely on mining and the State of Nevada as a whole. The BLM failed to provide any meaningful data or analysis, which is a critical flaw, consequently the socioeconomic impact analysis, especially the portion on locatable minerals is “inadequate as to preclude meaningful analysis” (40 CFR §1502.9(a)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-60

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The State of Nevada characterizes mining as a key industry and states “More than 12,000 people are directly employed by the Nevada mining industry, predominantly in rural Nevada, and earn some of the highest annual salaries in the state, averaging \$83,000. Mining also requires an extensive support system. For every mining job, approximately four other jobs provide goods and services used by the mining industry.”

As discussed in our DLUPA/DEIS comments (DLUPA/DEIS Comment Letter at 46-51), the BLM has inappropriately minimized the value that mining has on not only the counties in the planning area but the state as whole. The absence of any attempt

to provide meaningful analysis of the above noted impacts constitutes a legal defect in the FEIS, which fails to meet the BLM’s obligation to “guarantee that relevant information is available to the public.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-61

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The Regulatory Flexibility Act (hereinafter “RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act (hereinafter “SBREFA”) requires the BLM to analyze adequately the impacts of its proposal on small entities. The EIS documents for the Planning Area do not consider the adverse impact on small businesses of requiring validity examinations in withdrawn or segregated lands, and are devoid of any analysis or discussion of the impact of sweeping and cumulative land withdrawals of GRSG habitat on small entities. This is a significant omission that should be addressed in the socioeconomic analysis. As the BLM discovered in *Northwest Mining Association v. Babbitt*, 5 F.Supp.2d 9 (D.D.C. 1998), failure to comply with the RFA and SBREFA will invalidate a rulemaking.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-3

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Its Affected Environment chapter does not include a section on geology; rather, the chapter contains a brief discussion of locatable mineral resources, which is a facile presentation of statistics on notices and plans of operation (Id. at Ch. 3). Given Midway’s promising discovery in Gold

Rock and given that the Carlin Trend is coincident with GRSG habitat identified in the FEIS more generally, the failure to include this analysis is extremely troubling and demonstrates the material flaw in depriving the public of an adequate presentation of geologic and socioeconomic baseline conditions upon which to base a thorough impact analysis that takes a hard look at the adverse environmental consequences that will result from the Proposed Plan on geology and mineral resources and local and statewide socioeconomics. Alternatively, if Gold Rock is not affected because the restrictions will not apply to any rights under the General Mining Laws and/or to projects already midstream through the federal permitting process then that should be clarified in the final document.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-7

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It does not include an analysis of cumulative impacts to mining activities if the management decisions in the Proposed LUPA/FEIS are finalized (Id. at 5-53.) Given Midway's current relationships with vendors, contractors, and employees in White Pine, Pershing, and Nye Counties, data exists to complete such an analysis, and such an analysis must be completed in order for BLM to have successfully taken a "hard look" at the impacts to mining interests and local economies relying on those interests.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-9

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It concludes that impacts on mining employment would be

minimal, despite never analyzing mining-related employment (Id. at 5-239 to 5-240). The lack of disclosure and analysis of this issue renders the socioeconomic analysis deficient.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-12

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: The Proposed LUPA/FEIS unlawfully promotes conservation and management to the detriment of mineral development in violation of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-3

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: Its Affected Environment chapter does not include a section on geology; rather, the chapter contains a brief discussion of locatable mineral resources, which is a facile presentation of statistics on notices and plans of operation (Id. at Ch. 3). Given WEX's promising discoveries in Doby George and Wood Gulch, the failure to include this analysis is extremely troubling and demonstrates the material flaw in depriving the public of an adequate presentation of geologic and socioeconomic baseline conditions upon which to base a thorough impact analysis that takes a hard look at the adverse environmental consequences that will result from the Proposed Plan on geology and mineral resources and local and statewide socioeconomics.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-7

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It does not include an analysis of cumulative impacts to mining activities if the management decisions in the Proposed LUPA/FEIS are finalized (Id at 5-53). Given WEX’s current relationships with vendors, contractors, and employees in Mountain City, Elko, Winnemucca, Reno, and neighboring areas, data exists to complete such analysis, and such an analysis must be completed in order for the BLM to have successfully taken a “hard look” at the impacts to mining interests and local economies relying on those interests.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-9

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It concludes that impacts on mining employment would be minimal, despite never analyzing mining-related employment (Id at 5-239 to 5-240). The lack of disclosure and analysis of this issue renders the socioeconomic analysis legally deficient.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-30

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: NVMRA is especially concerned about the imminent, substantial, long-term, and irreparable adverse economic impacts to the State of Nevada that will result from the mineral withdrawals proposed in the SFA and the travel restrictions proposed elsewhere in areas with GRSG habitat in the Proposed Plan. As discussed in detail below, the FEIS fails to take a hard look at the nature and magnitude of this socioeconomic harm.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-31

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The analyses for locatable minerals in Sections 4.15.2 and 5.14.2 fail to take a hard look at the impacts associated with withdrawing lands from mineral entry as proposed in the Proposed Plan or include any quantitative discussion. The FEIS must evaluate the economic impacts on multiple levels that include impacts to individual claim owners, large and small companies that own and develop mining claims, Nevada counties, the State of Nevada, the U.S. Department of the Interior and the Nation given the increased dependence on foreign minerals the Proposed Plan will yield.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-32

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: This analysis must quantify the likely loss of jobs and the reduction in sales taxes, use taxes, property taxes, and NV Net Proceeds of Minerals (“NPOM”) tax revenue.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-3

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: Its Affected Environment chapter does not include a section on geology; rather, the chapter contains a brief discussion of locatable mineral resources, which is a facile

presentation of statistics on notices and plans of operation (Id at Ch. 3). Given Waterton’s promising discoveries or potential for the same in the Project areas, the failure to include this analysis is extremely troubling and demonstrates the material flaw in depriving the public of an adequate presentation of geologic and socioeconomic baseline conditions upon which to base a thorough impact analysis that takes a hard look at the adverse environmental consequences that will result from the Proposed Plan on geology and mineral resources and local and statewide socioeconomics.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-7

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It does not include an analysis of cumulative impacts to mining activities if the management decisions in the Proposed LUPA/FEIS are finalized (Id at 5-53). Given Waterton's current relationships with vendors, contractors, and employees in counties and cities surrounding its Projects (as well as relationships established by other mining operations), data exists to complete such an analysis, and such an analysis must be completed in order for the BLM to have successfully taken a “hard look” at the impacts to mining interests and local economies relying on those interests.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-9

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It concludes that impacts on mining employment would be minimal, despite never analyzing mining-

related employment (Id at 5-239 to 5-240). The lack of disclosure and analysis of this issue renders the socioeconomic analysis deficient.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-14

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The PEIS fails to adequately analyze the socio-economic impacts from the proposed action. The economic effects analysis was not conducted in collaboration with the SETT as a cooperating agency (43 CFR Part 4100 §1610.4-6) and does not give adequate consideration to economic factors in compliance with NEPA 40 CFR 1508.14 (BLM NEPA Handbook BLM Handbook of Socio- Economic Mitigation, IV-2). Socio-economic impacts to counties and local communities, where impacts will be most relevant, have not been disclosed. The proposed actions will require significant infrastructure and added operating expenses for livestock operators (fencing, water developments, livestock gathers, etc.). The indirect effects of the proposed action could result in a significant reduction or elimination of grazing, and the subsequent sale and subdivision of ranches. The FEIS does not provide adequate information to determine the costs and economic impacts of these actions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-8

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: Priority habitat and SFAs are subject to withdrawal recommendations. Even the threat of withdrawal can substantially chill the

investment atmosphere for Quantum when it seeks financing for exploration and mining activities. In effect, the changes made to the PRMP map areas provide more than just a “minor” change to the RMP because they will substantially hinder Quantum's future mining prospects.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-32-2

Organization: FIM Corporation, Farming and Livestock

Protestor: Fred Fulstone

Issue Excerpt Text: The LUPA/FEIS fails to put forth an analysis of economic effects that will be the result of special treatment of sage grouse to the exclusion of other land uses. Our ranch alone employs as many as 20 people and supports three generations of our family. Our ranch operating expenses provides cash that circulates within western Nevada and adjoining parts of California.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-10

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: FLPMA Section 202(c)(7) requires the agency to “weigh long-term benefits to the public against short-term benefits....” The FEIS/Proposed LUPA, being GRSG myopic, does not evaluate benefits or harms to other land users, to the public, or to Eureka County or the State. Curiously, the document only describes benefits to GRSG habitat; it does not discuss the short- or long-term benefits (if any) to the public, or adequately consider cumulative impacts to livestock grazing, recreation, mineral development, exploration and other rights under the various laws identified above. As described in detail elsewhere in this Protest Letter and our comments on the DEIS, the failure to

provide an adequate socioeconomic and cumulative impacts analyses does not satisfy NEPA requirements to take a “hard look” at the impacts associated with implementing the Proposed Plan. Socioeconomic and cumulative impact analyses that satisfy the NEPA hard look requirements would readily reveal that instead of providing any short- or long-term benefits, the FEIS/Proposed Plan will result in substantial short- and long-term harm to the public. The Proposed Plan in the FEIS does not comply with FLPMA Section 202(c)(7). The BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(7).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-21

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The socioeconomic analysis in the EIS is biased in that it overestimates and promotes speculative non-market valuations (e.g., disperse recreations, sightseeing), while underestimating the very real economic impacts from actual productive activities that directly create jobs and wealth. The EIS discussed the socioeconomic impacts at too broad of a scale to be of any worth to local economies and interests. During scoping and in our comments on the preliminary and DEIS, we continually noted this shortfall, and even provided very specific Eureka County data and analysis that was not included.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-8

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The FEIS does not adequately analyze and disclose the substantial adverse economic harms that

public land users, local economies such as Eureka County's and the State will experience if the Proposed Plan in the FEIS becomes the Final LUPA. BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(2).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-40-4

Organization: Nye County Commission

Protestor: Lorinda Wichman

Issue Excerpt Text: The LUPA/FEIS alternatives which withdraw lands from

multiple use, especially mineral exploration/leasing and grazing will definitely harm the existing tax base. Limitations on future economic development by the same restrictions or restrictions on surface occupancy, Rights of Ways (ROWs), grazing or any other private sector activities will also harm future economic development. There was no detailed analysis provided in the LUPA for adverse impacts to economic activity and tax base in Nye County, nor were suggestions offered to mitigate these impacts.

Summary:

The LUPA violated NEPA by failing to fully analyze and consider:

- alternative locations for water wells falling within 3.1 miles of a lek or exceptions to allow water wells within the lek buffer areas;
- alternative to allow ranching activities on public lands within 3.1 miles when livestock are on the public range and analyze the socioeconomic impacts of this allowance;
- the socioeconomic impacts on public land users, grazing, ranching operations, and rural communities;
- current information and available documents and provide information to the public;
- the socioeconomic impacts of proposed withdrawals on exploration and development harming AEMA members and claim holders in the SFAs, State of Nevada, and counties which benefit from and rely upon tax revenues and economic activity associated with mineral activities;
- locatable mineral development, surface use restrictions, and land withdrawals (40 CFR §1502.9(a)); and
- geology and mineral resources and the local and statewide socioeconomic impacts on these resources.

Response:

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), 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 Nevada and Northeastern California GRSG PLUPA/FEIS described the affected environment including groups and interests, public land users, grazing, ranching operations, mining operations, and rural communities all potentially affected by the actions in the PLUPA/FEIS (Volume II, Chapter 3, Section 3.23 page 3-193). In Volume II, Chapter 4, Section 4.21, page 4-402 to 4-442, the PLUPA/FEIS analyzes the social and economic impacts of the affected environment discussed in Chapter 3. Appendix V of the EIS contains the Economic Impact Analysis Methodology, describes the methodology and data used to model and assesses the economic impacts of public land management decisions on communities surrounding federal lands. The Impact Analysis for Planning (IMPLAN) model was used in the planning effort to provide a quantitative representation of the production relationships between individual economic sectors. The economic modeling analysis uses information about physical production quantities and the prices and costs for goods and services. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region's economy. The analysis of impacts on social conditions focuses on the effects of BLM-authorized actions. It is important to note that many other events outside of the BLM's control may alter economic and social trends. For instance, oil and gas prices may change as a result of an expansion or contraction of world or national economic activity, and this, in turn, may affect the pace of development or the quantity of development. Similarly, state and local laws regulating the subdivision of land may alter land ownership and development patterns, which may in turn affect open space and physical landscapes. Minimal or no changes to social conditions resulting from BLM actions does not imply that no change could occur, as other forces may drive changes in economic and social trends (FEIS Volume II, Chapter 4). For additional information regarding socioeconomic impacts to grazing, mining, recreation, etc., refer to the appropriate resources sections in the PLUPA/FEIS and Chapters 4 and 5 for additional discussion regarding decisions and their impact on existing and future operations under Mining Law of 1872. The cumulative impacts discussion is found in Chapter 5 under each specific resource section. The PLUPA/FEIS used the best available information to address the socioeconomics for the planning area and includes discussion and analysis in the plan therefore supplementation is not required.

During the scoping and initial planning phase of the FEIS, the planning team held several public meetings to share information, obtain information and concerns from the public, and coordinate

with State, local and Tribal governments in the Nevada and Northeastern California GRSG PLUPA/FEIS planning area and will continue to involve the public during the implementation phase of the PLUPA/FEIS.

By using IMPLAN, Nevada and Northeastern California GRSG PLUPA/FEIS complied with NEPA by considering social science activities in the planning area and used the best available references and resources to support conclusions. Information in the IMPLAN model included data related to grazing, mining, and other relevant activities. References for the PLUPA/FEIS are found in Volume III, Chapter 7.

The BLM and Forest Service complied with NEPA's requirement to consider and analyze the environmental consequences/impacts to socioeconomics in the Nevada and Northeastern California GRSG PLUPA/FEIS planning effort.

Impacts – Grazing

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-21

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: Action LG 21: Grazing permit retirement is unwarranted and violates 40 CFR §1502.16 due to inadequate consideration of effects, the BLM's multiple use mandate pursuant to 43 USC § 1701(a)(7) and 43 USC § 1732(a), Congress's declaration of policy regarding public land management under 43 USC § 1701(a)(12), the Multiple Use Sustained Yield Act, and the Taylor Grazing Act.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-24

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: Action WFM-HFM 7: Proper livestock grazing did not receive sufficient recognition as an effective fire and habitat management tool. The BLM violated 40 CFR § 1500.1(c) by not providing a balanced discussion on livestock grazing to better inform decision making.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-25

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The Proposed Plan and LUPA are replete with references to negative impacts from livestock grazing on GRSG habitat, but there is a dearth of discussion of the benefits of livestock grazing for GRSG beyond an occasional cryptic reference to vegetation treatments as a form of fire prevention. Properly managed livestock grazing has coexisted with GRSG for decades. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR § 1500.1(c)). SNWA protests the lack of balance in the LUPA in its discussion of properly managed livestock grazing of the type employed by SNWA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-14

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM proposes to remove livestock within 3-7 days of reaching allowable use levels based on percentage of forage used (FEIS at 2-40). In order to provide an adequate regulatory mechanism to prevent serious impacts from livestock grazing, this Action should be applied regardless of whether or not land use standards are being met, and should also include Desired Conditions for GRSG habitat features as a criterion for removal of livestock grazing. It is important to note that based on the agencies' own models, not only does GRSG habitat condition and trend not meet Desired Conditions in 50 years (only 70-71% of lands meet these targets), but the proportion lands meeting these Desired Conditions and trends is lower in 50 years than it is under present-day conditions. FEIS at 4-52. This means that not only is the proposed plan amendment inadequate to return GRSG habitats to healthy conditions, it is not even capable of maintaining today's impaired conditions without further degradation. This is indicative of a violation of FLPMA undue degradation standards for the BLM and a violation of NFMA viability regulations for the Forest Service.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-18

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In the proposed plan, the BLM erroneously prescribes livestock grazing as a means to reduce or control cheatgrass infestations. This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing

cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-25-2

Organization: California Cattlemen's Association

Protestor: Ken Wilbur

Issue Excerpt Text: The BLM and USFS lack the legal authority to permanently convert grazing allotments to non-grazing uses, and under the Taylor Grazing Act, relinquished grazing permits ought to be made available to other livestock grazers. Additionally, the conversion of grazing allotments to non-grazing uses is contrary not only to law, but also to sound policy.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-12

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: Proposed actions LG 1, LG 3, LG 5, and LG 6 are inappropriate at the RMP planning level. 43 CFR Part 4100 §1601 defines the RMP as a land use plan that identifies allowable resource uses, resource condition goals and objectives to be attained, and program level constraints and general management practices needed to achieve them. Details of range management practices and permit terms and conditions are not intended at the RMP level. The RMP is not a final implementation decision on actions which require further specific plans or decisions under specific provision of other laws and regulations (e.g. FLPMA and Taylor Grazing Act).

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS did not adequately analyze the effects of grazing and violated numerous Laws, Regulations and Policies:

- Grazing permit retirement violates 40 C.F.R. §1502.16 due to inadequate consideration of effects, the multiple use mandate for federal lands pursuant to 43 U.S.C. § 1701(a)(7) and 43 U.S.C. § 1732(a), Congress's declaration of policy regarding public land management under 43 U.S.C. § 1701(a)(12), the Multiple Use Sustained Yield Act, and the Taylor Grazing Act.
- The plan violates FLPMA's undue degradation standards for the BLM and violates NFMA's viability regulations for the Forest Service.
- Proper livestock grazing did not receive sufficient recognition as an effective fire and habitat management tool. The BLM violated 40 C.F.R. § 1500.1(c) by not providing a balanced discussion on livestock grazing to better inform decision making.
- The BLM failed to use the best science and take a hard look at the impacts of livestock grazing on cheatgrass.
- The BLM and USFS violate the Taylor Grazing Act by not making relinquished grazing permits available to other permittees.
- The BLM violated 43 CFR Part 4100 §1601, which defines the RMP as a land use plan that identifies allowable resource uses, resource condition goals and objectives to be attained, and program level constraints and general management practices needed to achieve them. Details of range management practices and permit terms and conditions are not intended at the RMP level.

Response:

Under the Nevada and Northeastern California GRSG PLUPA/FEIS, Action D-LG 23, the BLM would: "Consider retirement of grazing privileges on all voluntary relinquishments in PHMA and GHMA where removal of livestock grazing would enhance the ability to achieve GRSG habitat objectives (see Table 2-11 in section 2.8.5 of this Chapter) (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 2-370)" If appropriate, relinquishment of a livestock grazing permit would only occur at the implementation level, at the time of implementation, an effects analysis on a range of alternatives would occur and compliance with all laws, regulations and policies would be ensured.

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 USC 1711 Sec 201 (a)). The NFMA grants similar authority to the Secretary of Agriculture for National Forest System lands. 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. 36 CFR 222 provides that the Forest Service shall manage livestock grazing on National Forest System lands in accordance with land management plans. Further, the BLM may designate lands as "available" or "unavailable" for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). The Forest

Service may identify lands as “suitable” or “unsuitable” for livestock grazing through the land management planning process (36 CFR 219).

Although lands have been identified as “chiefly-valuable-for-grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 USC § 315) this does not negate the BLM’s authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principals of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans may include making some or all of the land within grazing districts, unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives.

The Taylor Grazing Act does not apply to National Forest System lands.

The Nevada and Northeastern California GRSG PLUPA/FEIS complies with the FLPMA, NFMA, MUSYA and Taylor Grazing Act, which do not preclude the BLM or Forest Service from identifying some public lands and National Forest System lands as not available to livestock grazing.

FLPMA requires that “...in managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands...” (FLPMA, Sec. 302. [43 USC 1732] (c)). The Proposed Plan would result in all areas meeting or exceeding desired conditions, based on the vegetation treatment objectives. For all areas GRSG populations should remain stable or improved, without other factors that may not have been accounted for in the model. As cited in the footnotes of Table 4-7, Trend on BLM-Administered and National Forest System Lands, “the outputs are not absolutes and are bound by the assumptions and limitations of the data. Habitat condition percentages are the amount of the analysis area that meets 10 to 30 percent sagebrush cover” (Nevada and Northeastern California GRSG PLUPA/FEIS p. 4-52).

On Table 4-7 (p. 4-52), habitat condition percentages indicate those lands meeting one type of habitat objective (shrub cover), which is not indicative of overall ecological function across and landscape. The protestor’s assumption that because the model indicates a slight decrease in one habitat objective (shrub cover) that “degradation of the lands” in the context of FLPMA will occur, which is an incorrect assumption; shrub cover is not the sole indicator for assessing whether or not lands are at risk for degradation of ecosystem function at a landscape scale. Depending on site-specific characteristics and seral stage, a site may be both functioning as expected and low in shrub cover at a given point in time. The Nevada and Northeastern California GRSG PLUPA/FEIS does not violate FLPMA’s “undue degradation” mandate.

The 1982 National Forest Management Act Regulations at 219.19 state that, “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” Forest Service Manual 2672.1 provides the following direction on sensitive species management: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no impacts

to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers.”

The Forest Service documents the analysis of viability and sensitive species in a biological evaluation. According to the Forest Service Manual at 2672.4, “The objectives of the biological evaluation are:

1. To ensure that Forest Service actions do not contribute to loss of viability of any native or desired non-native plant or contribute to animal species or trends toward Federal listing of any species;
2. To comply with the requirements of the Endangered Species Act that actions of Federal agencies not jeopardize or adversely modify critical habitat of Federally listed species’;
3. To provide a process and standard by which to ensure that threatened, endangered, proposed, and sensitive species receive full consideration in the decision-making process.”

In addition to the context provided above, Table 4-7 on page 4-52 of the FEIS, compares the No Action alternative and Proposed Plan in regard to the amount of land meeting the desired condition (70% of the analysis area meeting 10% to 30% sagebrush cover) as a result of planned vegetation treatments. This table projects that the proposed plan will meet the desired condition after 10 and 50 years.

A biological evaluation was completed for the FEIS and is included in Appendix Q. The determination for the proposed plan is that it “under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. Therefore, the Nevada and Northeastern California GRSG PLUPA/FEIS may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the GRSG in the plan area.”

The Biological Evaluation concluded: “Under the Proposed Plan, within MZs III, IV and V (Chapter 5 of the FEIS), livestock grazing would maintain current available acres for grazing and wild horse and burro territories would be managed for Appropriate Management Level. However, additional emphasis on protecting existing sagebrush and riparian habitat under the Proposed Plan would provide an added benefit to GRSG habitat. Therefore, the direct and indirect effects of livestock grazing and wild horse and burro management to GRSG in MZs III, IV and V from the management actions under the Proposed Plan, which would be largely beneficial for GRSG, when combined with the past, present and reasonably foreseeable future actions would not substantially increase negative impacts to GRSG.”

The FEIS adequately addressed the effects on viability for the greater sage grouse and other sensitive species and met the requirements under NFMA and Forest Service policy on sensitive species.

The Nevada and Northeastern California GRSG PLUPA/FEIS fully assesses and discloses the environmental consequences, both positive and negative, of livestock grazing in a number of Sections including Section 4.4.2 Nature and Type of Effects – Vegetation and Habitat Restoration and Livestock Grazing Management (p. 4-10 to 4-13), 4.4.10 Proposed Plan – Impacts from Livestock Grazing (p. 53), Section 4.5.10 Proposed Plan – Impacts from Vegetation and Soils Management and Impacts from Livestock Grazing Management (p. 4-92 to 4-94), Section 4.9 Wildland Fire and Fire Management (4-165 to 4-201), Section 4.10 Livestock Grazing (p. 4-201 to 4-241), specifically Section 4.10.10 The Proposed Plan (p. 4-232 to 4-241).

In a number of locations, the Nevada and Northeastern California GRSG PLUPA/FEIS recognizes the important role proper livestock grazing management plays in meeting habitat objectives. For instance, Action VEG-ISM 1 states: “Prevent the establishment of invasive species into uninvaded areas in PHMAs and GHMAs through properly managed grazing and by conducting systematic and strategic detection surveys, collecting data, mapping these areas, and engaging in early response to contain and eradicate invasion if it occurs” (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 4-30 and 4-31). The effects analysis states that “Studies from Nevada have shown a preference for grazed meadows or grazed areas in meadows over ungrazed meadows (Neel 1980; Evans 1986; Klebenow 1982; Oakleaf 1971). In these studies, GRSG were attracted to regrowth of grazed forbs or to the presence of selected food forbs common on grazed meadows” (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 4-12) and that “The attraction to grazed meadows may be explained by GRSG having adapted from a primary dependence on forbs in sagebrush communities to forbs in grazing-impacted meadows (Howell 2014). The forbs preferred by GRSG in brood-rearing habitats are primarily composites, with some mustards, clover, and milkvetches (Klebenow and Gray 1968, Savage 1969, Evans 1986). These forbs are generally tap-rooted, high-seed-producing plants that increase with disturbance (Howell 2014)” and that “GRSG would benefit most from properly managed grazing, which results in good ecological conditions in both uplands and riparian areas” (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 4-12).

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Nevada and Northeastern California GRSG PLUPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The FEIS has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C).

Although lands have been identified as “chiefly-valuable-for-grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 U.S.C. § 315) this does not negate the BLM’s authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principals of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans may include making some, or all of the land within grazing districts, unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives.

The Nevada and Northeastern California GRSG PLUPA/FEIS complies with the Taylor Grazing Act, which does not preclude the BLM from identifying some public lands not available to livestock grazing. The Taylor Grazing Act does not apply to National Forest System lands.

Livestock grazing permit modifications would occur at the implementation level; at the time of implementation, an effects analysis would occur and compliance with all laws, regulations and policies would be ensured. Livestock grazing permit modification for permits issued by BLM must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits issued by BLM are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR 4160 are available to the affected parties. BLM has not taken a pre-decisional approach because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made.

Impacts – Other

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-29

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The LUPA states that predator control is outside the scope of the analysis and the land use plan amendments yet actions are imposed to address predators. LUPA at 2-26 to 2-27. The BLM failed to analyze the impact of predation on GRSG in the EIS to support to imposition of agency

actions under the LUPA. If the BLM is unwilling to do so, then the actions should be removed as lacking support.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-06-5

Organization: Elko County Commission

Protestor: Demar Dahl

Issue Excerpt Text: Elko County asserts that the United States Fish and Wildlife Service (USFWS), the Bureau of Land Management (BLM) and the United States Forest Service (USFS) have failed to completely identify the full impacts of the Alternatives offered in the GRSG LUPA/FEIS including cultural, social and economic impacts to private concerns that the proposed alternative will serve on the social and economic detriment of the regions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-15

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire. According to BLM’s own NEPA analysis, “The positive feedback loop between fire and invasive plant species may be the greatest impact on fire management and GRSG (Abatzoglou and Kolden 2011).” Nevada – Northeastern California Greater Sage Grouse RMP Amendment DEIS at 701.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-46

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: CEQ regulation implementing NEPA at §1502.15 provides that the agency describe the affected environment in a clear and concise manner, and to a degree as to limit superfluous information. However, § 1502.15 does not forgive reckless oversight of the description of the affected environment on key issues. The BLM failed to describe the affected environment adequately by failing to include any discussion of geology. The complete absence of a section on geology and mineral resources in the FEIS is a glaring omission that constitutes a fatal flaw (See Section 3.13 at 3-139 to 3-142). As explained in our DLUPA/DEIS comment letter (DLUPA/DEIS Comment Letter at 22-23), mining is a key industry not only in the planning area but in the State of Nevada. Thanks mainly to the Nevada gold industry; the U.S. produces the third largest output of gold in the world. The geology of Nevada and Northeastern California contains numerous important mineral resources and deposits – many of which have not been fully explored, developed, or mined. In fact, the planning area contains some of the most prolific gold-producing mineral trends in the world, some of which are co-located within GRSG habitat. Numerous stakeholders including but not limited to individual claim owners, small and large mineral exploration companies, small and large mineral producers, county governments in areas with mineral exploration and production and the State of Nevada derive economic benefits from mineral exploration and production, and are risk at risk of significant harm by implementation of the Proposed Plan.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-47

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS’ description of the affected environment related to minerals, especially locatable minerals, demonstrates serious shortcomings, because it does not give an adequate picture of the existing locatable mineral production or future mineral potential within the planning area (See Section 3.13 at 3-139 to 3-142). Instead the discussion for locatable minerals in Section 3.13 of the FEIS focuses on the procedures established under the General Mining Law for locating claims and withdrawing lands from location. The discussion lacks any useful information of the minerals within the planning area. Without accurate discussion of mineral potential, existing and historical conditions and discussion of the economic importance of on-going exploration it is impossible to analyze the potential impacts the Proposed Plan (or any of the alternatives) will have on various resources, especially locatable minerals. Consequently, Section 3.13 of the PLUPA/FEIS is incomplete and is “inadequate as to preclude meaningful analysis” (40 CFR §1502.9(a)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-50

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM has failed to provide any sort of meaningful analysis associated with these management actions, lacks detail, and is incomplete. The BLM/USFS may have presented impacts (i.e. environmental consequences) by resource and alternative in the FEIS, however BLM/USFS completely fail to provide adequate detail of the potential direct, indirect and cumulative impacts (40 CFR § 1504.16) associated with the proposed management actions including but not limited to surface use restrictions, travel

and transportation management restrictions, and withdrawals. For example, the BLM failed to include any detailed or meaningful analysis of the impacts to locatable resources. In fact, the entire impact analysis under the Proposed Plan for locatable minerals is approximately one-page (PLUPA/FEIS, Section 4.15.2 at 4-310 to 311), totaling 35 lines of discussion. While the length of an analysis is not necessarily a predictor of quality, the lack of analysis awarded to locatable minerals is utterly shocking given the fact that locatable minerals are a significant resource issue in the planning area.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-51

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Not only is the analysis useless, it is also technically flawed. The validity examination would occur with the segregation– not the filing of a plan or notice. There would be no new plans or notices. Unfortunately, the discussion regarding withdrawals under Nature and Type of Effects at 4-307 is equally lacking in substance:

Withdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources. However, alternative decisions on locatables are subject to valid existing rights and applicable law.

Mining claims in areas recommended for withdrawal would require validity examinations subject to 43 CFR, Part 3809.100. New notices would not be reviewed or plans approved until a validity examination report was prepared.

While these statements might discuss the practical on-the-ground effect of withdrawals (i.e., “prohibit filing of new claims”), it provides no information on actual impacts, and is not based on any analysis let alone sound analytical methods. The “hard-look requirement” is specifically addressed in the BLM’s 2008 NEPA Handbook (H 1790-1), which defines “hard-look” as: “a reasoned analysis containing quantitative or detailed qualitative information.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-52

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: General qualitative statements about possible effects and risk like “least restrictive,” “more restrictive,” or “could affect” do not constitute a “hard look” absent a justification regarding why more definitive information could not be provided, like in *Neighbors of Cuddy Mtn. v. U.S. Forest Service* (1998; 137 F.3d 1372), where the court concluded: “General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.”

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-53

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The SFA boundaries are clearly arbitrary and capricious because they have little or no basis in fact or actual on-the-ground conditions (discussed in detail, *infra* VII.F.3). Our recommendation

during the comment period for the DLUPA was that BLM provide rationale for its decisions on mineral resources, including withdrawals (DLUPA/DEIS Comment Letter at 38-42). The BLM/USFS have not provided this information and have not adequately responded to our comment and request during the comment period for the DLUPA. BLM is in violation of its own policy regarding minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-62

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: One example of BLM/USFS’ failure to support important assertions in PLUPA/FEIS is best demonstrated in the following statement: “Long-term population declines leading to extirpation of GRSG in this PMU are likely over the next several decades due to isolation and habitat loss. This will greatly shrink GRSG range on the western edge and potentially eliminating them from northeastern California. No modeling has been completed to support this hypothesis” (PLUPA/FEIS at 3-35, emphasis added). Clearly, this is contrary to § 1502.24, BLM/USFS should not make assertions that are not supported, because it fails to lead to an informed decision.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-1

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It fails to include (and therefore analyze impacts to) a full list of locatable minerals of importance in Nevada (e.g., barite, lithium, gypsum, molybdenum). (Proposed LUPA/FEIS at 3-139 to 3-141.)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-1

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Moreover, the description of the Proposed Plan's impacts on locatable mineral development at Page 4-311 is stunningly brief (a mere four paragraphs and one sentence) and lacks any meaningful analysis of the Plan's impact on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; and economic impacts to industry and communities who rely on locatable mineral development for personal income and tax revenue. More concerning are the blatantly inaccurate statements about the impacts on valid existing rights. Specifically, the Proposed LUPA/FEIS states that there are no active mines in the over 2.8 million acres of land slated for withdrawal in the designated SFA (Proposed LUPA/FEIS at 4-311). Midway wishes to emphasize that the Big Springs Mine is adjacent to the SFA, and mineral discoveries, like the Gravel Creek discovery in the Wood Gulch area in northern Elko County, Nevada, have a very significant potential to become the next mine in this area. Thus, concluding that the SFA will not impact minerals in this area is specious because the SFA covers an area with significant mineral potential (as demonstrated by the adjacent Big Springs Mine and discoveries in the Wood Gulch area). Similarly, the Proposed LUPA/FEIS incorrectly assumes (without explanation) that most development will occur in proximity to existing mines; however, Midway understands that there are projects in the SFA that are not proximate to active mines.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-2

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It bases its analysis on incorrect and inconsistent statements about the price of gold, silver, and copper in Nevada (Id. at 3-141).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-4

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It erroneously assumes that its conclusions with respect to existing mines are sufficient to characterize impacts to future mines or future mineral exploration and development (Id. at 4-419). The BLM is required to consider publicly-available information (discussed below) to provide for a fully informed decision. Critically, Midway understands that the analyses in the Proposed LUPA/FEIS only address claims being mined and not the full claims staked, which is problematic when existing data from BLM's LR2000 database shows no fewer than 200 claim holders and up to more than 600 claim holders per county in Nevada.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-5

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It mischaracterizes removal of roads as an indirect, rather than a direct, impact to mineral resources (Id. at 4-305). Critically, the Proposed LUPA/FEIS does not even acknowledge that, without access roads to areas with mineral exploration and development potential, those rights cannot be explored and developed. Again, without access to lands

on which the Projects are located, Midway's economic interests, as well as interests of the surrounding communities related to mineral exploration and development, are critically threatened, if not eliminated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-6

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It incorrectly suggests that there is a lack of reliable data for mined areas in the planning area. In fact, a wealth of data is available from the Nevada Bureau of Mines and Geology, USGS, and other published sources (Id. at 4-306).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-8

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It makes unsupported statements about the future that do not take into account the very real impacts of GRSG management measures. For example, the Proposed LUPA/FEIS states, “[r]easonably foreseeable locatable mineral development in MZ III is expected to increase over the 20-year analysis period” (Id. at 5-56). This is not an accurate or even supportable prediction given that proposed travel restrictions and withdrawals are likely to inhibit, if not completely preclude, entry into areas intended for exploration and development.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-1

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It fails to include (and therefore analyze impacts to) a full list of locatable minerals of importance in Nevada

(e.g., barite, lithium, gypsum, molybdenum) (Proposed LUPA/FEIS at 3-139 to 3-141).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-11

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: Moreover, the description of the Proposed Plan's impacts on locatable mineral development at Page 4-311 is stunningly brief (a mere four paragraphs in one sentence) and lacks any meaningful analysis of the Plan's impact on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; economic impacts to industry and communities who rely on locatable mineral development for personal income and tax revenue. More concerning are the blatantly inaccurate statements about the impacts on valid existing rights. Specifically, the Proposed LUPA/FEIS states that there are no active mines in the over 2.8 million acres of land slated for withdrawal in the designated SFA (Proposed LUPA/FEIS at 4-311). WEX wishes to emphasize that the Big Springs Mine is adjacent to the SFA, and mineral discoveries, like the Gravel Creek discovery in the Wood Gulch area, have a very significant potential to become the next mine in this area. Thus, concluding that the SFA will not impact minerals in this area is specious because the SFA covers an area with significant mineral potential (as demonstrated by the adjacent Big Springs Mine and discoveries in the Wood Gulch area). Similarly, the Proposed LUPA/FEIS incorrectly assumes (without explanation) that most development will occur in proximity to existing mines; WEX understands that there are projects in the SFA that are not proximate to active mines.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-2

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It bases its analysis on incorrect and inconsistent statements about the price of gold, silver, and copper in Nevada (Id. at 3-141).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-4

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It erroneously assumes that its conclusions with respect to existing mines are sufficient to characterize impacts to future mines or future mineral exploration and development (Id. at 4-419). The BLM is required to consider publicly available information (discussed below) to provide for a fully informed decision and reasonable opportunity for public comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-5

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It mischaracterizes removal of roads as an indirect, rather than a direct, impact to mineral resources (Id. at 4-305). Critically, the Proposed LUPA/FEIS does not even acknowledge those rights cannot be explored and developed. Again, without access to lands on which the Projects are located, WEX's economic interests, as well as interests of the surrounding communities related to mineral exploration and development are critically threatened, if not eliminated in violation of the General Mining Law and FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-6

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It incorrectly suggests that there is a lack of reliable data for mined areas in the planning area. In fact, a wealth of data is available from the Nevada Bureau of Mines and Geology, the U.S. Geological Survey and other published sources (Id. at 4-306).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-8

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: It makes unsupported statements about the future that do not take into account the very real impacts of GRSG management measures. For example, the Proposed LUPA/FEIS states, “[r]easonably foreseeable locatable mineral development in MZ III is expected to increase over the 20-year analysis period” (Id. at 5-56). This is not an accurate or even supportable prediction given that proposed travel restrictions and withdrawals are likely to inhibit, if not completely preclude, entry into areas intended for exploration and development.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-29

Organization: Davis, Graham and Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The omission of a section on geology and mineral potential violates NEPA and FLPMA and has a ripple effect throughout the document because without this discussion, there is no baseline against which to measure the impacts that the Proposed Plan will have on locatable

minerals or to conduct a proper balancing analysis to comply with the multiple-use mandate.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-11

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It fails to include (and therefore analyze impacts to) a full list of locatable minerals of importance in Nevada (e.g., barite, lithium, gypsum, molybdenum) (Proposed LUPA/FEIS at 3-139 to 3-141).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-1

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: Moreover, the description of the Proposed Plan's impacts on locatable mineral development at Page 4-311 is stunningly brief (a mere four paragraphs and one sentence) and lacks any meaningful analysis of the Plan's impact on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; and economic impacts to industry and communities who rely on locatable mineral development for personal income and tax revenue. More concerning are the blatantly inaccurate statements about the impacts on valid existing rights. Specifically, the Proposed LUPA/FEIS states that there are no active mines in the over 2.8 million acres of land slated for withdrawal in the designated SFA (Proposed LUPA/FEIS at 4-311). Waterton wishes to emphasize that the Big Springs Mine is adjacent to the SFA, and mineral discoveries, like the Gravel Creek discovery in the Wood Gulch area in northern Elko County, Nevada, have a very

significant potential to become the next mine in this area. Thus, concluding that the SFA will not impact minerals in this area is specious because the SFA covers an area with significant mineral potential (as demonstrated by the adjacent Big Springs Mine and discoveries in the Wood Gulch area). The 2005 discovery of the Long Canyon gold deposit in eastern Elko County is another important example that mineral deposits continue to be discovered in new areas of Nevada far removed from existing mines. This new discovery, which is poised to become Nevada's next large gold mine, is roughly 90 miles from the east of the Carlin Trend. Similarly, the Proposed LUPA/FEIS incorrectly assumes (without explanation) that most development will occur in proximity to existing mines; however, Waterton understands that there are projects in the SFA that are not proximate to active mines.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-2

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It bases its analysis on incorrect and inconsistent statements about the price of gold, silver, and copper in Nevada. (Id. at 3-141.)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-4

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It erroneously assumes that its conclusions with respect to existing mines are sufficient to characterize impacts to future mines or future mineral exploration and development (Id. at 4-419). The BLM is required to consider publicly available

information (discussed below) to provide for a fully informed decision.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-5

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It mischaracterizes removal of roads as an indirect, rather than a direct, impact to mineral resources (Id. at 4-305). Critically, the Proposed LUPA/FEIS does not even acknowledge that, without access roads to areas with mineral exploration and development potential, those rights cannot be explored and developed. Again, without access to lands on which projects are located, a claim owner's economic interests, as well as interests of the surrounding communities related to mineral exploration and development are critically threatened, if not eliminated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-6

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It incorrectly suggests that there is a lack of reliable data for mined areas in the planning area. In fact, a wealth of data is available from the Nevada Bureau of Mines and Geology, the U.S. Geological Survey, and other published sources. (Id. at 4-306).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-8

Organization: Davis, Graham and Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: It makes unsupported statements about the future that do not take into account the very real impacts of GRSG management measures. For example, the Proposed LUPA/FEIS states, “[r]easonably foreseeable locatable mineral development in MZ III is expected to increase over the 20-year analysis period” (Id. at 5-56). This is not an accurate or even supportable prediction given that proposed travel restrictions and withdrawals are likely to inhibit, if not completely preclude, entry into areas intended for exploration and development.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-3

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: Of critical importance, the Proposed LUPA/FEIS fails to discuss geology or how geology relates to mineral potential. Further, the description of the Proposed Plan's impacts on locatable mineral development is stunningly brief (a mere four paragraphs and one sentence) and lacks any meaningful analysis of the Plan's impact on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; economic impacts to industry and communities who rely on locatable mineral development for personal income and tax revenue, etc.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-12

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The BLM and USFS to fail to analyze hunting and predation influences and management options. It is argued that it is outside of the jurisdiction

and authority of BLM/USFS; however, other issues, such as climate change, socioeconomics, travel management on non-federal roads, water resources and water rights are analyzed while being out of the control and jurisdiction of the BLM/USFS. It is impossible to holistically frame management without analyzing the cumulative effects and recognizing their role. Also, the agencies with jurisdiction by law and special expertise on the issue of hunting and predation are both cooperating agencies (e.g., FWS, NDOW, counties).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-13

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: The LUPA must be revised with a supplemental EIS to include adequate analysis on predators and hunting in coordination with the agencies that will formulate management based on the analysis, primarily FWS, NDOW, NDOA, and counties in order to truly meet the obligations of NEPA to see the “whole” and inform on all relevant issues so that the conservation of GRSG is truly met. It can be demonstrably argued that predation, previously identified as a USFWS-identified threat and cited in the EIS is a significant issue and that analysis of this issue is necessary to make a reasoned choice.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-27-13

Organization: Sagebrush Ecosystem Program

Protestor: Kacey KC

Issue Excerpt Text: The analysis of the environmental consequences to the Vegetation and Soils (Table 2-17) Proposed

Action is incorrect. It states, “Limited disturbance due to restricting permitted actions would lead to improved vegetation conditionsIncreased emphasis on incorporation of GRSG habitat objectives and considerations into programs such as livestock grazing, recreation, and wild horse and burro management would likely lead to improvements in overall vegetation conditions”. Science does not support this conclusion and the flawed analysis violates NEPA. Current range science would incorporate management based on ecological site descriptions, existing ecological state, and apply management to target desired phases within that state to avoid pathways (such as fire) that cross thresholds to new states (Caudle, et al. 2013). The impacts of the proposed action to vegetation and soils could have adverse effects on maintaining resilient sagebrush communities, increasing rangeland fuel load, and exacerbating wildland fire behavior.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-30-1

Organization: BlueRibbon Coalition

Protestor: Don Amador

Issue Excerpt Text: The Proposed LUPA/FEIS does not make clear whether any existing route will be closed to continuing (or future) motorized use. Instead, the documents present a confusing mix of concepts, some new, such as “sagebrush focal areas”, “anthropogenic disturbance” thresholds within “biologically significant units”, and general prescriptions for lek buffers. It seems likely that some of these concepts will be applied, or already have been determined, to restrict or prohibit continuing motorized use of some route(s). The documents fail to disclose such determinations or the future prospect of such determinations.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-22

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The BLM and USFS to fail to analyze hunting and predation influences and management options. It is argued that it is outside of the jurisdiction and authority of BLM/USFS; however, other issues, such as climate change, socioeconomics, travel management on non-federal roads, and water resources and water rights, are analyzed while also being out of the control and jurisdiction of the BLM/USFS. It is impossible to holistically frame management without analyzing the cumulative effects and recognizing their role. Also, the agencies with jurisdiction by

law and special expertise on the issue of hunting and predation are both cooperating agencies (e.g., FWS, NDOW, counties).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-23

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The LUPA fails to focus on a full range of possible approaches to grazing with the end results of rangeland health, socioeconomic stability, and GRSG population improvements tied strongly together and not mutually exclusive. The LUPA focuses on restriction first, rather than exhausting all other active management options first.

Summary:

The BLM failed to fully analyze a number of issues throughout the document, made errors in its analysis, or relied on faulty information when drawing conclusion about potential impacts, including:

- Failing to fully analyzing the impacts of predation on GRSG to support requiring predation controls;
- Failing to fully analyzing the impacts of GRSG hunting seasons sanctioned by the State of Nevada;
- Mischaracterizing the impacts of grazing on soil and vegetation health, the science that supports the grazing decision, as well as restricting use first rather than exploring more active grazing management solutions;
- Failing to fully analyzing the “positive feedback loop” between fire and invasive plants such as cheatgrass, especially as it relates to the analysis of impacts of the mitigation strategy;
- Predicting future extirpation of entire populations, while recognizing no modeling has been done to support that hypothesis;
- Failing to discuss the science on vegetation and habitat objectives and the impacts of those objectives on grazing, recreation, and wild horses and burros;
- Failing to discuss how comments on the DEIS regarding mineral withdrawals were addressed; and,
- Failing to fully analyze the impacts of the alternatives on the social, cultural, and economic fabric of the Elko County region.

The BLM failed to fully describe and analyze both the affected environment and impacts the preferred alternative would have on mining within the planning area, including:

- Failing to include within the affected environment section a detailed discussion of geology or locatable minerals, greatly understating the importance of mining in Nevada, as well as future development within the planning area and SFAs;
- Lacking a complete accounting of the important locatable minerals that would be impacted by the decision (e.g., barite, lithium, gypsum, gold, molybdenum);
- Mischaracterizing the impact of road removal within SFAs as “indirect” rather than “direct”, and failing to explain how decisions related to travel management could impact mining;
- Incorrectly suggesting that there is a lack of information in the planning area and assuming that all future mining will take place near existing mine facilities; and
- Failing to take a “hard look” at the impacts of mineral withdrawals as it only focuses on the BLM process, not the economic impacts of these withdrawals.

Response:

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

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM and Forest Service need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. 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.

A detailed response to the protested points follows:

- The BLM and Forest Service addressed predation and predator controls throughout the document. While the Conditions on BLM Lands, Section 3.5.1, mentions the impacts of predation on administered lands, the subject is addressed in more detail in Section 4.4, “Greater Sage-Grouse Habitat”, as various anthropogenic actions described in the alternatives (fence removal, etc.) would impact predation on GRSG populations;
- As noted on Table 2-1, while the USFWS indicated hunting is a threat to the GRSG, the taking of game through hunting is an activity regulated by the individual states and their respective wildlife agencies and not under BLM or the Forest Service's jurisdiction. The

BLM and the Forest Service will continue to work with the involved states to meet state wildlife population objectives.

- Sections 3.16 and 4.5 provide analysis of full range of impacts on soil and vegetation resources across all alternatives. There are resource areas beyond range management and fire that impact soils/vegetation, such as recreation activities, and surface-disturbing activities associated with mineral develop, ROWs, or otherwise. Additional detail regarding soil and vegetation resources, and the science supporting the analysis, can be found in Sections 3.16, 5.8, 5.9, and 25 of this protest report.
- The PLUPA/FEIS recognizes the relationship between disturbance such as fire and invasive species that thrive within disturbance, such as cheatgrass. See, for example, page 3-22: “The loss of GRSG habitat in the Northwestern interior population of the sub-region bears a direct relationship to the high risk of cheatgrass replacement following wildland fire...”, and page 3. 49: “A cheatgrass understory is highly susceptible to fire and greatly shortens the fire interval. As a result, these communities are dominated by exotic annual grasses and are severely degraded...” The Proposed LUPA, then, discusses various ways the BLM addresses these issues. More specific analysis, though, will be performed in connection with specific vegetation management projects, rather than at this more general programmatic level. Additional discussion regarding wildfire management can be found in Fire section of this protest report.
- The description of the Buffalo-Skedaddle PMU, part of the general descriptions of the Management Zones in Section 3.2.3, analyzes the current trend of the PMU in both a qualitative and quantitative manner, drawing a broad conclusion based on available data. The LUPA does not have modeling for every population, but can still draw reasoned conclusions based on data that is available.
- Section 4.21 contains a detailed analysis across all alternatives regarding socioeconomic impacts, including those to Elko County. Specific areas of socioeconomic concern that were analyzed include management actions that impact grazing, recreation, oil and gas development, renewable energy, and payments to states and counties. The analysis included specific references to Elko County’s socioeconomic connections to public lands.
- The analysis of mineral resources, including the discussion of geologic formations, mining trends, and past and future development, found in Sections 3.13 and 4.15, meets the hard look requirement for the level of analysis being undertaken for the GRSG LUPA. Examples of the analysis include:
 - Section 3.13 (pages 3-124 through 3-143) describes the current condition (e.g., baseline) of the mineral resources on a district-by-district basis and the current status of the BLM’s management of those resources.
 - Section 4.15 (pages 4-288 through 4-325) details the impacts each of the alternatives on mineral resources management, including fluid minerals, solid minerals, leasable minerals, and saleable minerals.
 - Section 4.15 also includes discussion of how ROW exclusion areas would impact future road construction, subject to valid existing rights. These impacts are referred to as “indirect” as defined under NEPA: “Direct impacts are caused by an action or implementation of an alternative and occur at the same time and place; indirect impacts result from implementing an action or alternative but usually occur later in time or are removed in distance and are reasonably certain to occur” (page 4-5).

- As is referenced numerous times in the document, the PLUPA/FEIS makes no decisions regarding specific road closures, as that would be an implementation level decision (See, for example, Section 4.9.9, page 4-201, “The impacts from such actions as evaluating the need for permanent or seasonal road closures in PHMA and GHMA could only be evaluated during activity-level travel planning.”).
- Section 4.2.1 discusses economic impacts of the alternatives. Analysis related to locatable minerals is on pages 4-418 through 4-420.

Further, any subsequent action particular to the mineral resource that could stem from this PLUPA/FEIS, such as a mineral withdrawal, would be analyzed under NEPA in a manner commensurate with the activity/implementation being proposed at that time.

The BLM and Forest Service complied with NEPA’s requirement to analyze the environmental consequences/impacts of these resources areas in the Nevada and Northeastern California GRSG PLUPA/FEIS.

GRSG-General

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Given that the science does not differ significantly across the species’ range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion. Standards should be brought up to meet scientific recommendations, not

down to reflect a political lowest common denominator; we are concerned that some aspects of the Nevada-California plan amendment have been weakened to match inadequate conservation measures in other jurisdictions.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-13

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: In requiring a 3% disturbance cap, the Proposed LUPA/FEIS does not recognize or otherwise explain why 3% has been chosen as compared to 5%, which Midway understands is used by the State of Wyoming.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-59

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: In the LUPAs, the BLM expressly exempts certain renewable

electric transmission projects from the species and habitat management prescriptions and restrictions. Yet, BLM acknowledged in the LUPA and FEIS that these projects will have significant impacts in GRSG habitat. This disparate treatment is compounded by the fact that, under the LUPA, BLM will still count these transmission projects significant environmental impacts and surface disturbance in priority habitat against the surface disturbance cap calculation imposed against the oil and gas industry and other developers of public resources.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-61

Summary:

Inconsistencies and differences among the various GRSG land use plan amendments and revisions constitute a capricious approach and may lead to arbitrary decisions in each sub-region.

Response:

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

While the BLM and the Forest Service have used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level.

Regarding the exemptions for certain Transmission Line Right-of-Ways in this plan, these ROW applications are currently being analyzed and similar provisions and stipulations are proposed there as are required under this plan.

The agencies have allowed some inconsistencies among sub-regional plans as a means to address specific threats at a local and sub-regional level and for other reasons as discussed below. Consistent with the National GRSG Planning Strategy (BLM 2011), the BLM as a lead agency, together with the Forest Service as a cooperating agency, prepared 14 EISs with associated plan amendments and revisions. Five of the 14 EISs involve National Forest System lands. Threats

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The affected LUPAs contain inconsistent explanations, and do not consistently apply or explain what provisions apply and what provisions do not. For example, the Nevada and Northeastern California LUPA expressly explains that the transmission project's surface disturbance counts against the cap that is applicable to other industries, but in contrast, this application is only implicitly provided for in the Northwestern Colorado LUPA and other LUPAs applicable to Wyoming and Utah.

affecting GRSG habitat were identified and the intensity of these threats vary by management zones. Within each management zone, differences in ecological conditions and ecological site potential affect the area's susceptibility to the various threats and its restoration potential. Further, each sub-region has varying local situations.

Each LUPA/FEIS takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests. Developing the LUPAs involved unprecedented collaboration with state agencies and leadership and were built upon local GRSG conservation efforts initiated by a number of states, including Wyoming's core area strategy, Idaho's three-tiered conservation approach, and Oregon's "all lands, all threats" approach. Where available, state population data and habitat use information were considered in developing management approaches in the LUPAs. Some states have regulatory measures in place for improved habitat protection, while others rely on voluntary actions. These variations were accounted for in the analyses.

Conservation measures are in the context of all the laws governing public land use and reflect the differing regulations and policies for the BLM and Forest Service. For example, the BLM proposed plans identified goals, objectives, and management actions and Forest Service plans identified desired future conditions, objectives, standards, and guidelines. Conservation measures are also in the context of the objectives of each alternative, keeping in mind that each alternative represents a distinct approach to meeting the purpose and need

Each LUPA/FEIS, in the beginning of Chapter 4, recognizes that certain information was unavailable because inventories either have not been conducted or are not complete in that planning area, and therefore some impacts cannot be quantified. Where this data gap occurs, subsequent site-specific inventory data could be collected for a project level analysis to determining appropriate application of LUPA-level guidance.

All these variables influenced the environmental analyses and management direction, resulting in portions of the LUPAs where there is uniformity across the landscape range and other aspects where there are differences.

See also responses to protest points about specific habitat objectives and management actions (such as density and disturbance caps).

[GRSG-Density and Disturbance Cap](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-26

Organization: Assistant General Counsel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: The application of the 3% disturbance cap to range improvements and associated infrastructure for livestock

grazing may be contrary to sage-grouse conservation. The LUPA does not treat livestock grazing as an anthropogenic disturbance (see LUPA at 8-7, or a surface-disturbing activity, Id. at 4-202, 8-34). However, based on the LUPA's definitions of these terms, it appears that range improvements and infrastructure for livestock grazing are considered to be

anthropogenic disturbances and, thus, subject to the 3% disturbance cap (Id. at 2-20 to 2-21, 8-7, 8-34). Subjecting these improvements and infrastructure to the cap seems contrary to LUPA's acknowledgment that "[r]ange improvements are generally intended to improve livestock distribution and management, which would maintain or improve rangeland health and could benefit the forage base and wildlife and GRSG habitat (Id. at 4-202). While the application of the disturbance management protocol could possibly allow for some relief from the disturbance cap, that process is unnecessarily burdensome and fraught with uncertainty. Thus, the LUPA will have the perverse effect of discouraging grazing permittees from proposing range improvement projects that would benefit sage-grouse (Id. at 4-232: "Consideration of GRSG habitat needs would likely reduce the number of constructed range improvements"). The BLM should clarify that range improvements and infrastructure for livestock grazing are not subject to the 3% disturbance cap without the need to apply the disturbance management protocol.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-7

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The 3% disturbance cap limit for Nevada; specifically within the Kings Valley Lithium Project Stages 1-5; Action SSS-2 (FEIS Page 2-20) and FEIS Appendix F. FEIS, Page F-2 states, "Although locatable mine sites are included in the degradation calculation, mining activities under the 1872 mining law may not be subject to the 3% disturbance cap. Details about locatable mining activities will be fully disclosed and analyzed in the NEPA process to assess impacts to GRSG and their

habitat as well as to BLM goals and objectives, and other BLM programs and activities". The FEIS fails to fully identify, discuss, and disclose (in compliance with 40 CFR 1502.24 Methodology and Scientific Accuracy) to the public how the 3% disturbance cap will apply to, affect, and [physically and economically] impact proposed and reasonably foreseeable locatable mining operations and exploration activities. Given the lack of clarity of how the cap will be applied, the public has not had reasonable and adequate notice and information to evaluate the potential impact, effectiveness or lawfulness of the proposed cap. Such information must be disclosed and analyzed and provided for public comment in compliance with NEPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-67

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The concept of capping anthropogenic and total disturbances is fundamentally flawed, and the BLM/USFS have not provided sufficient scientific data to support the disturbance cap concept or its effectiveness. Consequently, the 3% cap is arbitrary, and thus violates § 1502.24 of NEPA. The BLM/USFS must not impose overly restrictive and burdensome management that is not supported by the vast amount of literature on GRSG.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-68

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: It is unclear exactly how the BSUs are delineated. The vague

definition of a BSU states “Delineation of GRSG habitat based on GRSG interactions between Population Management Units (PMU) to represent local GRSG population habitat and use areas within the sub- region” (PLUPA/FEIS at 8-9). Map 2-1 at 2-77 of the PLUPA/FEIS, which depicts visually each of the BSUs indicates that the source is based upon information from Nevada Department of Wildlife 2015 (hereinafter “NDOW”). However, this information was not part of the DLUPA/DEIS and the method used to calculate disturbance was not conceived at the time of the DLUPA/DEIS. Consequently, the public has not had the opportunity to review and comment upon the impacts that the BSU designation, and calculation formula-which is dependent on the BSU acreage, will have on the planning area.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-39

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the Agencies must clearly define and publish maps of the BSUs within which the disturbance caps apply (See Proposed LUPA, app. F; Glossary at 8-9). The public has no way of knowing which areas constitute BSU and therefore cannot assess how impacts will be evaluated.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-17

Organization: Western Watersheds Project

Summary:

Protests dispute the application of density and disturbance caps of being insufficient to protect GRSG as the calculation does not include disturbance associated with livestock grazing. The BLM failed to disclose how much disturbance is currently mapped in each BSU.

Protestor: Michael Connor

Issue Excerpt Text: There is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or indeed if these GRSG populations can actually withstand the 3% disturbance cap and exemptions proposed in the plan. This cap is based the findings of Knick et al., 2013⁷⁴ that 99% of active GRSG leks were surrounded by lands with less than 3% surface disturbance. While that study demonstrates the need to limit cumulative surface disturbances below 3% of the landscape it is unclear how applicable the model is when used on a smaller scale or how disturbances specific to the planning area affect the model. For example, the model developed by Knick et al., 2013 did not include consideration of fences etc. which pose a considerable issue with respect to GRSG.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-1

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: The implementation of a 3% disturbance cap on selected lands with certain habitat qualities was not evaluated in the DEIS and, therefore, is a decision that is both arbitrary and capricious. A rigorous scientific analysis was not provided as to the derivation of the 3% cap value nor was it clear how the cap will be applied on the ground as required in NEPA 40 CFR 1502.24.

Response

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT Report to reduce disturbance associated with threats to GRSG habitat. In the NTT Report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8): “Sage-grouse are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed RMPA that address these impacts.

Regarding the lack of disturbance mapping in the PLUPA/FEIS:

Appendix F discusses the methods and data used in calculating disturbance in the BSUs. As stated on page F-2: “For the BSUs, west-wide habitat degradation (disturbance) data layers (Table F-1) will be used at a minimum to calculate the amount of disturbance and to determine if the disturbance cap has been exceeded as the land use plans (LUP) are being implemented. Locally collected disturbance data will be used to determine if the disturbance cap has been exceeded for project authorizations, and may also be used to calculate the amount of disturbance in the BSUs.”

While the density and disturbance caps will not apply to livestock grazing, they do address other more discrete disturbances. Additionally, there are management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in this RMPA (specifically, tables 2-15 (pages 2-155 through 2-157) and 2-16 (pages 2-342 through 2-383).

Mapping and calculations associated with the density and disturbance caps will occur at the project level and will therefore provide for public disclosure of the current condition of the BSUs.

GRSG-Adaptive Management

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-26

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The inflexible application of hard trigger responses, without regard to causation is problematic given the nature of the primary threats to GRSG in Nevada-fire and invasive species. If the hard triggers are reached in any BSU,

the most likely cause will be loss of habitat or leks (which will affect lek population counts) due to fire. In this context, the BLM would not be justified under the adaptive management rubric in essentially closing the public lands in PHMA and GHMA to other uses when those uses are not the cause of the decline. Further, NEPA and the Department of the Interior’s NEPA regulations require that BLM analyze the potential impacts of implementing this proposed adaptive management approach (43 CFR § 46.145).

The BLM failed to do so here because the LUPA does not adequately disclose how closing PHMAs and making authorizations in GHMAs much more difficult to obtain could negatively impact other uses and the rural economies in Nevada

Issue Number: PP-NVNORTHEASTCA-GRSG-15-8-79

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The adaptive management triggers do not adequately account for important population dynamic drivers such as long-term weather patterns, which can predict with high precision when a dip or surge in population abundance will occur, and thus the triggers are flawed, are not based upon scientifically defensible methods and lack scientific integrity, and will not address the specific cause and effect mechanisms impacting GRSG populations and will instead target secondary threats.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-22

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Second, the Agencies cannot implement the “responses” to the soft triggers because there is nothing to implement. The Proposed LUPA does not define any concrete actions that the Agencies will implement in response to the soft triggers (See Proposed LUPA at 2-83). The planning regulations do not permit the BLM to change the management prescriptions in an RMP via an open-ended placeholder.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-37

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the soft and hard adaptive management triggers and responses set forth in the Proposed LUPA as arbitrary because the adaptive management strategy does not describe the factors the Agencies will consider when assessing the “causal” factors of triggers being reached.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-14-7

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: The County understands that the BLM is looking to develop an “Adaptive Management Plan” that will include “soft and hard adaptive management triggers”; however, it is unclear how this plan will be developed. The plan must be developed through the public planning process NEPA, as this could have a profound effect on public land use.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-28

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The LUPA as outlined undermines true adaptive management by one-size-fits-all proposals and objectives. The adaptive management sections are unclear as to how new field data will be utilized, and how often it will need updated. For example, multiple field studies that show no winter use of “winter habitat” over multiple years should be sufficient to remove the designation as winter habitat and any seasonal restriction. The habitats as currently mapped by state and federal

agencies are best guesses in most instances and field data (habitat measurements and bird observations) are not available for many areas. The metrics that trigger the

implementation of seasonal restrictions, RDFs, etc. should be periodically revisited to ensure the condition actually exists.

Summary:

The Adaptive Management Plan associated with the Nevada and Northeastern California PLUPA/FEIS is insufficient as it does not:

- describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist;
- account for natural fluctuations in populations; or
- meet NEPA and the Department of the Interior's NEPA regulations to disclose how the triggers and responses could negatively impact other uses and the rural economies in Nevada.

Response:

Applying specific responses to soft triggers at a Land Use Plan Level would not be appropriate as such may not address the site-specific issues or “causal factors” that initiated the tripped soft trigger. The PLUPA provides for various implementation level responses that will more appropriately address the causal factors in these situations.

The PLUPA/FEIS on pages 2-76 to 2-80 describes the process of monitoring populations for the use of triggers and the means to reduce natural population fluctuations from influencing the triggers. The BLM and Forest Service cooperated with the Nevada SETT, NDOW, CDFW, and USFWS, along with GRSG research scientists from the USGS and the University of Nevada Reno in developing the adaptive management triggers, definitions, and methods of calculating population and habitat trends. Counts of male GRSGs attending breeding leks provide reliable data for analyzing population growth trends (Fedy and Aldridge 2011). Lek counts can inform statistical estimation of population growth rates at each scale. “Trend leks” have been identified by NDOW, USGS and CDFW within each BSU. Trend leks are monitored consistently each year and have more available data than adjacent leks within the BSU. These trend leks will be used to estimate the population trends/averages within each BSU. Triggers for changes in population growth will be evaluated at three scales: individual lek (smallest scale), lek cluster, and BSU (largest scale). Analyses of population changes at the three scales allow for detailed examination of how and where changes are occurring (for example, individual leks describe site-level changes, lek clusters describe local population changes, and BSUs describe changes relative to variation in climate within the sub-region).

The PLUPA/FEIS discloses environmental effects of the triggers and responses on other uses including reduction in the number of authorization applications received for activities in PHMA and longer, more complicated review periods for those that are proposed in PHMA (page 4-51), impacts to fluid mineral development (page 4-304), impacts to locatable mineral development (page 4-311), and impacts to livestock grazing (page 4-409).

Section 2.7.1 (Adaptive Management Plan) of the PLUPA/FEIS specifically discusses the adaptive management responses as prescribed. Tables 2-9 and 2-10 outline such responses and

the manner in which the responses would be implemented upon a tripped soft or hard trigger. These management responses are within the range of alternatives analyzed in the PLUPA/FEIS, as they are similar to the actions described in the range of alternatives (Table 2-16).

The BLM and Forest Service is within their authority and appropriately establishes an adaptive management plan to conserve GRSG habitat.

GRSG-Habitat Objectives

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-10

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: In PHMAs, GHMAs, and SFAs, livestock grazing is managed to ensure for adequate nesting, breeding, and winter cover and does not conflict with other vegetation attributes (Table 2-5 and Table 2-6). The Forest Service provides two tables Table 2-5 and Table 2-6 that ostensibly cover ecoregion 342 and ecoregion 341 respectively. Table 2-5 is already out of date. It calls for >15% canopy cover in Ecoregion 342. There has been much progress in modeling GRSG habitat in recent years but actual scientific publication frequently lags new discoveries. As we explained above, studies conducted within the planning area in Nevada in ecoregion 342 indicate that managing for greater than 40% total shrub canopy cover in GRSG nesting areas could yield improved reproductive success (Lockyer et al., 2015). In that context, managing for a three-fold less canopy cover is misguided and it would be inappropriate for the Forest Service to adopt this measure without more evaluation. The Forest should consider updating GRSG-LG-DC-041- Desired Condition to allow for changes in our understanding informed by best available science.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-21-1

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: Habitat objectives from those two different RMPs have the potential to impact different portions of allotments that are managed as one unit. The PLUPA is in direct conflict with the management area of the Proposed Jarbidge RMP, which includes these Nevada lands within the management area:

The boundary extends from the Bruneau River on the west to Salmon Falls Creek on the east, and from the Snake River on the north to the northern boundaries of the BLM Elko Field Office and the Humboldt-Toiyabe National Forest on the south (Map 1). It includes parts of Elmore, Owyhee, and Twin Falls Counties in south-central Idaho and Elko County in northern Nevada.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-29

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The BLM did not follow the Department of Interior and Nevada specific guidance on writing resource objectives (see Williams et al. 2009, “Adaptive Management: The U.S. Department of the Interior Technical Guide”; Adamcik et al. 2004, “Writing Refuge Management Goals and Objectives: A Handbook”, U.S. Fish and Wildlife Service; and Swanson et al. 2006 “Nevada Rangeland Monitoring Handbook Second

Edition”). The common thread of these references describes differentiating between vision, goals, and objectives and then setting objectives that fit the mnemonic SMART-Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.

S- Specific- They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.

M- Measurable- The change between present and proposed conditions must be quantifiable and measurable.

A- Achievable- Are the objectives set achievable in the current setting? Consider environmental constraints, societal

expectations, economic parameters, legal requirements, and technological limitations. R- Realistic/Related/Relevant- Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them. T -Time-fixed - They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.

Very few of the objectives meet all of the SMART criteria.

Summary:

- The Forest Service vegetation objectives for shrub cover are outdated and not based on the best available science.
- The BLM does not follow its own Adaptive Management Technical Reference and is not consistent with the Nevada Rangeland Monitoring Handbook as related to habitat objectives.

Response:

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

The process used in development of the Nevada and Northeastern California GRSG PLUPA/FEIS is described in Chapter 2, including consideration of documents related to the conservation of GRSG that have been released since the publication of the Draft LUPA/EIS (p.2-16). The BLM Proposed Plan Amendment is described in more detail on p.2-17 to 2-56), and the Forest Service Proposed Plan Amendment on p.2-56 to 2-75 (FEIS). Objective VEG1 for GRSG for BLM states that “In all SFAs and PHMAs, the desired condition is to maintain a minimum of 70% of lands capable of producing sagebrush with 10 to 30 percent sagebrush cover”, referencing BLM Tech Ref 1734-6 on Interpreting Indicators of Rangeland Health (p.2-27).

The Forest Service Proposed Plan Amendment contains GRSG-GEN-DC-003-Desired Condition: “In GRSG seasonal habitats, including all seasonal habitats, 70% of lands capable of producing sagebrush have 10-30% canopy cover, with more specific desired conditions included in Tables 2-5 and 2-6”. Three literature citations are listed in

conjunction with desired conditions related to sagebrush canopy cover in breeding and nesting habitat, including Stiver et.al.2015 editions (in press) (pp.2-58 to 2-59).

Appendix M (Vegetation Dynamics Development Tool Methodology) of the PLUPA/FEIS describes the process used for characterizing GRSG habitat based on non-spatial vegetation modeling across the Great Basin. As stated in Appendix M, in order to evaluate and compare the estimated effects of each alternative on the extent and distribution of sagebrush, a team of vegetation ecologists representing each sub-regional EIS in the Great Basin was assembled (p.M-2). Vegetation throughout the planning area was mapped based on Landfire v12 (updated through 2010), given the following criteria identified by the team: 1) dataset covers the entire western region, 2) vegetation data has an associated accuracy assessment, 3) data provides appropriate resolution of sagebrush habitat types and associated cover types for use at the forest planning scale. The FEIS described the current condition of vegetation and effects to vegetation across alternatives in Chapter 4 (p.4-60), including acres and condition of native vegetation communities. Habitat conditions trends are predicted under no action and for the proposed plan based on the amount of the analysis area that meets 10-30 percent sagebrush cover (p.4-93).

The BLM and USFS developed and analyzed alternatives, including habitat objectives, in the Nevada and Northeastern California GRSG PLUPA/FEIS using the best available information in compliance with Federal laws, guidelines, and policies. The BLM and USFS included references that support decisions with regard to Livestock Grazing Management and Habitat Management Objectives, specific to each agency. USFS Habitat Objectives provide best available science references supporting each presented Habitat Objective.

The GRSG Monitoring Framework (FEIS, Appendix E) includes sagebrush availability (percent of sagebrush per unit area) as a key component in monitoring of habitat (p.8), including Measure 1a: the current amount of sagebrush on the geographic area of interest, and Measure 1b: the amount of sagebrush on the geographic area of interest compared with the amount of sagebrush the landscape of interest could ecologically support. Datasets for establishing and monitoring changes in sagebrush availability are listed in Table 3 (p.13), and Ecological Systems capable of supporting sagebrush vegetation in Table 4. Sagebrush availability will be updated annually by incorporating changes to the sagebrush base layer. Areas with the potential to support sagebrush were derived from the BpS data layer that describes sagebrush pre-EuroAmerican settlement (v1.2 of LANDFIRE; p.13).

The USFS considered the best available information and science in the identification of current and desired conditions related to vegetation type and condition at the forest planning scale, in addressing direct, indirect, and cumulative effects, and in the monitoring of GRSG habitat related to sagebrush availability.

See the Best Available Science response section for more detail on this topic.

- The Department of Interior’s policy is to encourage the use of adaptive management as appropriate as a tool in managing lands and resources (522 DM 1). Adaptive Management is a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. The U.S. Department of the Interior Adaptive Management Technical Guide is the technical basis for adaptive decision making for the Department and bureaus (Williams, B. K., R. C. Szaro, and C. D. Shapiro. 2009. Adaptive Management: The U.S. Department of the Interior Technical Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.).

Development of the planning criteria required that “The LUPA will incorporate the principles of adaptive management” (Nevada and Northeastern California GRSG PLUPA/FEIS p. 1-26). Section 2.7.1 Adaptive Management Plan (p. 2-75 through 2-86) details the BLM’s and Forest Service’s adaptive management strategy for the Nevada and Northeastern California GRSG PLUPA/FEIS.

The habitat objectives in Table 2-2 of the Nevada and Northeastern California GRSG PLUPA/FEIS are consistent with the Adaptive Management Plan. The habitat objectives summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in the Table were adjusted based on local science and monitoring data to define the range of characteristics used in this sub-region. Thus, the habitat objectives provide the broad vegetative conditions the BLM strives to obtain across the landscape that indicate the seasonal habitats used by GRSG. These habitat indicators are consistent with the rangeland health indicators used by the BLM (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 2-17). The Nevada and Northeastern California GRSG PLUPA/FEIS recognizes “These habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas. Therefore, the determination on whether the objectives have been met will be based on the specific site’s ecological ability to meet the desired condition identified in the table” (Nevada and Northeastern California GRSG PLUPA/FEIS, p. 2-17).

As detailed in Section 1.6, Relationship to Other Policies, Plans and Programs (p. 1-35 to 1-45), the planning process recognized the many ongoing programs, plans, and policies that are being implemented in the planning area by other land managers and government agencies. The BLM and Forest Service sought to be consistent with, or complementary to, other management actions whenever possible. Plans considered include programmatic documents, state plans, local land use plans, other federal plans, fish and wildlife species recovery or management plans, tribal plans, memorandums of understanding, activity plans and amendments, habitat management plans and Secretarial Order 3336 and all other applicable laws, regulations and policies, including the Department’s own adaptive management policy. The Nevada and Northeastern California GRSG PLUPA/FEIS is consistent with the applicable vegetation management policies detailed in Section 1.7, p. 1-45 to 1-46.

The BLM is consistent with its own laws, regulations and policies related to Adaptive Management. See the Adaptive Management response section for more detail on this topic.

[GRSG-Livestock Grazing](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-12

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: GRSG-LG-GL-045-Guideline: In PHMAs, GHMAs, and SFAs, consider closure of grazing allotments, pastures, or portions of pastures or managing the allotment as a forage reserve as opportunities arise under applicable regulations, where removal of livestock grazing would enhance the ability to achieve desired habitat conditions (Table 2-5 and Table 2-6). The Forest Service always has the option of closing allotments to grazing to protect resource values. However in this case, the Forest throws in the words “or managing the allotment as a forage reserve”. If the purpose of this measure is to “conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat”, how can “managing the allotment as a forage reserve” possibly achieve that? The plan amendment neither provides management direction for forage reserves nor does the FEIS analyze the impacts of designating and using forage reserves on GRSG and their habitats. The LRMP itself does not even mention let alone provide direction for managing forage reserves. If forage reserves are established within GRSG habitat, any recovery from the absence of perennial livestock grazing could be quickly undone by a single-season of active grazing use. The PLUPA/FEIS should rather have specified that forage reserves will be created for GRSG forage (e.g. allotments closed to

domestic livestock), thus actually helping to conserve, protect, and recover the species.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-15

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: GRSG-LG-GL-049-Guideline: New permanent livestock facilities (e.g., windmills, water tanks, corrals) should not be constructed within 1.2 miles from the perimeter of occupied leks. This guideline does not comport with best available science. As we explained in our comments, the most significant environmental predictor of lek persistence or abandonment is the level of anthropogenic disturbance within 3.1 miles of the lek (Knick and Hanser, 2011). The NTT Report at 20-21 notes that even a four mile buffer would be inadequate to protect nesting GRSG. The FEIS fails to demonstrate why using a distance that is a quarter to one third of the distance recommended by scientists will help “conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-4

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: Braun (2006) identified the need for the seasonal restrictions on livestock use: “Grazing should not be allowed until after 20 June and all livestock should be removed by 1 August

with a goal of leaving at least 70% of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1)” (WWP v. Salazar, 843 F. Supp.2d 1105, 1123 (D. Idaho 2012)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-9

Organization: Western Watersheds Project
Protestor: Michael Connor

Issue Excerpt Text: Action LG 18: Locate salting and supplemental feeding locations, temporary or mobile watering, and new handling facilities (e.g., corrals and chutes) at least 1 mile from riparian areas, springs, and meadows. The distance can be greater based on site-specific conditions. This Action would apparently be implemented during grazing permit renewals. Although the BLM has doubled the distance from the 0.5 mile in the DEIS to 1 mile here, it is still inadequate to protect crucial GRSG use areas. As we explained in our comments, the most significant environmental predictor of lek persistence or abandonment is the level of anthropogenic disturbance within 3.1 miles of the lek (Knick and Hanser, 201172). The NTT Report at 20-21 notes that even a four mile buffer would be inadequate to protect nesting GRSG. The FEIS fails to demonstrate why using a distance that is a quarter to one third of the distance recommended by scientists will help “conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat”.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-21-2

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: The BLM grazing regulations already require the BLM to make management changes in order for allotments determined to not be meeting rangeland health standards to move towards meeting. Additional language covering this is not necessary.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-2

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: The primary use of grazing allotments should be for grazing. Action LG 21 encourages the Agencies to opportunistically retire grazing permits or leases that are voluntarily relinquished. Not only is this bad public policy, it contravenes clear statutory requirements on the Secretary of the Interior to maintain grazing land that is chiefly valuable for grazing. Direction to the BLM has been provided by the Solicitor on this very topic. See Solicitor Opinion M-27008 (Oct. 4, 2002) and as clarified by the Solicitor's Memorandum dated May 13, 2003. Any decision to retire livestock grazing on federal lands is not permanent unless made permanent through congressional action. Short of congressional action, any such decision is subject to reconsideration and reversal. Y-3 II appreciates the Agencies' quote of Solicitor Myers's M-Opinion No. 37008 to this effect. (p.C-57: “It is subject to reconsideration, modification, and reversal in subsequent land use plan decisions.”) The M-Opinion also cites the Tenth Circuit decision in Public Lands Council v. Babbitt, 167 F.3d 1287 (10th Cir. 1999), argued on other grounds, 529 U.S. 729 (2000), that the

Secretary has established grazing districts comprised of public lands that are chiefly valuable for grazing, consistent with the Taylor Grazing Act, 43 USC § 315. As the court noted, the presumption is that when range conditions permit, grazing levels will be maintained or even rise. “Congress intended that once the Secretary established

a grazing district under the [Taylor Grazing Act], the primary use of that land should be grazing” (Id. at 1308). Y-3 II protests Action LG 21 that counters the court-sanctioned, Congressional mandate that the primary use of the land should be grazing.

Summary:

- The agencies fail to use the best available science in developing habitat objectives, and requirements for livestock-related activities.
- Best available science requires seasonal grazing restrictions and this was not considered in the analysis.
- The PLUPA/FEIS violates the Taylor Grazing Act in considering the relinquishment of grazing permits.

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). Likewise the Forest Service is guided by CEQ (40 CFR 1500-1508) and Forest Service Handbook 1909.15 on NEPA implementation.

The Nevada and Northeastern California GRSG PLUPA/FEIS includes a bibliography (Volume 12, Chapter 7), which lists information considered by the agencies in preparation of the entire Nevada and Northeastern California GRSG PLUPA/FEIS. The BLM and Forest Service have reviewed and used the best available science to determine Habitat Objectives and impacts of the alternatives to GRSG habitat.

Seasonal Habitat Objectives are shown in Table 2-2, Proposed Habitat Objectives for GRSG (p. 2-18 and 2-19); each objective is paired with the peer-reviewed science that supports it. The BLM and Forest Service Proposed Plan Amendment also considers documents related to the conservation of GRSG that have been released since the publication of the Draft LUPA/EIS. For example, this Proposed Plan Amendment considers the USFWS’s October 27, 2014, memorandum, “Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes”, and the USGS’s November 21, 2014, report, “Conservation Buffer Distance Estimates for Greater Sage-Grouse - A Review” (USGS 2014). Based on these documents, the BLM is proposing to designate SFAs to further protect highly

valuable habitat. It is also proposing to include lek buffer-distances when authorizing activities near leks. The BLM and Forest Service also updated the Proposed Plan Amendment to reflect new GRSG state conservation strategies, including recent state executive orders. The BLM and Forest Service have refined the Proposed Plan Amendment to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat (p. 2-16).

The agencies relied on high quality information and the best available data in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS.

See the Best Available Science response section for more detail on this topic.

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

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

The agencies developed a reasonable range of alternatives that meet the purpose and need of the Nevada and Northeastern California GRSG PLUPA/FEIS and that address resource issues identified during the scoping period. The PLUPA/FEIS analyzed six alternatives, which are described in Chapter 2, Proposed Action and Alternatives (p. 2-1 through 2-460). The Proposed Plan Amendment can be found in Section 2.6 (p. 2-15 through 2-75); the other Alternatives can be found in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-91 through 2-105) and 2.10 Detailed Description of Draft Alternatives (p. 2-110 to 2-456). A number of alternatives were also considered but not carried forward for detailed analysis; these are detailed in Section 2.11 Alternatives Eliminated from Detailed Analysis (p. 2-457 through 2-460).

The agencies have considerable discretion through grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands and National Forest System lands in an RMP/LMP. Suitable measures, which could include reduction or elimination of livestock grazing, as well as a suite of resource-specific measures, are provided for in this PLUPA/FEIS, which could become implemented in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental reviews of site-specific proposals. These

determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the RMP/LMP objectives.

All alternatives would allow the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification for permits issued by the BLM would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Livestock grazing permit modifications for permits issued by the Forest Service would be in accordance with the Range Management Regulations found in 36 CFR 222. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, site-specific NEPA and administrative processes occur. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives.

The agencies considered a reasonable range of alternatives and considered grazing restrictions in the Nevada and Northeastern California GRSG PLUPA/FEIS in full compliance with NEPA; changes to individual permits are not appropriate at the land management planning scale and would occur at the implementation stage.

See the Range of Alternatives and Best Available Science response sections for more detail on these topics.

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 USC 1711 Sec 201 (a)). The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 grants similar authority to the Secretary of Agriculture for National Forest System lands (16 USC 1600 et seq.). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. 36 CFR 222 provides that the Forest Service shall manage livestock grazing in accordance with land management plans. Further, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). The Forest Service may identify lands as “suitable” or “unsuitable” for livestock grazing through the land management process (36 CFR 219).

Although lands have been identified as “chiefly-valuable-for-grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 USC § 315) this does not negate the BLM’s authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principles of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans may include making a portion or all of the land within grazing districts, unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives.

The Taylor Grazing Act does not apply to National Forest System lands.

The Nevada and Northeastern California GRSG PLUPA/FEIS complies with the FLPMA, NFMA, Multiple-Use Sustained-Yield Act of 1960, and Taylor Grazing Act, which do not preclude the agencies from identifying some public lands not available to livestock grazing.

See the FLPMA and NFMA response sections for more detail on these topics.

[GRSG-Mitigation](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-4

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Appendix J, Mitigation, speaks only in terms of potential future mitigation through avoidance, minimization, and compensation of impacts. The CEQ definition of mitigation includes these three and also includes rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (Id. at 1508.20(c)), and reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action (Id. at 1508.20(d)). Appendix J and

the FEIS are devoid of any discussion of mitigation by rectification, reduction, or elimination of impacts. These errors and omissions are significant flaws. As the Supreme Court has emphasized, “[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effect” (Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352, 371 (1989)). The response to comments on mitigation does not address this flaw (C-19, 33, 62).

Summary:

The PLUPA/FEIS fails to analyze mitigation measures, as defined by 40 CFR 1508.20(c) and 1508.20(d).

Response:

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

Chapter 4, Section 4.2 Mitigation (Vol. 2, p. 4-3), of the Nevada and Northeastern California GRSG PLUPA/FEIS, describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with this plan, coupled with

the mitigation of those activities and the goal of a net conservation gain. In undertaking BLM and Forest Service management actions, and consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions (Appendix I, p. I-1). Given that impacts would vary by project, more detailed consideration and analysis of appropriate GRSG mitigation measures would occur on a project-specific basis.

The Nevada and Northeastern California GRSG PLUPA/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses, and minimizes other potential future impacts by restricting certain uses on the public lands. At the RMP-level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of an RMP does not directly result in any on-the-ground impacts. The BLM would also look at all appropriate mitigation measures during the decision making process for future actions in the planning area.

The Nevada and Northeastern California GRSG PLUPA/FEIS complies with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP and properly recognizes that habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas.

GRSG-Data and Inventories

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-10

Organization: Barrick Gold

Protestor: Patrick Malone

Issue Excerpt Text: The LUPA must rely on the best available science, viz. the 2015 USGS habitat maps. Furthermore, the BLM must allow project-specific field verification of and updates to the delineation of PHMAs, GMHAs, and OHMAs.

The LUPA must rely on “best available science” (LUPA at 1-24). However, the LUPA explains that the BLM updated the habitat category delineation in October 2014 based on habitat suitability modeling by the U.S. Geological Survey (the “2014 USGS Map” - LUPA at 1-5 and App. A, A-5). The 2014 USGS Map does not represent the best

available science. It includes numerous mistakes, including but not limited to inclusion of known inactive leks and areas that are dominated by pinyon-juniper scrublands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-11

Organization: Barrick Gold

Protestor: Patrick Malone

Issue Excerpt Text: In addition to using the most up-to-date maps, best available science requires that site-specific GRSG data would control to the extent that it disproves assumptions made in the maps. Indeed, the LUPA recognizes that such site-specific data can be used in future modeling efforts; but apparently limits the use of these data until they are incorporated into a new

map and adopted through plan maintenance or plan amendment (Id. at 2-85 - Action AM 1). The LUPA does not specify how frequently those updated modeling efforts will occur. More important, the LUPA does not appear to provide any mechanism for verifying the accuracy of the habitat modeling or delineation of management categories identified in Figures 1-2, 1-3, and 2-5 through ground-truthing at the project level. These shortcomings must be addressed if the LUPA is to withstand scientific scrutiny. More specifically, the LUPA must allow for site-specific information to modify the habitat category applicable to a particular proposed action, when warranted, because: (1) the project proponent should not have to comply with the onerous restrictions required in PHMA or GHMA when the habitat in the proposed project area does not qualify as PHMA or GHMA; (2) the quality of GRSG habitat in Nevada may change from one year to the next as a result of wildfire or other natural occurrences, so waiting for future modeling updates and plan revisions is insufficient; and, (3) the LUPA itself relies on the need to use “sound science” as a justification for refining the habitat delineations after the issuance of the Draft LUPA (See Id at 2-3). Sound science dictates that models require ground-truthing to ensure that they reflect reality.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-19

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Midway has identified numerous discrepancies in certain of Nevada’s GIS shape files, including the fact that the footprints for the SFAs and the mineral withdrawals are not identical (which is concerning, given that the Proposed LUPA/FEIS reads as if the SFAs and the

mineral withdrawals are one and the same) (See Exhibit H: NVMRA Map 2 - Mineral Projects, Land Status, Sagebrush Focal Areas, and Areas Recommended for Mineral Withdrawal (June 23, 2015)). Specifically, the text of the Proposed LUPA/FEIS only describes areas recommended for withdrawal from mineral entry in the context of the SFA (Proposed LUPA/FEIS at 2-2). No justification is offered for expanding the areas proposed for mineral withdrawal beyond the boundaries of the SFA. To add to the confusion, the configuration of the SFA in the shape file is different than the SFA shown in Figure 2-5

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-22

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: The SFA boundaries are arbitrary and capricious because they have little or no basis in fact or actual on-the-ground conditions. The BLM and USFS must not proceed with the SFA without first proving that the SFA are indeed comprised solely of highest-priority habitat. At a minimum, the final document should clearly provide for site-specific ground-truthing where any interference with rights under general mining laws (including, but not limited to, General Mining Law Section 22 and 30 USC § 612(b), the Surface Use Act, which guarantee the right to use and occupy Federal lands open to mineral entry, with or without a mining claim, for prospecting, mining, and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights and rights of and associated with ingress and egress) and development is proposed.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-23

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: BLM's maps are based on satellite data and usage algorithms and do not reflect site-specific vegetation mapping. In fact, Midway's site-specific mapping efforts demonstrate that the pinyon/juniper line is significantly different from that in the BLM's maps and that areas of mapped sagebrush often are degraded for actual habitat due to low shrub cover, sparse forb production, and exotic invasive plants.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-24

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Midway's site-specific mapping studies have found no GRSG or sign of GRSG in current and proposed Project areas, though experts looked specifically for both visually and using tracking dogs in 2011.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-25

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: Midway has been willing to accept GRSG population and habitat management measures, provided that reliable, scientific data supported a delineation of affected habitat. However, and with respect to Midway's Projects, USGS tracking studies have confirmed Midway's site-specific models, supporting the conclusion that GRSG have not used any of the habitat within the Project areas over the past three years (i.e., 2012-2015).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-16

Organization: Western Exploration

Protestor: Carmen Fimiani

Issue Excerpt Text: WEX has identified numerous discrepancies in certain of Nevada's GIS shape files, including the fact that the footprints for the SFAs and the mineral withdrawals are not identical (which is concerning, given that the Proposed LUPA/FEIS text reads as if the SFAs and the mineral withdrawals are one and the same. See Exhibit H: NVMRA Map 2- Mineral Projects, Land Status, Sagebrush Focal Areas, and Areas Recommended for Mineral Withdrawal (June 23, 2015)). Specifically, the text of the Proposed LUPA/FEIS only describes areas recommended for withdrawal from mineral entry in the context of the SFA. No justification is offered for expanding the areas proposed for mineral withdrawal beyond the boundaries of the SFA. To add to the confusion, the configuration of the SFA in the shape file is different than the SFA shown in Figure 2-5 of the Proposed LUPA/FEIS which all are new and improperly added to the Proposed LUPA/FEIS as described in more detail below.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-20

Organization: Western Exploration

Protestor: Carmen Fimiani

Issue Excerpt Text: The SFA boundaries are arbitrary and capricious because they have little or no basis in fact or actual on-the-ground conditions. The BLM and USFS must not proceed with the SFA without first proving that they are indeed comprised solely of highest-priority habitat. At a minimum, the final document should clearly provide for site specific ground-truthing where any interference with rights under the Mining Law (including, but not limited to Section 22 rights of entry and occupancy

and for exploration) and development is proposed.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-13

Organization: Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The information from the LR2000 database in Table 1 clearly shows that the footprint of mineral activities in Nevada, and in the other western states with GRSG habitat, is very limited compared to the size of the habitat area. Consequently, the impact of mineral activities on GRSG habitat is similarly limited. Unfortunately, the Proposed Plan in the FEIS/Proposed LUPA to withdraw roughly 2.8 million acres of land from mineral entry clearly demonstrates that BLM and USFS completely ignored this important information on the acres within Notices of Intent and Plans of Operation that we provided in January 2014.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-15

Organization: Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The BLM acknowledges that some of the areas proposed for withdrawal do not have important habitat – or even habitat at all. This raises the question of what, if any, science exists to support identification of these areas proposed for withdrawal.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-18

Organization: Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: Finally, we note discrepancies with the shape files the BLM has provided on its website for the SFA and areas proposed for mineral withdrawal. NVMRA Map 2 overlays the shape files on for the SFA layer and the proposed for mineral withdrawal layer cover. NVMRA Map 2 reveals that the areas delineated in the SFA shape file and the areas proposed for mineral are different. There are areas proposed for mineral withdrawal that are outside of the SFA boundaries. As shown on NVMRA Map 2, the SFA are confined to BLM-administered lands and the areas proposed for mineral withdrawal outside of the SFA are on USFS-administered lands.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-19

Organization: Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The FEIS/Proposed LUPA states that the SFA are comprised of GRSG “strongholds.” Presumably, this description of the SFA pertains to the BLM-administered lands. There is no discussion in the document of why the USFS-administered lands are being recommended for mineral withdrawal. We note that generally speaking, USFS-administered lands are typically higher elevation lands compared to BLM-administered lands and are not as suitable for GRSG habitat due to the presence of trees (which GRSG avoid).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-15

Organization: Carlin Resources

Protestor: Laura Granier

Issue Excerpt Text: Waterton has identified numerous discrepancies in certain of Nevada’s GIS shape files, including the fact that the footprints for the SFAs and the

mineral withdrawals are not identical (which is concerning, given that the Proposed LUPA/FEIS reads as if the SFAs and the mineral withdrawals are one and the same). (See Exhibit 6: NVMRA Map 2 - Mineral Projects, Land Status, Sagebrush Focal Areas and Areas Recommended for Mineral Withdrawal (June 23, 2015)). Specifically, the text of the Proposed LUPA/FEIS only describes areas recommended for withdrawal from mineral entry in the context of the SFA (Proposed LUPA/FEIS at 2-2). No justification is offered for expanding the areas proposed for mineral withdrawal beyond the boundaries of the SFA. To add to the confusion, the configuration of the SFA in the shape file is different than the SFA shown in Figure 2-5

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-18

Organization: Carlin Resources

Protestor: Laura Granier

Issue Excerpt Text: The SFA boundaries are arbitrary and capricious because they have little or no basis in fact or actual on-the-ground conditions. The BLM and USFS must not proceed with the SFA without first demonstrating that the SFA are indeed comprised solely of highest-priority habitat. At a minimum, the final document should clearly provide for site-specific ground-truthing where any interference with rights under general mining laws (including, but not limited to, General Mining Law Section 22 and 30 USC § 612(b), the Surface Use Act, which guarantee the right to use and occupy Federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress) and development is proposed.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-2

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: In fact, the management directives and measures in the Proposed LUPA/FEIS are based on and merely supported by estimates, assumptions, approximations, hypotheses, and projections that do not reflect reproducible or supportable data.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-6

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: CRC has identified numerous discrepancies in certain of Nevada's GIS shape files, including the fact that the footprints for the SFAs and the mineral withdrawals are not identical, which is concerning given that: 1) the Proposed LUPA/FEIS text reads as if the SFAs and the mineral withdrawals are one and the same; and 2) some figures suggest that areas identified for withdrawal actually stretch beyond the SFA footprint, despite those boundaries only being described in the text in the context of the SFA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-9

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: GRSG do not use the LUPA defined space around each lek uniformly and some spaces in this buffer are used not at all. Just in White Pine County, we can point out many discrepancies between what is mapped as habitat versus what is on the ground that cannot be refuted as being non-GRSG habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-05-1

Organization: Nevada Cattlemen's Association

Protestor: Ron Torell

Issue Excerpt Text:

Information in Chapter 3: Affected Environment, should be updated to include the gamut of available information from subject matter experts in ecology, range and grazing management, plant/herbivore interactions, grazing system design, and state and transition model development and implications, as all these factors bear heavily on the success of efforts to improve habitat for GRSG and provide the diversity of available information and science on management flexibility needed to be successful over such a wide landscape scale.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-7

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This Northern Great Basin – Snake River Plain Ecoregional Assessment publication (BLM 2010) was completed in 2009, and the BLM should reference the findings of this report as they apply to the planning area, in order for the BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy. This study included a complete land cover mapping exercise including analysis of human footprint, which would have been useful to include in the Affected Environment section of the EIS (Figures 12 and 13 of this publication). BLM 2010 at 19 specifically addresses GRSG habitat risk from cheatgrass invasion. The BLM must incorporate the findings of this study into its

EIS.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-73

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS fail to adequately characterize conditions, including the presence and extent of threats in the planning area. As previously discussed, supra V.A., mining is not a significant threat to GRSG range-wide or within the planning area, and comprises just a fraction of the 7% total disturbance in the ecoregion. The failure by BLM/USFS to appropriately characterize the threats to each population is partly a result of their reliance on the COT Report. AEMA also contends that the population trends used to support the position that GRSG populations are declining in the planning area (See Section 3.2) is flawed, and diminishes the usefulness and adequacy of Section 3.2 of the PLUPA/FEIS. The BLM/USFS fundamentally and erroneously ignore accurate population data and ignore natural population fluctuations creating a narrative that assumes GRSG populations are in decline despite contrary evidence. Such assertions are without basis given the status of GRSG populations today.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-77

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Critical information on natural population fluctuations and the factors that drive them such as weather patterns and survival rates should be critically examined in the FEIS/Proposed LUPA and reflected in the Proposed Plan.

However, the FEIS/Proposed LUPA does not recognize the importance of naturally occurring variables such as precipitation and temperature fluctuations, which is a glaring omission in the Proposed Plan. Instead, the BLM/USFS blindly assume that long-term population trends can be controlled through restrictions on human activity and curtailing multiple uses of public lands, which is a critically flawed assumption. Consequently, the land use restrictions in the Proposed Plan, which are based solely on the unfounded premise that restricting human activities will benefit GRSB, are not scientifically justifiable and have a low likelihood of actually GRSB and its habitat.

Issue Number: PP-NVNORTHEASTCA-GRSB-15-08-78

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS decision to measure trends at multiple scales beginning with the “trend lek,” which is not chosen randomly, and is used to determine cluster trend, and then overall trend, could introduce bias in the resulting data. While the intent in measuring at different scales is to yield increased statistical precision, and account for limiting factors at different scales, the fact that the trend lek is not random undermines the entire intent, because it creates bias in the data. In other words, because the data used to measure population trends is not based on random sampling the resulting trend will not be representative.

Issue Number: PP-NVNORTHEASTCA-GRSB-15-22-10

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: We are aware that the habitat maps being developed in concert with the Nevada Sagebrush Ecosystem Council and USGS (Dr. Pete Coates) has yet to have the “infrastructure” layers added to the modeling. Once this layer is added to the habitat modeling, substantial changes will occur in many places, such as around the City of Ely as we noted above. The LUPA acknowledges that there are many areas with simply no good data regarding GSB use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available”. Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks, no telemetry locations, no infrastructure layers, and no Ecological Site Description (ESD) or current state of the ESD with many of these areas having ecological thresholds have been crossed in which the GRSB habitat objectives simply do not and cannot apply. The LUPA identified process to revise and update GRSB habitat mapping is too vague, appears overly cumbersome and bureaucratic, and pushes off what should be done now into the future at the detriment of our economy and industries that need assurance at the local, project level. Thus, the likelihood of changes based in reality being implemented in a streamlined manner or at all, especially if changes are substantial, is minimal. The language in needs to be more specific streamlining the process and outlining the exact steps to be taken for project-level planning use.

Issue Number: PP-NVNORTHEASTCA-GRSB-15-26-3

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The plan also should not assume that designated priority habitat includes all winter habitat. Priority habitat

areas, based on Doherty et al. (2010) and similar data and mapping, are generally established around GRSG leks. Connelly et al. (2004: 4-19) (unpublished) noted that females migrate an average of 9.9 km between summer and winter habitat. Fedy (2012: 1066) reported average summer-to-winter migration of 21.18 km and average nest-to-winter migration of 12.55 km in north-central Wyoming. Manier et al. (2013: 26) summarized that a majority of GRSG move 10 mi from summer to winter locations with movements of up to 90 mi (145 km) documented.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-18

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: We have major concerns about the adequacy and accuracy of the maps used to identify and designate GRSG habitat, namely PHMA, GHMA, and SFA. While we appreciate the pairing of the LUPA habitat maps with the Nevada habitat map, even a cursory review of the maps with some local, on-the-ground knowledge, highlights the huge areas of discrepancy between actual and mapped GRSG habitat. As a specific example, there is a large area in southern Eureka County designated as PHMA and would be subsequently held to the disturbance caps. This area includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields and irrigation systems, and hay barns, among other infrastructure. It is beyond puzzling how this area can be not only GRSG habitat, but “core” GRSG habitat. This example provides a perfect example of how the lek buffers are arbitrary and not applicable in

many circumstances as we note elsewhere in this Protest letter. GRSG do not use the LUPA defined space around each lek uniformly, and some spaces in this buffer are used not at all. Just in Eureka County, we can point out many discrepancies between what is mapped as habitat versus what is on the ground that cannot be refuted as being non-GRSG habitat.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-35-2

Organization: Multiple Individual
Protesting Parties

Issue Excerpt Text: Coates et al 2014, like all models based upon remote sensing, cannot be considered a reliable model until and unless it has not been ground-truthed. As stated herein above, very large areas of “priority” and “general” (and presumably Coates’ “core”) habitat are not dominated by sagebrush. Additionally, Coates et al 2014 admittedly added perhaps millions of acres of sagebrush and non-sagebrush habitats that are outside the range of known GRSG habitat and occupation, by their exercise to include areas outside PMUs identified by the States.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-32-1

Organization: FIM Corporation, Farming
and Livestock

Protestor: Fred Fulstone

Issue Excerpt Text: The LUPA/FEIS fails to clearly state that the goal of your plan is to have more GRSG in the future. Your plan must state how many GRSG are present and include statistically sound monitoring to determine how many more GRSG are present at a future date. In accordance with NEPA, if your plan and your management activities fail to result in an increased number of GRSG it is a bad plan that must

be discarded and replaced with a plan that works. Federal courts have already ruled that use of habitat as a proxy for GRSG populations is not acceptable. The agencies must go outside and count the birds to be scientifically sound in decision making. Agencies can no longer use habitat description as a substitute for knowing how many birds are present before and after a management action is undertaken (See *Native Ecosystems Council v. Tidwell*, 599 F.3d 926 (9th Cir. 2010)).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-19

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: We are aware the habitat maps being developed in concert with the Nevada Sagebrush Ecosystem Council and USGS (Dr. Pete Coates) have yet to have the “infrastructure” layers added to the modeling. Once this layer is added to the habitat modeling, substantial changes will occur in many places, such as around the Town of Eureka as we noted above. The LUPA acknowledges there are many areas with simply no good data regarding GRSG

use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available”. Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks, no telemetry locations, no infrastructure layers, and no Ecological Site Description (ESD) or current state of the ESD with many of these areas having ecological thresholds already crossed, in which the GRSG habitat objectives simply do not and can not apply. The LUPA identified process to revise and update GSG habitat mapping is too vague, appears overly cumbersome and bureaucratic, and pushes off what should be done now into the future at the detriment of our economy and industries that need assurance at the local, project level. Thus, the likelihood of changes based in reality being implemented in a streamlined manner or at all, especially if changes are substantial, is minimal. The language needs to be more specific, streamlining the process and outlining the exact steps to be taken for project-level planning use. A Supplemental EIS and Revised Proposed LUPA must be developed to address these issues with the habitat delineations.

Summary

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

- incorrectly identifying habitat and failing to identify winter habitat;
- failing to include site-specific data;
- failing to reconcile SFA and mineral withdrawal boundaries;
- providing GIS information that conflicts with the PLUPA/FEIS text; and
- failing to incorporate the Northern Great Basin – Snake River Plain Ecoregional Assessment.

Response:

Before beginning the Nevada and Northeastern California PLUPA/FEIS and throughout the planning effort, the BLM and the Forest Service considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed

management decisions at the land-use plan level. The data needed to support broad-scale analysis of the 55 million acre planning area are substantially different than the data needed to support site-specific analysis of projects. The LUPA/EIS data and information is presented in map and table form and is sufficient to support the broad scale analyses required for land use planning. Sections 1.1.2 and 1.1.3 and Appendix A outline the information used to determine habitat areas for the Nevada and Northeastern California PLUPA/FEIS. Data sources include the U.S. Fish and Wildlife Service, U.S. Geological Survey, State of California, State of Nevada, BLM, and the Forest Service. In addition, a variety of literature and reports were used to determine habitat areas, including the COT Report and the NTT Report. Winter habitat is addressed in both Chapter 3 (pp. 3-5, 3-7, 3-9, 3-11 through 3-13, 3-36) and Chapter 4 (pp. 4-7, 4-14, 4-17, 4-28, 4-31, 4-32, 4-38, 4-50, 4-5).

On October 27, 2014, the USFWS provided the BLM and Forest Service a memorandum titled “Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes.” The memorandum and associated maps provided by the USFWS identify areas that represent recognized “strongholds” for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. Within these areas, the BLM and Forest Service identified Sagebrush Focal Areas (SFAs). This memorandum provides information in addition to that which was already considered in the Draft LUPA/FEIS, aiding the BLM and Forest Service in refining management within PHMAs in the PLUPA/FEIS.

Site-specific NEPA analysis on use authorizations would include project level adaptive management responses to address changed conditions in GRSG habitat and population trends, when necessary or as new data becomes available (SSS 10, p. 2-27; Section 2.7.1, Adaptive Management Plan).

As such the BLM and Forest Service have obtained information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives with regard to GRSG habitat.

Maps 2-5 and 2-34 in the Nevada and Northeastern California PRMP/FEIS are correct regarding the locations of SFAs and areas proposed for mineral withdrawal. The shapefile referenced in the protest did not correctly display Forest Service managed lands proposed for mineral withdrawal on Forest Service managed lands. The shapefile also incorrectly displayed proposals for mineral withdrawals on lands managed by the U.S. Fish and Wildlife Service. That shapefile has been corrected and is now available at: <http://on.doi.gov/1Oo89r3>.

The Nevada and Northeastern California PLUPA/FEIS incorporate information from the Rapid Ecological Assessments appropriate to the planning area. The Central Basin and Range and the Mojave Basin and Range Rapid Ecological Assessments in a variety of places throughout the PLUPA/FEIS (pp. 3-27, 3-30 through 3-33, 3-37, 3-38 through 3-41, 3-182 through 3-186, 4-382 through 4-386). As such, the BLM has considered relevant information from the relevant Rapid Ecological Assessments.

Administrative Procedure Act

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-22

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Under the Administrative Procedure Act agency decisions may be set aside if they are found to “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” (5 USC § 706(2)(A), hereinafter “APA”). Under this standard of review the agency must demonstrate that its decision is based upon a “reasoned evaluation of the relevant factors” (Marsh v. Or. Natural Res. Council, 490 U.S. 360, 378, 109 S. Ct. 1851, 104 L. Ed.2d 377 (1989)), including a rational connection between the facts found and the choice made” (Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)). The § 3809 regulations have a proven track record of effectively mitigating impacts to GRSG habitat, as described above. Thus, the § 3809 regulations, and the 36 CFR 228A regulations applicable to mineral activities on National Forest System lands clearly provide the necessary adequate existing and enforceable regulatory mechanisms to conserve GRSG and its habitat; there is no need for BLM to amend their RMPs/LUPs for GRSG conservation with respect to locatable mineral operations.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-37

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Agency decisions may be set aside if they are found to be

“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” (APA, 5 USC § 706(2)(A)). In order for an agency decision to not be found arbitrary and capricious, decisions must be founded on a “reasoned evaluation of the relevant factors” (Marsh v. Or. Natural Res. Council, 490 U.S. 360, 378, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989)). As raised in our DLUPA/DEIS Comment Letter, and discussed in detail below, the Proposed Plan arbitrarily imposes a completely new regulatory framework without providing a reasonable explanation for doing so, and is therefore arbitrary and capricious.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-7

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The proposed withdrawals within SFAs are over 2.8 million acres, 15 times larger than the total footprint of existing mining activities in the state of Nevada. Therefore, the proposal to withdraw over 2.8 million acres of land in Nevada from mineral entry is grossly out of proportion with the maximum potential impact that mineral activities might have on GRSG and its habitat. Consequently, the proposed withdrawal within SFAs is not justified, is unreasonable and unnecessary, and is, therefore, arbitrary and capricious.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-8

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The Agencies have not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions

associated with how the withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-3

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the Agencies’ adoption of several elements of the Proposed LUPA, specifically, the compensatory mitigation requirement, the “net conservation gain” standard, and conservation measures that include lek buffer distances, RDFs, and density and disturbance caps, because each constitutes a substantive rule that the Agencies cannot apply before they complete the formal rulemaking procedures required by the APA.⁴ See 5 USC § 553. Additionally, the Trades protest the limitations on modifications and waivers of No Surface Occupancy (NSO) stipulations in PHMA because they improperly amend a BLM regulation before BLM has completed formal rulemaking procedures.⁵ Because the land use planning process is not equivalent to a formal rulemaking, these provisions of the Proposed LUPA are void until the Agencies adopt these rules in accordance with APA rulemaking procedures.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-4

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. First, the Proposed LUPA prohibits waivers and modifications despite the regulation’s language that stipulations “shall be subject to modification or waiver.” Second, the Proposed LUPA expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and the Nevada Department of Wildlife or California Department of Fish and Wildlife. These direct contradictions reflect that BLM is attempting to alter its regulations through the LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-12

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The Agencies have not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-28-10

Organization: Quantum Minerals, LLC

Protestor: Everett Gustin

Issue Excerpt Text: The arbitrary extensions of PHMA to include the Project area are arbitrary and capricious, and are not based on current or accurate scientific findings. Conclusions in the PRMP/FEIS are arbitrary and capricious because they ignore

site-specific data on habitat quality and/or population numbers, instead focusing on landscape-scale maps that are not supported with new data. Specifically, if Quantum was allowed the opportunity to participate in public comments, it would have presented data in response to the DEIS (as well as identified more recently) that demonstrates the BLM's analyses are outdated, flawed,

and unsupported by empirical evidence. Quantum's site-specific studies, verified by the USFS, demonstrate that no GrSG scat, nests, eggshells, feathers, or tracks have been found during studies conducted in the Project area since at least 2010.

Summary:

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

- Implemented a number of changes to management practices - including a “net conservation standard,” required design features, lek buffer distances, and density and disturbance caps – without first completing a formal rulemaking process;
- Arbitrarily and capriciously imposed a new “regulatory framework” without a reasoned explanation, including recommending withdrawals from mineral development that overstate by an order of magnitude the potential for surface disturbance by mineral development’ and
- Failed to document rationale for withdrawal and “de facto” withdrawal decisions.

Response:

The Federal Land Policy and Management Act details the BLM’s broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. (Refer to section 1.4.2 of the PLUPA/FEIS for a discussion of corresponding Forest Service policy.) A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Nevada and Northeastern California GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.3, Purpose and Need). The BLM’s and Forest Service’s planning processes respectively allow for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

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

The introduction to this RMP Amendment, Section 1.1.1, details how Director-approved

guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

Finally, the protestors are incorrect that the Proposed LUPA's waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. That regulation does not require BLM to provide for waivers or modifications but instead provides regulatory limits on the BLM's ability to allow waivers or modifications if BLM determines (e.g., consistent with the plan and its regulatory authority) that it wishes to grant one.

The Nevada and Northeastern California GRSG PLUPA/FEIS does not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally, and the process followed for this planning effort specifically, provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA. The proposed plan describes the basis for its proposed actions and the science upon which it is based; it is not arbitrary or capricious under the APA – which, regardless, is the standard of review of agency action in federal court, not BLM's administrative protest procedures. Additional rationale will be provided in the Record of Decision.

For more discussion of withdrawals and “de facto” withdrawals, please see protest summaries and responses in FLPMA and Solid Minerals sections of this report.

Environmental Justice

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-58

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM must take into account the disproportionately high adverse impact to low income populations in the planning area and throughout the State of Nevada as a result of restrictions and prohibitions to locatable mineral development.

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS failed to consider and analyze environmental justice for low income populations throughout the State of Nevada as a result of restrictions and prohibitions to locatable mineral development.

Response:

Chapter 3 of the Nevada and Northeastern California GRSG PLUPA/FEIS succinctly addresses Environmental Justice (p. 3-227 through 3-231) and provides data detailing population, race, and ethnicity (Table 3-77, p. 3-229). As described in Chapter 4 of the Nevada and Northeastern California GRSG PLUPA/FEIS, (*Section 4.21.4, (p. 4-439)*). The BLM and the Forest Service considered information on the presence of minority and low-income populations (from Chapter 3) along with additional information, described in this section, to assess the potential for the

alternatives to result in disproportionately high and adverse impacts on minority or low income populations. The Chapter 4 analysis clearly states, “Based on available information about the nature and geographic incidence of impacts, the BLM and the Forest Service identified a potential concern about disproportionately high and adverse impacts on low income populations in Lassen County (California), White Pine County (Nevada) and possibly northern portions of Nye County (Nevada), related to economic and social effects. This is based on relatively high poverty rates (14.2 percent for Lassen, 15.5 percent for White Pine, and 18.9 percent for Nye County) and the identification of these counties as experiencing potentially substantial reductions in employment or earnings associated with livestock grazing in Alternatives C and F, when compared to Alternative A.

Thus it was concluded based on available evidence, there would not be disproportionately high and adverse impacts on other counties, nor would there be disproportionately high and adverse impacts associated with Alternatives A, B, D, E or the Proposed Plan (p-4-442).

The study and analysis of environmental justice as described and analyzed in the Nevada and Northeastern California GRSG PLUPA/FEIS is consistent with the guidance in Appendix D (p. 11) in the BLM’s land Use Planning Handbook (H-1601-1).

The BLM and Forest Service considered relevant information for the consideration of the Environmental Justice impact analysis.

[Energy Policy Act of 2005](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-31

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed LUPA should clarify that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed LUPA. The Energy Policy Act of 2005 requires the BLM to approve applications for permits to drill if the requirements of NEPA “and other applicable law” have been completed (30 USC § 226(p)(2)). Thus, BLM can only defer decisions on permits when the requirements of NEPA “and other applicable law” have not been met (See Id.). The BLM’s planning authority conferred through FLPMA is not “other applicable law” that

allows BLM to defer development due to the density and disturbance limitations on existing federal leases because RMPs developed pursuant to FLPMA are subject to valid existing rights. See Colo. Env’tl Coal., et al., 165 IBLA 221, 228 (2005). At most, the BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. The BLM should revise the Proposed LUPA to clearly state that BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-34

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The requirement that lessees mitigate impacts to GRSG to provide a “net conservation gain” is more restrictive than necessary. The Agencies could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 USC § 1732(b). The Agencies also considered requiring that mitigation achieve “no net loss” of GRSG habitat as part of the Nevada Plan alternative, which, though inconsistent with FLPMA, is a less restrictive standard than “net conservation gain” (See Draft LUPA, Chapter 2, Table 2-4 at 42, Goal E-SSS 1; Proposed LUPA at 2-97). Because the requirement that mitigation achieve a “net conservation gain” is inconsistent with EAct, the Agencies must revise the Proposed LUPA to remove the “net conservation gain” requirement, or adopt the more reasonable “no net unmitigated loss” standard proposed in the Nevada Plan alternative.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-35

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in Section IX.B, *infra*. Furthermore, in the Final EIS, the Agencies did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG (See Proposed LUPA, app. B). Because the lek buffer distances are unnecessarily restrictive, the Agencies must revise the Proposed LUPA to identify measures that comply with the directives of EAct.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-12-36

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the requirement that lessees limit noise from discretionary activities during construction, operation, and maintenance to not exceed 10 decibels above ambient sound levels (not to exceed 20-24 dB) at occupied leks, on BLM lands from two hours before to two after official sunrise and sunset during breeding season and on National Forest System lands from 6 p.m. to 9 a.m. during lekking season, is overly restrictive, particularly because the noise limitation is not justified by science (See Proposed LUPA/Final EIS at 2-23, 2-61). The Agencies should have analyzed the effects of less stringent noise limitations. Indeed, even the USGS has observed that the effects of noise on the GRSG are not well understood. See USGS Report at 91; see also Patricelli, G.L. et al., “Recommended Management Strategies to Limit Anthropogenic Noise Impacts on Greater Sage-Grouse in Wyoming, Human-Wildlife Interactions” 7:230-249. Furthermore, the threshold of 20 – 24 decibels is unreasonable. The Occupational Safety & Health Administration’s (OSHA) sound level scale discloses that ambient noise levels at the North Rim of the Grand Canyon average 25 dBA and that a “soft whisper” at two meters is approximately 35 dBA. See OSHA, Occupational Noise Exposure.²⁹ Accordingly, EAct required the Agencies to consider and adopt less restrictive measures.

Summary:

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

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

Response:

The Nevada and Northeastern California GRSG PLUPA/FEIS does not propose, deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6.2 of the PLUPA/FEIS beginning on page 2-48.

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

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

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

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for Greater Sage-Grouse - A Review” (USGS 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The Proposed Alternative in the Nevada and Northeastern California GRSG PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the report during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternatives C and F) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, elimination of grazing. For

example, Alternative C proposed closure to fluid, salable, and non-energy leasable minerals in all GRSG habitats. It also included elimination of grazing in all habitats. In Alternative C, all GRSG habitats were excluded for ROW development. Alternative D proposed exclusion for solar and wind development in PHMA and GHMA and also proposed closures for salable and non-energy leasable minerals. Alternative F proposed closure to fluid and salable minerals in PHMA and GHMA. Alternative F also proposed exclusion areas in PHMA and GHMA for solar, wind and all ROWs. The impacts of the lek buffers on GRSG are disclosed in Section 4.4 of the Nevada and Northeastern California GRSG PLUPA/FEIS.

Similarly, a range of alternatives was developed around noise restrictions, with most alternatives not containing any noise restrictions. The impacts of noise restrictions on GRSG are disclosed in Section 4.4. of the Nevada and Northeastern California GRSG PLUPA/FEIS.

Based on the impacts analysis performed, the BLM and FS determined that the stipulations, conditions of approval, and best management practices considered, and included in the PLUPA/FEIS are not overly restrictive, and are necessary to meet the goals and objectives of the PLUPA/FEIS, and do not violate the Energy Policy Act.

The guidance in the Nevada and Northeastern California GRSG PLUPA/FEIS to provide for a net conservation gain is not a stipulation, condition of approval, or best management practice that will be applied to leases or Applications for Permit to Drill. Instead, it is part of the mitigation strategy as a response in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. As it relates to mitigation, page 2-88 through 2-89 of the PLUPA/FEIS state:

“Consistent with the proposed plan's goal outlined in Goal SSS 1, the intent of the Nevada and Northeastern California GRSG Sub-region Proposed LUPA/Final EIS is to provide a net conservation gain to the species. This will happen in all GRSG habitat. The BLM, in undertaking management actions, and consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation, will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. The BLM will achieve this by avoiding, minimizing, and compensating for impacts and by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840—Special Status Species Management, Section .02B, which states “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA” (and Forest Service Manual 2672.1, which states: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”).

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

Air Quality Climate Change Noise

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-9

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: The requirement that noise be “limited to less than 10 decibels” above ambient conditions is arbitrary and is not supported by current scientific literature. Currently there is no scientific consensus on the level of noise that could negatively impact GRSG. A low but constant noise generated from a project might be 10 decibels or above, but still be within a comfortable decibels range for GRSG (e.g., 50 decibels equates to a quiet urban daytime environment; 40 decibels is a quiet urban nighttime environment). In addition, it will be difficult to determine whether a 10 decibel increase is resulting from project-related activities or non-project related activities. The WLC Kings Valley Lithium Project Stage 1 site is immediately adjacent to an existing highway (Nevada State Route 293) and Pole Creek Road that has significant random traffic, and the immediate project area receives significant off-road vehicle use from the public and livestock grazing permittees. Therefore, it will be difficult (if not impossible) to distinguish whether a 10 decibel increase is associated with WLC's project and what noise is non-project related.

The State Director's decision regarding noise limitation of 10 decibels and monitoring requirements is further believed to be wrong because: The BLM has acknowledged (as cited below) that impacts to GRSG from noise and activity are uncertain, and the threshold of 10 decibels above ambient noise levels is arbitrary and not scientifically proven. Keeping project-related noise to within or below the 10 decibels threshold

limit may be unattainable (e.g., by limiting the types of specialty equipment use or hours of operation) and, therefore, unlawfully and unreasonably interfere with rights under the General Mining Law of 1872. The WLC Kings Valley Clay Mine Environmental Assessment DOI-BLM-NV-WO10-2013-0046- Environmental Assessment Finding of No Significant Impact (FONSI) (FONS! Page 4) states “There is some uncertainty associated with the affects that increased noise and activity have on GRSG. Recent studies have shown that increased noise and activity affects the behavior of GRSG (Blickley and Patrice/Ii 2010; Blickley, Blackwood, and Patrice/Ii 2011; Blickley et. al. 2012), however, the authors also acknowledge the uncertainties about how much noise or activity results in a negative impact (Blickley, Blackwood, and Patrice/Ii 2011; Patrice/Ii, Blickley, and Hooper 2013). Similarly, while establishing a general threshold for impacts at 20 dB above ambient, the BLM has acknowledged in the EA that impacts to GRSG from noise and activity are uncertain”. Per Ambrose and Florian (Page 25, 2013), “No current available literature suggest a specific sound levels above which would significantly impact GRSG; however, given the elaborate audio displays of this species, there is almost certainly some sound level above which negative impacts occur. That level is currently unknown” (As stated in: Sound Levels of Gas Field Activities at GRSG Leks, Pinedale Anticline Project Area, Wyoming, April 2013. September 22, 2013. Prepared by Skip Ambrose and Chris Florian, Sandhill Company, Castle Valley, Utah).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-71

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: A 10 dBA limit is a one-size-fits-all recommendation that is not representative of local conditions including topographic barriers that attenuate noise and is unrealistically low for windy areas where the research was conducted. The proposed noise levels are unsupported by any sort of unbiased, systematic data collection across seasons. They are made without any knowledge of what thresholds would limit GRSG reproduction or survival.

The BLM/USFS' treatment of noise is completely inconsistent with the current background of 39 dBA background plus the 10 decibel threshold. This overly restrictive threshold is based on a questionable study referenced directly in the NTT Report and will be difficult, if not impossible to

achieve. Specifically, there is no peer reviewed data that supports a background at dawn for a 20-24 dBA background level (see PLUPA/FEIS at 2-61).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-11

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: It suggests (without compelling explanation and contrary to experience and the physics of acoustics) that low-frequency mining noise does not diminish as it travels away from its source (Proposed LUPA/FEIS at 4-16). Moreover, the source cited in the Proposed LUPA/FEIS to support this claim (i.e., Amstrup and Phillips 1977) is an internal governmental report; was never peer-reviewed; and, to the best of Midway's knowledge, is no longer available in public libraries or on-line.

Summary:

The BLM and USFS propose overly restrictive noise thresholds that are not based on unbiased, peer reviewed data. The proposed thresholds do not reflect local conditions and will be extremely difficult to achieve. Also, information on mining noise in the PLUPA/FEIS was never peer reviewed.

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 federal agencies such as the BLM and USFS 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 Nevada and Northeastern California GRSG PLUPA/FEIS used the best available information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB. The PLUPA/FEIS discusses impacts

from noise throughout Chapter 4 for each resource. For example in Chapter 4, page 4-16, the PLUPA/FEIS states that, “Recent research has demonstrated that noise from natural gas development negatively impacts GRSG abundance, stress levels, and behaviors (Patricelli et al. 2013).” The PLUPA/FEIS goes on to discuss research from Patricelli et al. 2013 and. Blickley et al. 2013, where male GRSG produce acoustic signals in a similar frequency range, between 0.2 and 2.0 kilohertz, so the potential exists for industrial noise to mask GRSG communication and, thus, interfere with the ability of females to find and choose mates (Patricelli et al. 2013). Blickley et al. (2013) found immediate and sustained declines in male attendance on noise leks (29 percent decline on drilling noise leks and 73 percent decline on traffic noise leks relative to control leks) and evidence of similar declines in female attendance. These results suggest a strong noise avoidance in male and, possibly, female GRSG. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the PLUPA/FEIS, coupled with the mitigation of those activities and the goal of a net conservation gain. Therefore, the PLUPA/FEIS used the best available science to determine buffer and distance limits. (Nevada and Northeastern California GRSG PLUPA/FEIS, Chapter 4)

The Nevada and Northeastern California GRSG PLUPA/FEIS includes a bibliography and reference section in Chapter 7 of the FEIS, which lists information considered by the BLM in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS planning effort.

The BLM and USFS used the best available science when developing noise restrictions in the Nevada and Northeastern California GRSG PLUPA/FEIS planning effort.

ACECs

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-20

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and

important values will be protected absent such designation. Where BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs, yet has instead developed a new, less-restrictive designation for them, the BLM has failed to put designation of ACECs first, in violation of FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-18-16

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: FLPMA requires BLM to ‘give priority’ to the designation of ACECs in the planning process and that has not happened here. The agencies failure to designate a system of ACECs and

Zoological Areas - the most powerful land use conservation tool in the toolbox - to protect sage-grouse and their habitats in this plan amendment process is especially troubling given that the proposed management standards do not comply with best available science. Designating protected areas with minimal disturbance allowed

could have helped offset impacts from authorized activities to GRSG and GRSG habitats outside those protected areas. It would have provided a surety of conservation that is sorely needed if the purpose and need for this planning effort is to forestall ESA listing for the GRSG.

Summary:

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

Response:

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

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

The Nevada and Northeastern California GRSG PLUPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Nevada and Northeastern California GRSG PLUPA/FEIS analyzed special management areas that would fully protect relevant and important values of each potential ACEC in at least one alternative. Section 3.14 described the current conditions for special designations, and Table 3-56 showed all current ACECs and how much they overlapped with the designations contemplated in the LUPA. Additionally, Section 2.4, Alternatives Development Process, for the Nevada and Northeastern California Greater Sage-Grouse LUPA describes how the BLM has refined the Proposed Plan to provide a layered management approach - including GHMAs, OHMAs, PHMAs, and SFAs - to offer the highest level of protection for greater sage-grouse in the most valuable habitat.

The BLM adequately considered the protection of relevant and important values in the Nevada and Northeastern California GRSG PLUPA/FEIS.

Solid Minerals including Mining Law of 1872

Issue Number: PP-NVNORTHEASTCA-GRSG-15-01-1

Organization: PilotGold USA, Inc.

Protestor: Vance Spalding

Issue Excerpt Text: The FEIS Proposed Plan includes withdrawal of 2.7 million acres of public land from mineral location under the General Mining Law of 1872 (Section 4.15.2, page 4-310). Although expansive mineral withdrawals were considered as alternatives in the Draft EIS, this specific withdrawal was not part of the Draft EIS Proposed Plan. The BLM did not provide adequate notice to stakeholders that this withdrawal would become part of the FEIS Proposed Plan.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-01-2

Organization: PilotGold USA, Inc.

Protestor: Vance Spalding

Issue Excerpt Text: Pilot Gold owns the Viper Exploration Project which is situated within the proposed withdrawal area. The Viper Exploration Project, located about 60 miles northeast of Wells, Nevada (Attachment 2), consists of 65 federal lode mining claims on BLM-administered land, federal lode mining claims on a Stock Raising Homestead Entry Patent (private surface), and 2,054 acres of privately held mineral rights. In 2011, Pilot Gold made a bulk tonnage style gold/silver discovery on the Viper project. Pilot Gold holds active BLM Notice of Intent NVN-088830 to conduct further exploration. Since 2010, Pilot Gold and its predecessor have spent \$1million to develop and hold the Project. Under the General Mining Law of 1872, Pilot Gold's existing claims give us the right to use the surface to explore for minerals,

but the proposed withdrawal will prevent us from expanding the project.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-17

Organization: Assistant General Counsel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: The LUPA's actions regarding sage-grouse habitat screening criteria, lek buffers, seasonal restrictions, compensatory mitigation, and consultation with the Sagebrush Ecosystem Technical Team require clarification to avoid interfering with rights under the Mining Laws and the BEA. As a guiding principle, the LUPA must recognize that, under the Mining Laws, the economics of the ore body will ultimately define the location, timing, and extent of a project, not other considerations. To the extent that the LUPA restrictions are inconsistent with this principle, they are not enforceable.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-30

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The BLM has no authority to impose management restrictions on non-federal surface lands, even when the minerals are federally owned, except through conditions placed on the mineral extraction activities.

Action MSE 2 calls on the BLM to apply GRSG restrictions including stipulations, conditions of approval and other measures on non-federal surface lands above federal minerals if the mineral estate is "developed", to the extent permissible under

existing law and in coordination with the landowner. SNWA owns the surface lands above federal minerals and is greatly concerned by this provision. First, it is not clear what “developed” means. It is assumed, but unknown, that this verb requires some actual disturbance of the surface in pursuit of federal minerals before this provision would apply, but this is not clear. Nor is it clear what is meant by “to the maximum extent permissible under existing authorities”. The BLM should clearly describe the existing authorities that permit it to regulate non-federal surface lands for sage-grouse when BLM minerals are developed. Finally, the promised coordination with the surface estate owner is of little consolation since coordination does not provide the landowner with a veto over the application of the restrictions to the landowner's surface estate. This provision should be deleted and SNWA protests its adoption in any ROD.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-3

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: WLC has performed exploration activities on Stages 2-5 and these stages are a known historical lithium resource; however, WLC has not performed intensive drilling throughout the deposit. WLC must be allowed to exercise our rights, under the General Mining Law of 1872 (“GMA”), to efficiently and reasonably access, further explore, and perform on-the-ground physical activities (including drilling, trenching, and constructing test pits) on all stages of our deposit (Stages 1-5). The proposed withdrawal is not supported by best available science, violates rights under the General Mining Law of 1872 and was not appropriately publicly

noticed. In addition, the lack of economic and geologic analysis for minerals in the EIS (as discussed in later sections of this letter) renders it inadequate as a matter of law and requires preparation of a supplemental EIS or substantial changes and opportunity for public comment to address the deficiencies.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-04-6

Organization: Western Lithium Corporation

Protestor: Dennis Bryan

Issue Excerpt Text: Restriction of activities within this zone (whether they be seasonal, time of day, noise-related, or visual limitations) is unrealistic for the development and operation of any major state-of-the-art mining facility and, therefore, interferes with rights under the General Mining Law of 1872. Protection of only “valid existing rights” is inadequate to avoid interference with rights under Federal law. In addition, these requirements do not appear to be based on the best available science, provide no account for topography or other relevant factors and, therefore, are arbitrary.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-11

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: In addition, M 37012 “Legal Requirements for Determining Mining Claim Validity Before Approving a Mining Plan of Operation” (November 14, 2005) establishes that BLM has no legal obligation to determine claim validity; rather validity examinations for mining claims are a tool used to confirm claim validity for mineral patenting purposes to ensure that fraud is not perpetrated on the government

when claims pass from public to private ownership or after land has been withdrawn. Although, the lack of “validity” (discovery; passing the prudent man test, etc.) may prevent mineral patenting, it does not preclude the claimant’s right to pursue discovery under §22 of the General Mining Law, which is a valid existing right.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-13

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: As previously discussed, supra V.A., the maximum number of acres authorized for disturbance within Notices and Plan of Operations boundaries in the entire state of Nevada is only 191,374 acres, some of which are not co-located within GRSG habitat. By contrast the proposed withdrawals within SFAs are almost 2.8 million acres-15 times larger than the total footprint of existing mining activities in the state of Nevada. Therefore, the proposal to withdraw almost 2.8 million acres of land in Nevada from mineral entry is grossly out of proportion with the maximum potential impact that mineral activities might have on GRSG and its habitat. Consequently, the proposed withdrawal within SFAs is not justified, is unreasonable and unnecessary, and is therefore, arbitrary and capricious. The proposal to withdraw almost 2.8 million acres (over 3.3 million acres total) from mineral entry demonstrates a general lack of understanding of geology and mineral occurrence by the BLM/USFS. Mineral deposits do not occur everywhere- they are located in small areas where geologic conditions are favorable. Mineral deposits are difficult and expensive to find. Therefore maintaining access for future mineral exploration and development is a planning

issue that cannot be ignored. Withdrawals of the magnitude proposed under the Proposed Plan, 3,319,000 acres (including existing withdrawals at Table 2-14) conflict with § 22 of the General Mining Law, and the Mining and Minerals Policy Act; and cannot be implemented through the land use planning process. Withdrawal of this magnitude can only be made by an Act of Congress or by the Secretary pursuant to the requirements and procedures of FLPMA §204(c) for a period not to exceed 20 years, discussed in detail below.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-16

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-2

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that several of the goals, objectives, management actions, standards, and guidelines (listed below) contained in the PLUPA/FEIS are not consistent with rights under the General Mining Law which allow citizens of the United States the opportunity to enter, use and occupy public lands open to location to

explore for, discover, and develop certain valuable mineral deposits (30 USC §22), subject to the FLPMA mandate to prevent unnecessary and undue degradation of public lands. The General Mining Law authorizes and governs the exploration, discovery, and development of valuable minerals:

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase...(Id.)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-20

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: As described in our DLUPA/DEIS comment letter at 45, BLM must evaluate the substantially adverse consequences of making it impossible to explore and develop pre-discovery unpatented mining claims, and lands that are currently open to location on which there are no unpatented mining claims. The BLM/USFS have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the ROW restriction create de facto withdrawals recommended in the PLUPA/FEIS comply with §22 of the General Mining Law.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-21

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that BLM does not have the authority, outside of the regulations at 43 CFR § 3809 (Surface Management Regulations) to impose Required Design Features (hereinafter, “RDFs”) on operators exercising their rights under the General Mining Law. Moreover, the RDFs specific to locatable minerals are not appropriate and demonstrate a general lack of knowledge by the BLM/USFS of how locatable minerals are explored and developed. Therefore, AEMA objects, and BLM/USFS must remove or revise the following RDFs found in Appendix D.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-23

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM must recognize that the need for mineral development to reduce the Nation’s reliance on foreign sources of the minerals, to maintain our way of life and defend the country, may in fact be greater than the need to conserve millions of acres of GRSG habitat. As such BLM must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act (30 USC §21(a)), and FLPMA (43 USC §1701(a)(12)) to recognize the Nation’s need for domestic minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-26

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: In addition the land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Sections 2.6.2 and 2.6.3 at 2-25, 2-45, 2-50; and 2-63, respectively), and the

widespread travel and transportation restrictions (Sections 2.6.2 and 2.6.3 at 2-52, 53, 54; and 2-70, 71, respectively) are not in compliance with the specific directive pertaining to minerals in FLPMA § 102(a)(12):... the public lands [shall] be managed in a manner that recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a... (43 USC 1701(a)(12)). The proposed restrictions, limitations, and withdrawals from mineral entry in the PLUPA/FEIS directly conflict with FLPMA’s requirement that the Secretary must manage public lands to respond to the Nation’s needs for minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-27

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: In the Proposed Plan, 3,319,000 acres (including existing withdrawals at Table 2-14) are recommended for withdrawal from mineral entry including approximately 2.8 million in areas designated as SFAs (see PLUPA/FEIS, Figure 2.5), and is inconsistent with FLPMA’s mandate, to recognize the Nation’s need for domestic sources of minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-28

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The widespread and cumulative restrictions also include seasonal restrictions throughout much of the practical exploration and development season, and include large No Surface Occupancy

(hereinafter “NSO”) buffer zones leading to de facto withdrawal from mineral entry on lands with sage-grouse habitat. FLPMA does not authorize using restrictions, and prohibitions such as those associated with travel and transportation management, ROW management to achieve de facto mineral withdrawals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-3

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: 30 USC § 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development. Prohibiting or restricting mineral exploration and development on lands co-located with GRSG habitat, by way of limits placed upon surface disturbance, travel and transportation management (roads), right-of-way (hereinafter “ROW”) avoidance and exclusion areas, and mineral withdrawals is contrary to the rights granted by § 22 of the General Mining Law, and therefore the Proposed Plan is in violation of the General Mining Law, and cannot be implemented.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-4

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: AEMA contends that the BLM has a legal obligation to comply with the General Mining Law, Mining and Minerals Policy Act, and FLPMA to recognize the Nation’s need for domestic sources of minerals and the right to explore. Despite, and in direct conflict with this legal obligation, the BLM/USFS nevertheless recommend severe restrictions, prohibitions,

withdrawals, and de facto withdrawals including:

-Section 2.6.2: Objective SSS 110 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 LR-LUA 6, Action LR-LUA 16, Action LR-LUA 19, Action LR-LUA 21, Action LR-LW 1, Action LOC 2, Action LOC 4;
-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.

The 3% disturbance threshold (Nevada) and one disturbance per 640 acres (California) (Action SSS 2 and Appendix F) puts an overly restrictive and unrealistic burden on mining operators exercising their rights under the General Mining Law, and creates a de facto withdrawal which is outside BLM's authority and contrary to law. BLM/USFS also must explain how the surface use restrictions comply with the 43 CFR 3809 surface management regulations and the 228A regulations.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-48

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The poorly researched FEIS offers no hard data concerning recent valuation of locatable mineral production, forecasts of trends in production and the potential for discovery of new, important mineral deposits in the planning area, Further, Section 3.13 (see 3-139 to 3-142) of the PLUPA/FEIS provides no historical

context for metals deposits and production, no discussion of the economic importance of on-going exploration and no forward guidance with respect to where future mineral resource exploitation is likely to occur.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-54

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Because the FEIS is completely silent on this important issue, the Nevada Mineral Resources Alliance (hereinafter "NVMRA") developed maps (See Exhibit 6, NVMRA Map 1) using BLM's geospatial data showing habitat areas, travel restrictions, and the SFA and superimposed this information on maps published by the Nevada Bureau of Mines and Geology and other publically available sources showing the location of mines and major mineral exploration projects in Nevada. NVMRA Map 1 clearly shows that there is considerable overlap and contiguity between many of Nevada's most important mineral districts and GRSG habitat, with many mineral deposits co-located in sage-grouse habitat areas, and BLM's geospatial data can be readily used (and should have been used by BLM) to develop maps to illustrate where GRSG habitat and mineral deposits are co- located. The NVMRA map also shows that the proposed travel restrictions will impact numerous mineral districts and mining and mineral exploration areas throughout northern Nevada. Thus the claims made in the FEIS and statements made by Secretary Jewell that the Proposed Plan will have limited impact on mineral activities is based on an incomplete analysis and is therefore incorrect, as clearly shown in NVMRA Map 1.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-55

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The omission of a similar map in the FEIS (which can be readily prepared using the BLM's own data and available information on the location of mineral deposits) is an egregious oversight and a fatal flaw. Similarly, the absence of any meaningful analysis of the actual impact that the travel restrictions will have on mineral exploration and development is a serious shortcoming that leads to an incomplete analysis and is also a fatal flaw. BLM/USFS must prepare a Supplemental EIS to carefully assess the indirect, direct, and cumulative impacts of the proposed travel restrictions and how they will limit future exploration, discovery, and development of economically viable mineral deposits.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-6

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM/USFS' proposed prohibition against mineral development in GRSG habitat areas is disproportional to the amount of land used for mineral development and the impacts associated with mineral exploration and development, especially considering that the projected long term, unclaimed surface disturbances (i.e., open pit mines that are stabilized at closure but remain as features on the landscape) are small in the context of the habitat area. Data compiled by the United States Geological Survey (hereinafter "USGS") clearly show that the habitat loss due to mining (locatable, leasable and

salable) range-wide are minor, totaling about 3.6 percent, and therefore can be mitigated with appropriate project-specific conservation measures including off-site mitigation for unavoidable impacts.

In addition, the Central Basin Range Rapid Ecological Assessment (hereinafter "CBR REA") and BLM/USFS indicate that just 7 percent of the entire ecoregion (which includes areas outside the planning area) is impacted by all types of development and is only expected to increase by 0.5-percent over the next 10 years (PLUPA/FEIS, Section 3.2.4 at 3-37; see also CBR REA at 12). Moreover, the BLM's LR-2000 database shows that only about 191,374 acres of BLM-administered lands in the entire state of Nevada are included in Notices of Intent and Plans of Operations for locatable mineral activities. Because the LR-2000 database covers the entire state, which includes areas in southern Nevada that do not contain suitable GRGS habitat, it is clear that only a fraction of the 191,374 acres is located within the planning area and co-located in GRSG habitat. The BLM's proposed management of mineral development must be commensurate with the actual footprint on the land that mineral development has and is likely to have in the future. The mineral withdrawals and widespread travel and transportation management restrictions/limitations are completely inappropriate in light of the limited extent of mineral activities co-located in GRSG habitat within the planning area. BLM/USFS must explain the overly restrictive response upon the regulated community in light of the relatively small footprint associated with developed lands in the ecoregion.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-7

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM must provide convincing data to support the proposed land withdrawals, surface use restrictions, and explain its rationale for inappropriately targeting mineral development in the Proposed Plan, when it is not identified as a primary threat to GRSG. The BLM also must explain how the surface use restrictions comply with the 43 CFR 3809 Surface management Regulations. The BLM/USFS have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with § 22 of the General Mining Law. Our recommendation during the comment period for the DLUPA was that BLM allow for a supplemental comment period once it provides its rationale for these decisions before releasing the PLUPA/FEIS (DLUPA Comments at 38-41).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-9

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The Agencies have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation's need for domestic sources of minerals.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-10-18

Organization: Midway Gold

Protestor: Tom Williams

Issue Excerpt Text: The road use and travel restrictions in the Proposed LUPA/FEIS must be expressly subject to all rights under the General Mining Law, not just valid existing rights. Otherwise, such restrictions will substantially impair access to many locations in which Midway (or others similarly situated) holds a real property interest, thereby serving as a governmental taking requiring compensation. Specifically, road and travel restrictions are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. These restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections inaccessible and therefore without economic value. For reference, under the Proposed Plan no acres would be open to motorized travel and BLM would manage 16 million acres as limited to existing or specifically designated routes. (Proposed LUPA/FEIS at 2-465.) The Proposed Plan unlawfully includes 2.8 million acres recommended for mineral withdrawal, 3.1-mile lek buffers in priority and general habitat (and possibly a 6.2-mile buffer using the Coates algorithm for designation of core habitat), no surface occupancy restrictions on oil and gas, and the previously mentioned 16 million acres of travel restrictions. These closures are not temporary or brief and are likely to be repeated seasonally. Moreover, these restrictions have the real potential to put most other lands with GRSG habitat functionally off-limits to exploration and mining, with the end result being a de facto withdrawal of all public lands with GRSG habitat. Notably, where these closures threaten or eliminate access to existing or

possible locatable mineral claims, they contravene FLPMA Section 1732(b) regarding ingress and egress to mining claims (i.e., “[N]o provision of this section or any other section of this Act 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”). Such restrictions should not be applied to projects midway through the permitting process such as Gold Rock.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-15

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: The road use and travel restrictions in the Proposed LUPA/FEIS must be expressly subject to all rights under the General Mining Law and the Surface Use Act (30 USC 612(b) and collectively with the General Mining Law, hereinafter the “General Mining Laws”), not just valid existing rights. Otherwise, such restrictions will substantially impair access, in violation of FLPMA, to many locations in which WEX (or others similarly situated) holds a real property interest, thereby serving as an unlawful governmental taking requiring, at a minimum, compensation. Specifically, road and travel restrictions are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. These restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections or mining claims inaccessible and therefore without economic value. For reference, under the Proposed Plan no acres would be open to motorized travel and BLM would manage 16 million acres as limited to existing or specifically designated routes. (Proposed LUPA/FEIS at 2-465.) The Proposed Plan unlawfully includes 2.8

million acres recommended for mineral withdrawal, a 3.1 mile lek buffers in priority and general habitat, no surface occupancy restrictions on oil and gas, and the 16 million acres of travel restrictions. These closures are not temporary or brief and are likely to be repeated seasonally. Moreover, and particularly with respect to potential withdrawal of the Wood Gulch project area from mineral entry, these restrictions have the real potential to put most other lands with agency identified (through landscape scale maps) GRSG habitat functionally off-limits to exploration and mining, with the end result being a de facto withdrawal of all public lands with GRSG habitat. Notably, where these closures threaten or eliminate access to existing or possible locatable mineral claims, they contravene FLPMA Section 1732(b) regarding ingress and egress to mining claims (i.e., “[N]o provision of this section or any other section of this Act 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”)(emphasis added).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-13-19

Organization: Western Exploration, LLC

Protestor: Carmen Fimiani

Issue Excerpt Text: WEX’s Wood Gulch project is extremely promising, yet it is slated for withdrawal on recent maps associated with the Proposed LUPA/FEIS. Withdrawal cannot be supported without analyzing and considering the impacts of such withdrawal on existing mineral development, future prospects for mineral development, and resulting impact to the surrounding communities that rely on activities in Wood Gulch for revenue.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-12

Organization: Davis, Graham & Stubbs for Nevada Mineral Resource Alliance

Protestor: Laura Granier

Issue Excerpt Text: Beyond the direct and devastating impact to companies and individuals with mining claims in areas proposed for mineral withdrawal, the Proposed Plan will cause substantial harm to many other stakeholders in the planning area including but not limited to local and state governments and businesses that provide goods and services to exploration and mining projects. Ultimately, withdrawing the 2.8 millions of acres from mineral entry identified in the Proposed Plan will cause substantial harm to Nevada’s mineral industry because these withdrawals send a strong signal that public lands in Nevada are no longer a good place for investing in mineral exploration and development. Additionally the 2.8 million acres of mineral withdrawals include lands with significant but not fully known mineral potential. The FEIS does not adequately discuss this substantial impact but instead simplistically asserts without support that most future development would be in areas of existing mines (FEIS, Page 4-311). One NVMRA member, Western Exploration, recently disclosed a significant new discovery that is just one example of significant mineral potential that would be adversely affected by the Proposed Plan and was not adequately analyzed in the document. The BLM’s total failure to analyze the mineral potential in the SFA, including known discoveries of mineral deposits, the geologic conditions favorable for future discoveries, and the lost mineral exploration and development opportunities is a fatal flaw in violation of NEPA and FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-22

Organization: Davis, Graham & Stubbs for Nevada Mineral Resource Alliance

Protestor: Laura Granier

Issue Excerpt Text: Thus, rather than limiting or exempting mining claims from the draconian land use restrictions, the Valid Existing Rights references throughout the FEIS/Proposed LUPA could be read to broaden the impact of these restrictions to nearly all mining claims in the planning area. The FEIS/Proposed LUPA must be revised to clearly confirm that all rights under the General Mining Laws, including Section 22 pre-discovery rights and rights on unclaimed lands that are open to location are respected and preserved, as opposed to just preserving rights on those few claims that will withstand a validity exam.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-6

Organization: Davis, Graham & Stubbs for Nevada Mineral Resource Alliance

Protestor: Laura Granier

Issue Excerpt Text: This right of access, use, and occupancy applies to all unpatented mining claims both before and after discovery of a valuable mineral deposit pursuant to Section 22 of the Mining Law and 30 USC 612(b), the Surface Use Act, (hereinafter referred to as “the General Mining Laws”) which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. These rights also extend to mill sites that are being used and occupied for mill site purposes and ancillary uses for facilities necessary to support mining

operations. Consequently, many of the conservation measures that impose land use restrictions, especially the access (travel) restrictions shown in Figure 2-14, discussed in Section 2.12, and presented in Table 2-17 (Page 2-465) in the Proposed Plan, conflict with rights under the General Mining Laws and are therefore unlawful.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-7

Organization: Davis, Graham & Stubbs for Nevada Mineral Resource Alliance

Protestor: Laura Granier

Issue Excerpt Text: Because the FEIS is completely silent on this important issue, NVMRA undertook to develop a map (NVMRA Map 1) using BLM's geospatial data⁴ showing habitat areas, travel restrictions, and the SFA and superimposed this information on maps published by the Nevada Bureau of Mines and Geology and other publically available sources showing the location of mines and major mineral exploration projects in Nevada. NVMRA Map 1 clearly shows that there is considerable overlap and contiguity between many of Nevada's most important mineral districts and GRSG habitat, with many mineral deposits co-located in GRSG habitat areas. NVMRA Map 1 also shows that the proposed travel restrictions will impact numerous mineral districts and mining and mineral exploration areas throughout northern Nevada.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-16-14

Organization: Davis, Graham & Stubbs for Carlin Resources, LLC

Protestor: Laura Granier

Issue Excerpt Text: The road use and travel restrictions in the Proposed LUPA/FEIS must be expressly subject to all rights under the General Mining Law, not

just valid existing rights. Otherwise, such restrictions will substantially impair access to many locations in which Waterton (or others similarly situated) holds a real property interest, thereby serving as a governmental taking requiring compensation. Specifically, road and travel restrictions are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. These restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections inaccessible and therefore without economic value. For reference, under the Proposed Plan no acres would be open to motorized travel and BLM would manage 16 million acres as limited to existing or specifically designated routes. (Proposed LUPA/FEIS at 2-465.) The Proposed Plan unlawfully includes 2.8 million acres recommended for mineral withdrawal, 3.1-mile lek buffers in priority and general habitat, no surface occupancy restrictions on oil and gas, and the previously mentioned 16 million acres of travel restrictions. These closures are not temporary or brief and are likely to be repeated seasonally. Moreover, these restrictions have the real potential to put most other lands with GRSG habitat functionally off-limits to exploration and mining, with the end result being a de facto withdrawal of all public lands with GRSG habitat. Notably, where these closures threaten or eliminate access to existing or possible locatable mineral claims, they contravene FLPMA Section 1732(b) regarding ingress and egress to mining claims (i.e., "[N]o provision of this section or any other section of this Act 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"). The FEIS/Proposed LUPA must be revised to confirm that these restrictions will not apply

to any rights, actions or activities under the General Mining Law. Alternatively, if the BLM intends to apply such restrictions in contravention of the General Mining Law then a full analysis of the impacts and lost mineral potential must be undertaken and provided in a SEIS for public comment.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-14

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The Agencies have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation’s need for domestic sources of minerals. The BLM is in violation of the MMPA, and for the reasons described herein, the PLUPA is illegal; it cannot be implemented and is thus, a fatal flaw that can only be cured by publishing a Revised PLUPA and a Supplemental FEIS BLM.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-4

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: The Proposed LUPA/FEIS is not balanced in its consideration of land uses and proposed restrictions, particularly those likely to limit physical access to mining exploration and development projects. Such limits threaten the economic prosperity of surrounding communities, which is certainly in tension with the FLPMA directive to manage lands in a manner meeting present and future

needs of the American people. Moreover, the Proposed LUPA/FEIS lacks a comprehensive, detailed discussion of impacts to mining operations or the likelihood of successful mineral development in impacted areas, such that it prioritizes GRGS above all else without duly considering economic impact, the need for domestic sources of certain minerals, etc. In this way, land uses are one dimensional and directly counter to multiple use management as expressly described in FLPMA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-20-5

Organization: Coral Reef Capital

Protestor: Salman Al-Rashid

Issue Excerpt Text: The road use and travel restrictions in the Proposed LUPA/FEIS will substantially impair access to properties (or activities) on which CRC’s investment is based. Specifically, road and travel restrictions are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. CRC understands that travel using established routes (on both public and private land) is essential to the successful exploration and production of minerals, most specifically in the first stage of mineral exploration {where new target areas are identified) and subsequent commercialization of the claims, requiring the construction of temporary drilling roads. Without this ability, these restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections inaccessible and therefore without economic value.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-31-6

Organization: Nevada Mining Association

Protestor: Dana Bennett

Issue Excerpt Text: The LUPA/FEIS proposes to withdraw lands from the General Mining Act of 1872, subject to Valid Existing Rights. It is estimated that 55% (almost 97,000) of all mining claims in Nevada reside in counties where SFA withdrawals are proposed. The LUPA/FEIS does not adequately estimate the impacts and costs associated with the withdrawals as they relate to mining activities or the number of claims that may be subject to Validity Examinations (a required precursor to obtaining a Valid Existing Right). The

LUPA/FEIS did not adequately analyze the economic or social impacts of the potential forfeiture of claims, nor did it estimate the resources needed for the BLM's to, in a timely fashion, evaluate claims not currently classified as having Valid Existing Rights, nor did it note that the FLM's currently do not have the resources necessary to evaluate, in a timely fashion, this body of claims or estimate the likelihood of the FLM's obtaining these resources.

Summary:

The Proposed LUPA/FEIS fails to describe the authorities that permit the regulation of non-federal surface lands with federal mineral ownership and also fails to adequately analyze impacts to future and existing locatable mineral development from decisions proposed in the Proposed LUPA/FEIS.

The Proposed LUPA/FEIS violates FLPMA, the MMPA and the Mining Law of 1872 by:

- Creating de facto withdrawals from mineral entry by imposing disturbance caps, buffers, ROW restrictions and travel management restrictions;
- Imposing Required Design Features outside what is needed to prevent unnecessary or undue degradation of public lands;
- Proposing to withdraw lands without proper authority to do so; and
- Failing to manage public lands in a manner that recognizes the nation's need for domestic materials.

Response:

The Nevada and Northeastern California GRSG PLUPA/FEIS does not include an exhaustive description of every law, regulation, and policy applicable to the land use planning process; however, it does include descriptions of various legal authorities when doing so provides context for the reader. Additionally, the Land Use Planning Handbook (H-1610-1) and regulations set forth a process that ensures the BLM adheres to law, regulation, and policy during land use planning activity.

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

The Nevada and Northeastern California GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.3, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

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

The first Special Status Species goal of the Nevada and Northeastern California GRSG PLUPA/FEIS, detailed on Page 2-17, is to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners.” The BLM does not seek jurisdiction over wildlife, but seeks to enhance or restore the habitat on which GRSG and other species depend.

Additionally, the BLM's responsibility to avoid “undue degradation” as required in FLPMA is not in conflict with the Nevada and Northeastern California GRSG PLUPA/FEIS's “net conservation gain” goals. To achieve this goal, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. This is consistent with BLM Manual 6840 mentioned above.

Finally, the Federal Lands Policy and Management Act requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning. Specifically, Section 202(e)(2) states “[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate.” Upon approval of the PLUPA/FEIS, the BLM will comply with the applicable reporting requirements set forth in FLPMA Section 202 as necessary and appropriate.

The Proposed LUPA recommends the withdrawal of approximately 2.79 million acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy.

Additionally, 43 CFR 1610.6, which addresses the implementation of this requirement, states that the report from the Secretary to the Congress regarding decisions excluding major uses from over 100,000 acres of land, “shall not be required prior to approval of a resource management plan. The required report shall be submitted as the first action step in implementing that portion

of a resource management plan which would require elimination of such a use.” Based on this regulation, the Secretary is not required to provide this report until the RMP is signed and the BLM is ready to begin implementation.

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

Page 4-311 of the FEIS discusses the impacts of the proposed minerals management actions of the Proposed LUPA, including, but not limited to, the 3% disturbance cap, RDFs, and the proposed withdrawal in SFAs. “There are no active mines in the 2,731,600 acres that would be recommended for withdrawal in the SFA. Mining claims in areas recommended for withdrawal would require validity examinations subject to 43 CFR 3809.100 when new plans of operations or notices are submitted to the BLM. New mining claims would no longer be allowed. Because new locatable mineral development is most likely to occur in proximity to existing mines, anticipated impacts on locatable minerals under the proposed plan would be concentrated in these areas. Impacts of the withdrawal would be the same as those described under Nature and Type of Effects,” (p. 4-311).

The Proposed LUPA/FEIS contains planning actions and does not include site-specific implementation actions. The maps presented are for broad-scale planning purpose only, and represent proposed land use allocations. For example, Figure 2-5 in the PLUPA/FEIS portrays the GRSG management areas analyzed in the Proposed LUPA, Figure 2-34 shows areas already withdrawn, proposed for withdrawal, and open to locatable minerals under the Proposed LUPA. These figures are displayed separately to support their respective management action, and are suitable for the purposes of a broad-scale planning effort.

Special Status Species

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-10
Organization: WildEarth Guardians
Protestor: Erik Molvar
Issue Excerpt Text: Protections applied to existing oil and gas leases both inside

Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as BLM’s responsibility to prevent undue degradation to GRSG habitats under

FLPMA and the agency's duty to uphold the responsibilities outlined in its Sensitive Species policy. The BLM's failure to apply adequate lek buffers to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: According to the original mining regulations, "Unnecessary or undue degradation means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology." 43 CFR § 3802.0-5(l) (emphasis added). In the Nevada-California RMP Amendment EIS, the BLM has failed to apply in its proposed plan amendments the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and as a result development approved under the proposed plan violate the directives of BLM Sensitive Species Policy and will result in both unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these areas, undermining the effectiveness of the Priority Habitat strategy as an adequate regulatory mechanism in the context of the decision.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-5

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The Objectives of BLM's sensitive species policy includes the following: "To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA" (BLM Manual 6840.02).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-07-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG toward ESA listing in violation of BLM Sensitive Species policy.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-36

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The Proposed Plan inappropriately jettison the BLM's existing policies to protect candidate species, including the policies contained in BLM Manual 6840, "Special Status Species Management" (hereinafter "Manual 6840"), the provisions in the § 3809 regulations and §228A regulations that pertain to wildlife habitat protection, and represents a pre-determined decision to implement the required design features and best management practices as recommended in the NTT Report. For example, the BLM claims that "[t]he LUPA is limited to providing land use planning direction specific to conserving GRSG and their habitat" (PLUPA/FEIS at 1-10), but then fails to identify Manual 6840 as the principal policy document guiding

management of special status species or reference the policy at all (See Ch.7 References).

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-44

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM's failure to incorporate the special species management

directives in Manual 6840, Special Status Species Management in the FEIS is a fatal flaw. The inclusion of a "Manual 6840 Alternative" is both reasonable and practical while providing for compliance with other statutory mandates. The BLM must prepare a Supplemental EIS to include this alternative.

Summary:

- In the Nevada and Northeastern California GRSG PLUPA/FEIS, BLM has failed to apply the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and violate the directives of BLM Sensitive Species Policy. This will result in unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these areas.
- Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of BLM Sensitive Species Policy.
- The proposed plans disregards existing policies to protect candidate species contained in BLM Manual 6840 and the 3809 and 228A regulations pertaining to wildlife habitat protection, and represent a pre-determined decision to implement the required design features and best management practices as recommended in the NTT Report.
- The BLM failed to uphold its responsibilities outlined in its Sensitive Species policy. BLM's failure to apply adequate lek buffers to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Response:

Contrary to the protest issues raised, the proposed land use plan revision for Nevada and Northeastern California GRSG PLUPA/FEIS does satisfy the BLM's Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM Special Status Species is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purposes of managing for the conservation (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM's multiple use mission as specific in the FLMPA (Manual 6840.2). The BLM's Land Use Planning Handbook (1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species" and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation level plans" (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying

stipulations or criteria that would be applied to implementation actions” (Handbook 1601-1 Appendix C at 4). Additionally, as stated in the planning criteria for the PLUPA/FEIS: “The BLM will be consistent with the objectives in BLM Manual 6840 which are to: 1) preserve the ecosystem upon which species depend, and 2) initiate proactive conservation measures that minimize listing of the species under the ESA” (PLUPA/FEIS, p. 25). The BLM did consider measures that conserve the GRSG as contemplated in policies.

As described and analyzed in the PLUPA/FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis (See FEIS page 2-10) specifically, the BLM incorporated conservation measures identified in the NTT Report, COT Report in table 2-16 starting on page 2-182.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the FEIS. For example, On page 4-31 the FEIS analysis the impact of using withdrawals as a conservation measure “Alternative B would reduce disturbance to both GRSG habitat and individuals at leks, during nesting, brood-rearing, and on winter ranges; reducing direct disturbance to over 8 million acres of PHMA in modeled GRSG nesting habitat” Since, land planning-level decision is broad in scope. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. Again, the Proposed Plan/ Final EIS the GRSG Key Habitat Areas and GRSG Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Nevada and Northeastern California GRSG PLUPA/FEIS, the management proposed in the Nevada and Northeastern California Sub-Regional GRSG Amendment satisfies BLM’s intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA. Additionally, the BLM’s analysis did rely on existing policies, including Manual 6840, and thus, the suggestion that the BLM must issue a supplemental EIS guiding to incorporate analysis that relies on these policies is inaccurate.

Lands with Wilderness Characteristics

Issue Number: PP-NVNORTHEASTCA-GRSG-15-29-7

Organization: Y-3 II Ranch

Protestor: Christopher Clark

Issue Excerpt Text: Lands with Wilderness Characteristics should not be incorporated into the LUPA. One of the planning criteria for the development of the

Nevada LUPA/FEIS is management of GRSG habitat that intersects with Lands with Wilderness Characteristics on BLM lands (See p. 1-25). This discussion is confusing when compared to discussion at section 3.19 in which it is clearly stated that management of Lands with Wilderness Characteristics is considered outside the scope of this plan amendment process.

Former Secretary Salazar issued Secretarial Order No. 3310 regarding protection of wilderness characteristics on land managed by the BLM. Congress subsequently prohibited the Secretary from using any federal funds to implement, administer, or enforce that Secretarial Order (See, e.g., Department of the Interior, Environment and Related Agencies Appropriations Act of 2014, H.R. 3547, Section 124). The Idaho LUPA/FEIS does not include Lands with

Wilderness Characteristics as one of the planning criteria. See Idaho LUPA/FEIS at Section 1.6.1. To the extent that this criterion is included and affects management of sage-grouse habitat, Y-3 II protests the Nevada plan's departure from the Idaho plan approach and any proposed actions that contravene federal legislation prohibiting the use of federal funds to implement Secretarial Order No. 3210.

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS violated the law by addressing lands with wilderness characteristics, directly contravening Congress' prohibition on implementing Secretarial Order 3320.

Response:

The BLM's analysis and consideration of lands with wilderness characteristics in the Nevada and Northeastern California GRSG PLUPA/FEIS is consistent with applicable law and policy and is consistently described in Chapters 1 and 3. Sections 201 and 202 of FLPMA require the BLM with to maintain an inventory on a continuing basis and provide the authority for managing lands to protect or enhance wilderness characteristics (43 USC §§ 1711, 1712). The BLM issued Manuals 6310 and 6320 to provide policy direction on how to meet the requirements of Sections 201 and 202 of FLPMA as it relates to wilderness characteristic resources. Contrary to the protest's claim, the BLM has an obligation under FLPMA to inventory for and consider the management of lands with wilderness characteristics, which has been clearly articulated by the Ninth Circuit Court of Appeals and other federal courts.

Additionally, contrary to the protestor's claims, the references and discussion in the PLUPA/FEIS with respect to consideration of lands with wilderness characteristics are consistent. As explained in Section 3.19 of the PLUPA/FEIS, the BLM addressed lands with wilderness characteristics only as it relates to the LUPA's Purpose and Need – consideration of the management of GRSG. That is, the discussion of lands with wilderness characteristics is generally limited to analyzing the impacts of the alternatives on lands with wilderness characteristics (See PLUPA/FEIS at 3-173, 4-325). In short, the BLM refers the obligation under FLPMA to consider information about lands with wilderness characteristics and the potential impacts associated with this targeted plan amendment, but does not propose or analyze alternatives for the management of lands with wilderness characteristics.

Finally, the BLM has not implicitly or explicitly relied on Secretarial Order 3310. The BLM acknowledges that Congress has defunded the implementation of Secretarial Order 3310, and that the policy is currently held in abeyance and inactive.

[Lands and Realty](#)

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-13

Organization: Assistant Counsel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: The LUPA provides no indication of when ROWs through PHMAs will be allowed, what special stipulations may be required, and the process for authorizing ROWs in PHMAs. The LUPA should clarify that BLM will authorize ROWs (not limited to access road ROWs) in PHMAs when necessary to provide access for nondiscretionary activities under the Mining Laws. The LUPA should also explain that a ROW will be authorized in PHMA when locating the ROW outside PHMA would result in greater impacts to the GRSG or other sensitive natural resources.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-02-15

Organization: Assistant Counsel to Barrick Gold of North America, Inc.

Protestor: Patrick Malone

Issue Excerpt Text: “Construct new ROWs in designated corridors as close as technically feasible to existing linear ROW infrastructure to limit disturbance to the smallest footprint” (Id. at 2-47). The LUPA does not appear to include an exception to this requirement when the use of designated corridors is infeasible or collocation is not possible due to a lack of existing infrastructure. Failure to allow exceptions to this requirement could interfere with the exercise of rights under the Mining Laws, which may require linear features such as power lines, pipelines, and access roads. This action also appears to be inconsistent with Action LR-LUA 9, which indicates that

GHMAs will be managed as open to ROWs. Id. at 2-46.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-13

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text: The BLM cannot undesignate the Congressionally-designated LCCRDA corridor. In 2004, Congress passed LCCRDA, Pub. L. 108-424, which provided that the Secretary of the Interior “...shall establish on public land a 2,640-foot wide corridor for utilities in Lincoln County and Clark County, Nevada, as generally depicted on the map entitled ‘Lincoln County Conservation, Recreation, and Development Act’, and dated October 1, 2004” (Id. § 301(a)). The BLM incorporated the LCCRDA corridor into its Ely Resource Management Plan Amendment in 2008, but has not included it in Figure 2-67, indicating that BLM has “evaluated and undesignated” the corridor. The BLM, however, cannot override Congress’ direction in LCCRDA, and cannot unilaterally undesignate the LCCRDA corridor. The BLM must include the LCCRDA corridor in Figure 2-67 as part of the LUPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-14-5

Organization: Lincoln County Commission

Protestor: Kevin Phillips

Issue Excerpt Text: Land disposals that is not consistent with the Lincoln County Lands Acts or the Ely Resource Management Plan. Acts or the current version of the Ely RMP would be affected by this action.

Summary:

The PLUPA/FEIS fails to:

- specify when right-of-ways will be allowed in PHMAs including for access for nondiscretionary activities exercising rights under the Mining Laws;
- analyze ROWs authorized in PHMA when locating the ROW outside PHMA would result in greater impacts to the sage-grouse or other sensitive natural resources;
- analyze an exception when the use of designated corridors is infeasible or collocation is not possible due to a lack of existing infrastructure which is inconsistent with Action LR-LUA 9, which indicates that GHMAs will be managed as open to ROWs (Id. at 2-46);
- consider and incorporate in Figure 2-67 the ‘Lincoln County Conservation, Recreation, and Development Act’, and dated October 1, 2004 for the Ely Resource Management Plan Amendment in 2008, which establishes a 2,640-foot wide corridor for utilities in Lincoln and Clark County, Nevada which is Congressionally designated (Pub. L. 108-424); and
- consider the Lincoln County Lands Act.

Response:

The Ely Resource Management Plan (2008d) would be amended by the Nevada and Northeastern California GRSG PLUPA/FEIS. (Chapter 1, page 1-4). The PLUPA/FEIS planning effort may have not included the LCCRDA corridor on figure 2-67. However, if they were congressionally designated corridors, the BLM did not undesignate them. The RMP does not supersede any Act of Congress, and that the corridor still exists. The corridors will be added to the Corridor Map in the ROD/ARMPA.

The Lincoln County Conservation, Recreation, and Development Act of 2004 and the Lincoln County Lands Act would be considered and applied on site specific land tenure proposals. Under Appendix D, Required Design Features (RDF), the PLUPA/FEIS outlines the stipulations for rights-of-way (page D-38 to D-40). On page D-40, a RDF addresses valid existing rights. “Subject to valid, existing rights, where new ROWs associated with valid existing rights are required, co-locate new ROWs within existing ROWs or where it best minimizes sage-grouse impacts. Use existing roads, or realignments as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing roads, then build any new road constructed to the minimum standard necessary.” The PLUPA/FEIS does not analyze site specific projects. Analysis would be completed for future site specific ROW applications and RDFs would be applied as appropriate. Whether the project is located in sage-grouse habitat would also be assessed during site specific NEPA analysis.

The Nevada and Northeastern California GRSG PLUPA/FEIS includes a bibliography and reference section in Chapter 7 of the FEIS, which lists information considered by the BLM in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS planning effort.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts and relied on high quality information and the best available data in preparation of the Nevada and Northeastern California GRSG PLUPA/FEIS.

Tribal Issues

Issue Number: PP-NVNORTHEASTCA-GRSG-15-38-1

Organization: Walker River Paiute Tribe

Protestor: Bobby Sanchez

Issue Excerpt Text: Based on the foregoing, the Walker River Paiute Tribe hereby submits this protest to the Nevada and Northeastern California GRSG Proposed Land Use Plan Amendment and Final Environmental Impact Statement. The Tribe's protest is based on the BLM and Forest Service's failure to properly consult with the Tribe and take into consideration

the Tribe's concerns in these documents, as required by Federal law, including the American Indian Religious Freedom Act of 1978, Executive Order 115936 (cultural), Executive Order 13007 (American Indian Sacred Sites) and the National Environmental Policy Act. The Tribe requests that the Land Use Plan and EIS not be finalized or approved until and unless the Tribe's concerns regarding the destruction of [pinyon and cedar] trees are adequately addressed so that the Tribe's cultural heritage can be preserved.

Summary:

The BLM and the USFS have violated the American Indian Religious Freedom Act of 1978, Executive Order 115936 (cultural), Executive Order 13007 (American Indian Sacred Sites), and NEPA because they failed to properly consult with or take into consideration the Walker River Paiute Tribe's concerns about the destruction of pinyon and cedar trees which are important to the Tribe's cultural heritage.

Response:

Chapter 6, Section 6.2.1 of the Nevada and Northeastern California GRSG PLUPA/FEIS documents the Native American Tribal Consultation efforts that occurred during the GRSG planning effort. The BLM and USFS began tribal consultation by requesting a tribal consultation meeting with area tribes to discuss the GRSG planning effort. As shown on page 6-3, the Walker River Paiute Tribe was invited to be a cooperating agency in the development of the Nevada and Northeastern California GRSG PLUPA/FEIS on December 7, 2011 and a consultation letter was sent on June 12, 2012. The Walker River Paiute Tribe did not sign a memorandum of understanding as a cooperating agency. A consultation meeting was held on June 29, 2012 between the Tribe and BLM representatives, during which no GRSG related comments were provided. As indicated on page 6-14 of the PLUPA/FEIS, the Walker River Paiute Tribe also participated in the 48th Annual Inter-Tribal Council of Nevada Executive Session, where the Tribes were provided hand-delivered hard copies and digital copies of the Draft LUPA/EIS and Executive Summary.

Through these efforts, BLM and the USFS met tribal consultation requirements as directed by Section 101(d)(6) of the National Historic Preservation Act which requires that "in carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties [of traditional religious and cultural importance to be eligible for inclusion on the National Register]". It is BLM policy to "consult with affected tribes to identify and consider their concerns in BLM land use planning and decision-making, and [that the BLM] shall document all consultation efforts" (BLM Manual Section 8120.06.E).

While the BLM manager must give tribal concerns and preferences due consideration and make a good faith effort to address them as an integral part of the decision making process, final decisions may not always conform with the preferences and suggestions of the tribes (BLM Handbook H-8120-1, p. V-11).

With regard to specific tribal concerns related to juniper and pinyon trees, Section 4.21.3 of the PLUPA/FEIS states: Juniper and pinyon trees have both been identified as important to tribal communities for maintaining traditional cultural practices and values. Thinning or removal of juniper or pinyon pine trees could decrease tribal opportunities to maintain the practices and values centered upon these trees. However, site-specific NEPA analyses completed prior to the implementation of any thinning project would include additional government-to-government consultation with tribes in order to avoid or minimize impacts on tribal concerns.

As discussed above, the BLM and USFS have consulted with tribal governments throughout the development of the Nevada and Northeastern California GRSG PLUPA/FEIS and have taken tribal concerns into consideration during the planning effort. The BLM's consultation with tribal governments is summarized in Chapter 6, Section 6.2.1 of the Nevada and Northeastern California GRSG PLUPA/FEIS.

The BLM, as the lead agency in cooperation with the USFS, adequately consulted with tribal governments regarding the Nevada and Northeastern California GRSG PLUPA/FEIS. The BLM will continue to consult with tribal governments as appropriate, including before authorizing any pinyon or cedar thinning project under this LUPA.

Wild Horses and Burros

Issue Number: PP-NVNORTHEASTCA-GRSG-15-22-11

Organization: White Pine County Commission

Protestor: Gary Perea

Issue Excerpt Text: Given the actual performance record of BLM in Nevada and the exceedingly over-abundance...numbers, how will the actual corrections be brought about that the DEIS proposes? The LUPA fails to...propose real, actionable solutions to the WH&B issue.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-34-20

Organization: Eureka County Commission

Protestor: JJ Goicoechea

Issue Excerpt Text: The LUPA fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas or wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process.

In addition, any attempts to restore rangelands within HMAs would be most challenging due to the restrictions that

would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management process of “do as we say,

not as we do”? Instead, the LUPA targets the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML. The BLM's failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for BLM's shortfall.

Summary:

The Nevada and Northeastern California GRSG PLUPA/FEIS violates NEPA because the proposed alternative as it relates to wild horses & burros is not reasonable (implementable).

Response:

A land use plan is a tool to project present and future use and identify goals, objectives, management actions, and allowable uses. Unlike a specific statutory command requiring an agency to promulgate regulations by a certain date, a land use plan is a statement of priorities which guides and restrains actions, and provides statement about what BLM plans to do, if it has funds and there are not more pressing priorities. The National Forest Management Act of 1976 (NFMA) and the Forest Service's Land Management Planning Handbook, 1909.12, provide similar direction for management of National Forest System lands. Wild horse and burro management is governed by 43 CFR Part 4700 (BLM) and 36 CFR, Part 222, Subpart D (Forest Service).

As discussed in the LUPA/FEIS (p. 3-75 to 3-82), BLM has shifted program emphasis beyond just establishing an AML and conducting gathers to include a variety of management actions to address increasing population levels. The Forest Service has shifted its management emphasis to re-examine AMLs and include a variety of management actions in its efforts.

Impacts to and from wild horse and burro management are documented throughout Chapter 4 Environmental Consequences of the FEIS, particularly in Section 4.8 “Wild Horses and Burros”, p. 4-149 to 4-165. Under the BLM Proposed Plan Amendment the following action is prescribed for Wild Horse and Burros AML (p. 2-43) “Manage herd management areas (HMAs) in GRSG habitat within established AML ranges to achieve and maintain GRSG habitat objectives (Table 2-2).” Under the Forest Service Proposed Plan Amendment, the standards and guidelines are designed to help ensure that in PHMAs, GHMAs, and SFAs, wild horse and burro populations are within established appropriate management levels (p. 2-69).

The Nevada and Northeastern California GRSG PLUPA/FEIS correctly establishes goals and objectives for future management of Wild Horse and Burros consistent with agency direction

that would be implemented as funding and priorities allow.

Travel Management

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-15

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on the hardrock mining industry, and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-08-18

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at 06). However the BLM has not balanced access needs associated with minerals, or any other use, and instead places a preference on aesthetic values and protection of GRSG; despite the fact that the science surrounding the impact of roads on sage-grouse has been shown to contain serious flaws, discussed in more detail

below (See Exhibit 4a and 4b).

In fact, the most recent science indicates GRSG use greater variation in habitat (Reinhart et al. 2013) and that noise tolerances and habitat selection in areas of high road density are greater than previously documented (Patricelli et al. 2013).

Moreover, topographic roughness appeared to be a much stronger indicator of habitat avoidance than anthropogenic disturbances. Further, data on lek locations and attending male numbers from Colorado Parks and Wildlife show that currently active (2012) leks occur on, or immediately adjacent to, roads, pipeline corridors, and well pads in the area (Exhibit 4b/Exhibit A at 8), indicating that GRSG are much more tolerant of roads than suggested in the PLUPA, and the NTT Report and COT Report upon which it relies. Thus, the travel restrictions in the PLUPA are unnecessary in light of the growing body of important data documenting that road disturbance and road-related noise do not adversely impact GRSG use.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-09-5

Organization: EP Minerals, LLP

Protestor: Chris Coley

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands

are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located.

These travel and transportation management restrictions are unlawful because they conflict with the rights granted by Section 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy Federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan, the BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands. Similarly, the Agencies' proposal to authorize new roads only for administrative access, public safety or access to VERs (Section 2.6.2 and Section 2.6.3 Action LR-LUA 19, GRSG-RT-ST-081-Standard), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, the Agencies fail to maintain access and thus, conflict with § 22 of the General Mining Law. Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at 06). However, the Agencies have not balanced access needs associated with minerals, or any other use, and instead place

a preference on aesthetic values and protection of the GRSG.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-10

Organization: Davis, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: In addition, the primary jurisdiction over use of roads resides with State and local governments and, therefore, the BLM cannot lawfully restrict such use or the right of State and local governments to maintain and/or improve such roads, including but not limited to RS 2477 roads.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-7

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located. These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident

thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan, the BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands. Similarly, the Agencies' proposal to authorize new roads only for administrative access, public safety or access to VERs (Section 2.6.2 and Section 2.6.3 Action LR-LUA 19, GRSG-RT-ST-081-Standard), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, the Agencies fail to maintain access and thus, conflict with § 22 of the General Mining Law. Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, the Agencies have not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-17-8

Organization: Industrial Minerals Association – North America

Protestor: Mark Ellis

Issue Excerpt Text: The travel and transportation restrictions described under the Proposed Plan create de facto withdrawals and thus, violate § 22 of the

General Mining Law. As previously discussed, the misuse of the term “Valid Existing Rights” in the context of the travel and transportation restrictions does not ensure pre-discovery access to public lands with or without mining claims. BLM must uphold NMA and IMA-NA's protest of the PLUPA because it does not comply with applicable laws, regulations, policies and planning procedures.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-30-3

Organization: BlueRibbon Coalition

Protestor: Don Amador

Issue Excerpt Text: The documents suggest that motorized activities, including OHV use, are expected to have a larger footprint on the landscape. They are anticipated to have the greatest level of impact due to noise levels, compared to non-motorized uses, such as hiking or equestrian use (See ,e.g. FEIS Vol. III, Chapter 5, 5-58). BRC submitted the following OHV noise management prescription in our comment letter, Consider adopting a defensible standard, such as the 2003 California State OHV Sound Law which states, “Sound emissions of competitive off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Sound emissions of all other off-highway vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 dBA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-

1287, as applicable”. Link to CA Sound Law: <http://ohv.parks.ca.gov/?pageid=23037>.

Notwithstanding our comments and the vague threat that failure to address vehicle

Summary:

The LUPA violates State and Local Government rights under R.S. 2477 by unlawfully restricting the right of State and local governments to maintain and/or improve such roads. The LUPA fails to include an OHV Noise Management Standard. The LUPA violates NEPA by failing to:

- analyze the economic impact of limiting access for exploration and development of mineral deposits; and
- utilize best available science to identify limits on road location and density.

In addition, the LUPA travel and transportation restrictions violates section 22 of the General Mining Law and 30 USC 612(b) Surface Resources Act of 1955 by creating de facto withdrawals and affecting rights of ingress and egress

Response:

Revised Statute (R.S.) 2477 (enacted 1866) stated that “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted”. This statute was repealed by the Federal Land Policy and Management Act (FLPMA) of 1976, however Section 701 of FLPMA provided that nothing “...shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use authorization existing on the date of approval of this Act”. Therefore, for a route to be an R.S. 2477 right-of-way, it must have existed before the passage of FLPMA (October 21, 1976).

The BLM Travel and Transportation Management Manual 1626 at .06A2h states that, “A travel management plan is not intended to provide evidence bearing on or addressing the validity of any R.S. 2477 assertions. R.S. 2477 rights are determined through a process that is entirely independent of the BLM's planning process. Consequently, travel management planning should not take into consideration R.S. 2477 assertions or evidence. Travel management planning should be founded on an independently determined purpose and need that is based on resource uses and associated access to public lands and waters. At such time as a decision is made on R.S. 2477 assertions, the BLM will adjust its travel routes accordingly.”

Because the legally binding determination of whether a R.S. 2477 ROW exists is a judicial one, at such time as a decision is made by the courts on any R.S. 2477 assertions, the BLM and/or FS would adjust their travel management accordingly.

Noise Standard

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14) if it is determined not to meet the proposed action’s purpose and need; (BLM Handbook H-1790-1, Section 6.6.3).

noise could be used to justify restrictions, the Proposed LUPA/FEIS fail to meaningfully address this factor. We ask that this oversight be addressed in a supplemental analysis.

Comment response in the plan notes (p. C-76) that “During subsequent implementation-level travel management planning, new travel management plans would evaluate vehicle routes and determine the need for permanent or seasonal road closures and mode of travel (e.g., motorcycle, ATV, and UTV) restrictions, including noise levels and speed. Implementation-level travel management planning will include public involvement.”

While noise management standards themselves would be an individual action within an alternative, the BLM appropriately dismissed the suggested action because it would not respond to the plan amendment’s purpose and need of “identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (p. 1-15).”

The LUPA appropriately postpones the suggested action until implementation level travel management planning – which could include a broader purpose and need.

Economic Impacts

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

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 FEIS states in the Social and Economic Impacts section that “As of June of 2014, there were 43 Nevada and 1 California plans of operation in the study area that potentially overlap with GRSG habitat (BLM 2014c). For these operations, in the long run, production of locatable minerals would be affected only to the degree that the cost of conducting a mineral examination would affect individual operators’ decisions to modify their plans of operation, which would depend on site-specific and operator-specific conditions.

...In addition to land petitioned for withdrawal, several alternatives include added RDFs to protect GRSG (consistent with applicable law) when compared to Alternative A. In particular, RDFs are added under Alternatives D, E and the Proposed Plan, consistent with applicable law. These RDFs could add costs to mining operations.

Overall, economic activity associated with management of locatable minerals would be the same for Alternatives A, D, and E, and may be lower under Alternatives B, C, F and the Proposed Plan depending on site-specific and operator-specific conditions” (p. 4-419).

Best Available Science

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 "ensure 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).

The Nevada and Northeastern California GRS/PLUPA/FEIS considered alternative B, which was based on "A Report on National Greater Sage-Grouse Conservation Measures" (NTT, 2011). Consistent with the NTT report (p. 11) this alternative would "limit OHV travel to existing roads, primitive roads, and trails at a minimum in PHMA" (Nevada FEIS, p. 2-386).

The BLM utilized Holloran's 2005 findings, the NTT report, and the USGS Report on "Conservation Buffer Distance Estimates for Greater Sage-Grouse to define allowable maximum landscape anthropogenic disturbance, required distance from leks for new actions, and density of mining or energy facilities".

As discussed previously under the NEPA—Range of Alternatives Section, of this report, the BLM complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM regulations, policy, and guidance. The management actions in the Proposed RMPA/Final EIS fall within the range of alternatives for protecting GRS/PLUPA related to travel management, including travel limitations, road maintenance, and road construction. The Nevada and Northeastern California GRS/PLUPA/FEIS includes a list of references (Chapter 7), which lists information considered by the BLM in preparation of the PLUPA/FEIS.

General Mining Law

General Mining Act of 1872 (30 USC 22) states that:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

Surfaces Resources Act of 1955 (30 USC 612) states that:

"(b) Reservations in the United States to use of the surface and surface resources
Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be

such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto”.

Per BLM H-3809-1(p. 5-8) “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.” However, as stated in the Proposed Alternative, cross country use would not be allowed for the purposes of staking claims upon approval of the plan in the ROD.

For the Forest Service, statutory rights of access are discussed in FSM 2734.5 and 2734.6. Appropriate access to non-Federal land to use and manage that land constitutes entry for a lawful and proper purpose and must be allowed. (See FSM 2703) The standard for appropriate and reasonable access is determined by the present or future use of the non-Federal land. Undue restrictions to access may affect the purpose for seeking access and violate the right established. Location, type and method of access can be reasonably limited considering the purposes for which the National Forest System was established and is administered. Restrictions only apply to future requests and provides options if the alternative is impracticable.

Access rights to non-Federal land are not affected by land management planning considerations or procedures. However, exercising the right may involve land management planning. Statutory rights of access attach to the land, therefore application for access must be made by the landowner, and access authorization shall be issued only to the landowner. Application for access across National Forest System land will be evaluated through the NEPA process. The analysis will address such points as the type, location, and conditions of the access sought; whether other adequate access exists; and requirements of any grant.

The Nevada and Northeastern California GRSG PLUPA/FEIS is consistent with BLM and FS direction to balance mining claimant’s right and requirement to access claims with FLPMA’s requirement to prevent unnecessary or undue degradation.

Clarifications and Clerical Errors

Issue Number: PP-NVNORTHEASTCA-GRSG-15-03-10

Organization: Southern Nevada Water Authority

Protestor: Zane Marshall

Issue Excerpt Text:

Roads are not defined in Appendix B, but the definition provided in the glossary very broadly defines a road as “[a] linear route

declared as a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use” (LUPA at 8-32). Based on this definition, a gravel access road maintained as part of SNWA’s GWD Project would qualify as a road, and likely be prohibited within 3.1 miles of a lek. However, this broad definition of a road is internally inconsistent with Table F-1’s list of features that qualify as anthropogenic

disturbance for purposes of the 3% disturbance calculation. Table F-1 lists roads in three categories: (1) surface streets (minor roads), (2) major roads, and (3) interstate highways (Appendix F at F-5). It is not clear how a dirt or gravel access road, which meets the broad glossary definition of a road, might not count as anthropogenic disturbance, and at the same time be prohibited within 3.1 miles of a lek.

Summary:

The applicability of the disturbance cap with regard to gravel roads needs clarification.

Response:

A minor road for the purpose of the disturbance cap is a road with a maintenance rating of 3 or 5 (e.g. a crowned and ditched gravel road). Table F-1 uses terminology from the data source (i.e. ESRI), not from the BLM. There is no connection between the disturbance cap and the lek buffer. The lek buffer will be applied and analyzed during the NEPA analysis for an implementation action, while the disturbance cap would be measured prior to considering the action to decide whether to proceed or not with the action.