



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

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

March 15, 2019

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Acronyms

AMS	Analysis of the Management Situation
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COT	Conservation Objectives Team
ESA	Endangered Species Act
FLPMA	Federal Land Policy and Management Act
GHMA	General Habitat Management Areas
NMFS	National Marine Fisheries Service
RNA	Research Natural Areas
SFA	Sagebrush Focal Area
USC	United States Code
USFWS	United States Fish and Wildlife
USGS	US Geological Survey

Protesting Party Index

Protester	Organization	Determination
Bill Harvey	Baker County	Dismissed – No Standing
Carrie Mann	Friends of the Earth	Dismissed – Comments Only
Jean Public	N/A	Dismissed – Comments Only
Joe Cahill	Cahill Ranches Inc.	Denied – Issues and Comments
Laura Skaer	American Exploration and Mining	Dismissed – No Relevant Issues
Marry Anne Cooper, ¹ Jerome Rosa	Oregon Farm Bureau, ¹ Oregon Cattleman’s Association	Denied – Issues and Comments
Marty Sutter-Goold, ² Frank Falen,* Conner Nicklas*	Harney County Soil and Water ² Conservation District, Falen Law Offices LLC.*	Denied – Issues and Comments
Nada Culver, ³ Brian Rutledge, Jayson O’Neill, Mary Greene, Robert McEnaney	The Wilderness Society, ³ National Audubon Society, Western Values Project, National Wildlife Federation, Natural Resources Defense Council	Denied – Issues and Comments
Paul Turcke	Blue Ribbon Coalition	Denied – Issues and Comments
Pete Runnels	Harney County Court	Denied – Issues and Comments
Peter Lacy, ⁴ Dan Morse, Bob Sallinger, Randy Spivak, Rory Isbell, Mark Salvo, Veronica Warnock, Dave Willis, Doug Heiken, Erik Molvar	Oregon Natural Desert Association, ⁴ Oregon Natural Desert Association, Audubon Society of Portland, Center for Biological Diversity, Central Oregon LandWatch, Defenders of Wildlife, Greater Hells Canyon Council, Soda Mountain Wilderness Council, Oregon Wild, Western Watersheds Project	Denied – Issues and Comments
Tracie Hornung	N/A	Dismissed – Comments Only

¹ This letter was cosigned by multiple parties. In this report, it is referenced as Mary Anne Cooper, Oregon Farm Bureau

² This letter was cosigned by multiple parties. In this report, it is referenced as Marty Sutter-Goold, Harney County Soil and Water Conservation District.

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

⁴ This letter was cosigned by multiple parties. In this report, it is referenced as Peter Lacy, Oregon Natural Desert Association

Endangered Species Act Consultation

The Wilderness Society

Nada Culver

Issue Excerpt Text: The changes incorporated in the Proposed Amendments will weaken protections and increase the likelihood of damage to sage-grouse habitat, as discussed in detail above. However, because of the hundreds of other plants and wildlife species that rely on this same habitat, the changes made in the Proposed Amendments will also affect plants and wildlife species, including those that are listed as threatened or endangered under the ESA. Since these are new risks of harm, related to the new purpose and need, circumstances and policies that underlie these Proposed Amendments, BLM cannot rely on findings from the 2015 ESA consultations.

Summary: The Bureau of Land Management (BLM) cannot rely on findings from the 2015 Endangered Species Act (ESA) consultations because there are new risks of harm related to the new purpose and need, circumstances, and policies that underlie the Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment/Final Environmental Impact Statement (Proposed RMP Amendment/Final EIS).

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

In 2015, the BLM Oregon State Office engaged in informal consultation and determined that there would be no effects on listed species from the actions proposed in the 2015 Proposed RMP Amendment/Final EIS. In 2018, the BLM Oregon State Office again engaged in informal consultation regarding the 2018 Proposed RMP Amendment/Final EIS (see Sections 3.6 and 4.8, which specifically discussed special status species, including threatened and endangered species, and the key research natural areas [RNAs]). No listed or proposed species and designated or proposed critical habitat were identified in the RNA descriptions (see pages 3-19 to 3-21). Additionally, the 2018 Proposed RMP Amendment/Final EIS incorporated the information on wildlife species of concern described in the 2015 Proposed RMP Amendment/Final EIS. Appendix W of the 2015 Approved RMP Amendment/Record of Decision summarized the findings from the Biological Assessment. The BLM coordinated its 2018 no effects determination with USFWS and National Marine Fisheries Service (NMFS) (correspondence in the record). It was again determined that there would be no effects on listed species from the actions proposed in the 2018 Proposed RMP Amendment/Final EIS. Therefore, the BLM has fulfilled its obligations under Section 7 of the Endangered Species Act.

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

FLPMA—Areas of Critical Environmental Concern (ACECs)/Research Natural Areas (RNAs)

Harney County Soil and Water Conservation District Marty Suter-Gould

Issue Excerpt Text: Chapter 4: Environmental Impacts- 4.7, paragraph 3, "Livestock could also spread invasive plants, which would degrade habitats; however, BLM grazing policy requires that all wildlife habitat achieve or make significant progress toward achieving land health standards, including the standard for wildlife and special status species. For allotments not meeting the BLM's Standards for Rangeland Health and where livestock grazing is determined to be a significant factor, appropriate changes in grazing management would be implemented prior to the start of the next grazing year." This statement is not just true in regard to RNAs, but to all grazing on BLM administered land. The BLM's failure to extend this precedent to the remaining grazing allotments in the 2015 Armpa project area who all have the same assurances of sage-grouse habitat protection as these RNAs is illogical and fails to consider relevant factors, thus making it arbitrary and capricious.

Summary: The BLM's failure to apply land health standards to all BLM-administered grazing allotments in the project area is arbitrary and capricious.

Response: In accordance with 43 Code of Federal Regulations (CFR) 4100 and BLM Manual 4100, Grazing Administration, the BLM is required to apply land health standards on all BLM-administered grazing allotments.

As described in Section 1.2 of the Proposed RMP Amendment/Final EIS, the scope of the analysis is limited to RNAs. The BLM does not disagree that land health standards apply to all grazing allotments on BLM-administered lands; however, these standards are not subject to analysis in the Proposed RMP Amendment/Final EIS. The BLM continues to apply land health standards on all BLM-administered grazing allotments.

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

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Reversing course and allowing livestock grazing in the key RNAs fails to prevent activities that modify ecological conditions, fails to give "priority" to sage-grouse conservation and does not require management of these areas to avoid "unnecessary or undue" degradation of their unique natural characteristics and important scientific and management value.

Response: Allowing livestock grazing in the key RNAs fails to avoid unnecessary or undue degradation of their unique natural characteristics and important scientific and management value.

Section 302(b) of the Federal Land Policy and Management Act (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 Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Proposed RMP Amendment/Final EIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of the National Environmental Policy Act (NEPA), and other statutes, regulations, and Executive Orders related to environmental quality. The Proposed RMP Amendment/Final EIS identifies appropriate allowable uses and management actions that prevent the unnecessary or undue degradation of public lands. The Proposed RMP Amendment/Final EIS does not authorize any use of the public lands, much less any that would result in unnecessary or undue degradation.

Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public lands. Through monitoring of the 2015 Approved RMP Amendment/Record of Decision, it has been determined that excluding livestock grazing in these areas is not necessary to further conservation outcomes of Greater Sage-Grouse.

Because the Proposed RMP Amendment/Final EIS would not authorize any uses of the public lands, and the alternatives evaluated in the Proposed RMP Amendment/Final EIS comply with all applicable statutes, regulations, and policy, the Proposed RMP Amendment/Final EIS will not result in "unnecessary or undue degradation of the lands" under Section 302(b) of FLPMA.

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

FLPMA—Consistency with State and Local Plans

Harney County Soil and Water Conservation District

Marty Suter-Gould

Issue Excerpt Text: First, the BLM's blatant disregard to the 2016 Harney Soil and Water Conservation District Land Use Plan in violation of its coordination requirements set forth in FLPMA and NEPA. Further, despite requests from Harney SWCD to participate as a cooperating agency, and the considerable amount of comments submitted to the BLM, those comments were mostly ignored by

the BLM in violation of its collaboration requirements under FLPMA and NEPA. The plan's economic harm to the Harney County community is in direct violation of SO #3349 and EO #13771.

Harney County Soil and Water Conservation District

Marty Suter-Goold

Issue Excerpt Text: Harney SWCD further requests, once again, that the BLM conduct a consistency review in regard to the 2016 Harney Soil and Water Local Land Use Plan (40 C.F.R. §§ 1506.2 and 1506.2(d); 43 C.F.R. § 1610.3-1(d)(2), (3); 43 C.F.R. 1610.3-1(f); 43 C.F.R. § 1610.3-2(b)).

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Nowhere in the Oregon Sage-Grouse Action Plan does the State of Oregon discuss specific management of RNAs or any need to maintain livestock grazing in these critical areas for research and monitoring. Simply put, reinstating livestock grazing in these areas is not needed to ensure consistency with Oregon's state plan.

Harney County Soil and Water Conservation District

Marty Suter-Goold

Issue Excerpt Text: The BLM is obligated to coordinate its planning processes with local government land use plans, provide the state and local governments with meaningful involvement in the development of resource management plans, and, if possible, develop resource management plans in collaboration with cooperating agencies. 43 C.F.R. §§ 1610.3-1(a)(3), (4), and (5). Further, the BLM resource management plan must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with the purposes, policies, and programs associated with federal law and regulations. 43 CFR § 1610.3-2(a). Despite the BLM's clear obligation to coordinate and collaborate with local government, and its obligation to align its resource management plan with local land use plans when possible, we have yet to be contacted by the BLM regarding this Consistency Review, nor does this 2018 PRMPA/FEIS reflect either our Land Use Plan or the key Cooperating Agency scoping comments that we provided.

Summary:

- The Proposed RMP Amendment/Final EIS is not in compliance with the 2016 Harney Soil and Water Conservation District Land Use Plan, in violation of FLPMA and NEPA. The BLM failed to conduct a consistency review in regard to the 2016 Harney Soil and Water Local Land Use Plan.
- The BLM did not comply with its collaboration requirements under FLPMA and NEPA regarding responses to public comments because, according to Harney Soil and Water Conservation District, “[a] considerable amount of comments...were mostly ignored by the BLM.”
- The Proposed RMP Amendment would result in economic harm to the Harney County community, which is in violation of Secretarial Order 3349 and Executive Order 13771.
- Reinstating livestock grazing in these areas is not needed to ensure consistency with Oregon's state plan.

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

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

In accordance with these requirements, the BLM has given consideration to state, local, and tribal plans that are germane to the development of the Oregon GRSG Proposed RMP Amendment/Final EIS. The BLM has worked closely with state, local, and tribal governments during preparation of the Proposed RMP Amendment/Final EIS. Chapter 5 describes coordination that has occurred throughout the development of the Proposed RMP Amendment/Final EIS. Because the goal of this amendment was to align with state plans, local and tribal governments are encouraged to work closely with their state governments to ensure their local issues are adequately addressed.

In Section 1.6.2 of the Draft RMP Amendment/Draft EIS and of the Proposed RMP Amendment/Final EIS, the BLM mentions by name the Harney Soil and Water Conservation District (Harney SWCD) land use plan and its relationship to the 2015 plans. The BLM reviewed the Harney SWCD land use plan and found that modifying the proposed action to better conform with that plan would not improve alignment of 2015 decisions with state management of the species, and would therefore would not meet the purpose and need of the proposed plan. This planning effort is not intended to re-consider the entirety of BLM’s 2015 decisions, and reopen consideration of all decisions and their consistency with local plans, but rather, to consider targeted changes in consideration of the state’s primary role in management of wildlife. Pursuant to 40 CFR 1506.2(d), the agency will discuss why any remaining inconsistencies between the Proposed RMP Amendment/Final EIS and relevant local, state, and tribal plans cannot be resolved in the record of decision (ROD) for the Oregon Proposed RMP Amendment/Final EIS.

Comments submitted on behalf of Harney SWCD maintain that the District requested participation as a Cooperating Agency. As indicated in Table 5-1 of the Oregon GRSG Proposed Plan/Final EIS, Harney SWCD was granted status as a Cooperating Agency and entered into an updated Memorandum of Understanding with the BLM as part of the planning process.

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

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

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

It is important for the public to understand that the BLM’s comment response process does not treat public comments as if they were a vote or particular action. The comment response process ensures that every comment is considered at some point when preparing the Proposed RMP Amendment/Final EIS.

In regard to EO 13771, Reducing Regulation and Controlling Regulatory Costs and Secretarial Order 3349, American Energy Independence, the BLM addresses these in the economics section of Chapter 4 of the Proposed RMP Amendment/Final EIS, which indicates that continued grazing would continue to support local economies because grazing would continue in the 13 key RNAs. The 2018 Proposed RMP Amendment/Final EIS reexamines the balance of both conservation and jobs, directly affecting the economy. The BLM retained the grazing allowance on these RNAs, which removes any adverse effect (reduced AUMs) that the 2015 Approved RMP Amendment/Record of Decision would have had. Please refer to this chapter of the Oregon Proposed RMP Amendment/Final EIS for more detailed information. The BLM considered the economic effects to Harney County when preparing the Proposed RMP Amendment/Final EIS, and as explained above, the Proposed RMP Amendment/Final EIS would not result in additional economic harm to the Harney County community. The BLM did not violate Secretarial Order 3349 and Executive Order 13771.

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

FLPMA—Data and Inventories

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Finally, to ensure informed land management, FLPMA requires that BLM "shall" maintain on a continuing basis a current inventory of public lands and resources. 43 U.S.C. § 1711(a). By failing to actually implement the 2015 grazing closure, which was intended to provide areas to study the effects of habitat recovery in the absence of grazing, and by failing to collect and present monitoring and baseline information about management and grazing impacts in these areas before and after the 2015 grazing closure decision, BLM has failed to maintain a current, up-to-date inventory of these key RNAs.

Summary: The BLM has failed to maintain a current, up-to-date inventory of public lands and resources, including the key RNAs.

Response: Section 201(a) of FLPMA requires that the BLM "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values."

Section 202(c)(4) of FLPMA requires that "in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values."

The BLM relied on a current inventory of the resources of the public lands when preparing the Proposed RMP Amendment/Final EIS, and fully described the inventory information it used in Section 3.3 of the Proposed RMP Amendment/Final EIS. The BLM is not obligated to conduct a new inventory whenever it undertakes a planning effort.

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

FLPMA—General

The Wilderness Society

Nada Culver

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

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

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

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

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

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

The beginning of Chapter 3 of the Proposed RMP Amendment/Final EIS explains that the BLM analyzed the management situation in full compliance with its regulations and policies. The BLM evaluated inventory and other data and information, partnering with the US Geological Survey (USGS) and coordinating extensively with States, to help provide a basis for formulating reasonable alternatives. The BLM described this process in its Report to the Secretary in response to Secretarial Order 3353 (August 4, 2017). Among other things, the Report describes how the BLM coordinated "with each State to gather information related to the [Secretary's] Order, including State-specific issues and potential options for actions with respect to the 2015 GRS G Plans and IMs to identify opportunities to promote consistency with State plans." (Report to the Secretary, page 3.) Implementing that direction, the Proposed RMP Amendment/Final EIS incorporates, as appropriate, information in a USGS report that identified and annotated Greater Sage-Grouse science published since January 2015 (Carter et al. 2018), a report that synthesized and outlined the potential management implications of this new science (Hanser et al. 2018), and other best available science.

The BLM's AMS is adequate and in full compliance under 43 CFR 1610.4-4 and the BLM's Land Use Planning Handbook, H-1601-1.

[FLPMA—Unnecessary or Undue Degradation](#)

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Only with a current inventory will BLM have an accurate baseline against which to measure and understand what effect reversing the 2015 decision would actually have, and to assess whether its proposed action will prevent unnecessary or undue degradation and comply with other substantive requirements of law.

BLM does not explain how its proposal will "prevent unnecessary or undue degradation" of the public lands and resources. Despite the public having expressly raised the issue during the NEPA process, the EIS barely references this requirement. See FEIS 4-24 n.1, 4-26 n.2 (footnotes in reference to mining regulations). Nowhere does the agency honestly grapple with the fact that retaining (that is, implementing) the RNA grazing closure is what is in fact "necessary" for sage-grouse conservation and measuring plan effectiveness.

The EIS provides no support for the notion that allowing livestock grazing in the RNAs is "necessary"- certainly not for the sage-grouse or for purposes of scientific study, and generally not for affected grazing operations. The document makes clear that the loss of 1,772 AUMs is "negligible." FEIS 3-22. As described above, the EIS vaguely assumes unspecified socioeconomic impact to unspecified grazing operations, but it presents no specific information to support that assumption. Even then, only five of the thirteen RNAs would have any of the presumed "direct" economic impacts, while the others could "absorb" the change. As a matter of logic, continuing grazing in most of the RNAs at issue is not "necessary" to the continuing viability of the affected grazing operations.

FEIS Sections 1.5 (issues), 2.2 (alternatives considered but not analyzed in detail), 3.4 (resources affected), 4.1 to 4.14 (environmental impacts) (all failing to address climate change and climate conservation areas); see also FEIS Table 4-5 (recognizing some of the plant communities available in RNAs for studying changing climate, but not including analysis of same). This failure is inconsistent with BLM's duty to take a "hard look" at the environmental impacts of proposed actions. It is also inconsistent with the agency's obligation under FLPMA to prevent unnecessary or undue degradation, and the Secretary's directive that BLM shall consider and analyze potential climate change impacts when undertaking long-range planning exercises like this land use plan amendment.

The Wilderness Society

Nada Culver

Issue Excerpt Text: As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach.[21 43 USC § 1732(b). 22 BLM cited this the case in its determination to issue its Notice of Intent opening this rulemaking process. See Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments. 82 Fed.Reg. 47248 (October 11, 2017). Docket No.: LLWO200000/LXSGPL000000/17x/LI 1 00000.PH0000. 23 *Western Exploration, LLC v. U.S. Department of the Interior*, at 747.]based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover violates FLPMA's requirement to avoid unnecessary or undue degradation (UUD). Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques.

Summary: The BLM failed to explain how the Proposed RMP Amendment/Final EIS, including its approach to compensatory mitigation, will prevent unnecessary and undue degradation.

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

The Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Proposed RMP Amendment/Final EIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. It does not authorize any use of the public lands, much less any that would result in unnecessary or undue degradation. The BLM’s proposed management direction would improve alignment with state agencies and enhance coordination between jurisdictions (43 CFR 24.3(a)). Proposed management changes would result in foreseeable effects on the species, described in Section 4.5 of the Proposed RMP Amendment/Final EIS, but such effects could be justified in the balancing of competing interests, reflecting the BLM’s multiple-use mission. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

Thus, adoption of the Proposed RMP Amendment/Final EIS would not violate FLPMA’s requirement to prevent unnecessary or undue degradation because adoption of the Proposed RMP Amendment/Final EIS would not authorize any public land uses that would result in unnecessary or undue degradation.

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

NEPA—Best Available Science

The Wilderness Society

Nada Culver

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

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

The Wilderness Society

Nada Culver

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

The Wilderness Society**Nada Culver**

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

Harney County Soil and Water Conservation District**Marty Suter-Gould**

Issue Excerpt Text: Grazing decreases the risk, size and severity of wildfires. Davies et. al. 2011; Svejcar et. al. 2014; Strand et. al. 2014; Davies et. al. 2016b; Davies et. al. 2017; see also 2018 PRMPA/FEIS section 1.5.3, pages 1-9, 1-10. In light of the overwhelming evidence that grazing does in fact lower fine fuel loads across the range of sage-grouse habitat and with the knowledge that the primary risk to sage-grouse is wildfire, therefore, it would be in light of the current record, it would be arbitrary and capricious to remove or curtail any grazing activities beyond what is applicable in pre-2015 grazing regulations due to the fact that curtailing grazing would be counterproductive to sage-grouse population recovery.

The Wilderness Society**Nada Culver**

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

The Wilderness Society**Nada Culver**

Issue Excerpt Text: The research upon with BLM relies in the Proposed Amendments and FEISs actually points to the need to sustain the direction in the 2015 Sage-grouse Plans, including maintaining a landscape-scale approach, retaining priority and general habitat management areas and preserving protections from oil and gas development. However, many of these elements of the plans are being weakened or removed altogether in contravention of this accepted science. In addition, more recent science has only reinforced this interpretation of the weight of existing, applicable science (including BLM's USGS Synthesis). For instance, a report by Burkhalter et al. found that landscapes associated with a higher abundance of males on leks were those located in highly connected, sagebrush-dominated areas with limited energy development.⁹ A report by Lipp, T.W. and Gregory, A.J., found that, as energy demands continue to increase, and with multiple species of grouse listed or nominated for listing under the ESA, negative impacts attributed to energy development are likely to continue.¹⁰ And a study by Row, et al., finds that, although population strongholds will likely have much higher suitability values, maintaining areas outside of these regions should help maintain connectivity between these existing protection areas.¹¹ This new science emphasizes the importance of retaining protections from energy development, maintaining connectivity and ensuring that management is conducted at a landscape scale. [9 Burkhalter et al. (2018), *Animal Conservation*. Landscape-scale habitat assessment for an imperiled avian species <https://zslpublications.onlinelibrary.wiley.com/doi/full/10.1111/acv.12382> 10 Lipp, T.W. and Gregory, A.J., 2018, *Environmental Impacts of Energy Development on Prairie-Grouse and Sage Grouse in the Continental U.S.* http://www.academia.edu/37497955/Environmental_Impacts_of_Energy_Development_on_Prairie-Grouse_and_SageGrouse_in_the_Continental_United_States. 11 Row, J.R.,

Doherty, K.E., Cross, T.B., Schwartz, M.K., Oyler-McCance, S.J., Naugle, D.E., Knick, S.T., and Fedy, B.C., 2018, Quantifying functional connectivity-The role of breeding habitat, abundance, and landscape features on range-wide gene flow in sage-grouse: *Evolutionary Applications*, v. 11, no. 8, p. 1305-1321, <https://doi.org/10.1111/eva.12627>.]

The Wilderness Society

Nada Culver

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

Harney County Soil and Water Conservation District

Marty Suter-Goold

Issue Excerpt Text: There is, however, little evidence for the existence of the causal relationship between grass height and nest survival on which these guidelines were predicted. (Smith et. al. 2017(b)). This proves that stubble height requirements should be removed from the Habitat Objectives. Hanser revealed that sagebrush height requirements in the Habitat Objectives are in error as well.

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

- Deciding to eliminate prioritization of oil and gas leasing outside of Greater Sage-Grouse habitat
- Not accounting for studies indicating that grazing decreases the risk of fire on rangeland
- Basing its analysis on scientific studies contrary to the true best available by the Conservation Objectives Team (COT) Report
- Not accounting for studies indicating that grazing decreases the risk of fire on Greater Sage-Grouse
- Overlooking the role of General Habitat Management Areas (GHMA) for habitat connectivity in the Oregon Proposed RMP Amendment/Final EIS
- Overlooking the role of oil and gas leasing and energy development in impacting Greater Sage-Grouse habitat
- Including grass height as part of the habitat objectives for Greater Sage-Grouse
- Removing goals and objectives of the 2015 plans that were designed based on best available science

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).

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

In developing the 2018 Proposed RMP Amendment/Final EIS, the BLM specifically partnered with the USGS to review the best available information and incorporate the management implications of that information into the Proposed RMP Amendment/Final EIS. The report from the USGS is available [here](#) and referenced throughout the Proposed RMP Amendment/Final EIS in Sections 1.1, 1.4, 2.2.1, 3.1, 3.1.1, 4.11, and 4.11.1. Specifically, in response to public comments, grazing and wildfire risks information was added between the Draft RMP Amendment/Draft EIS and the Proposed RMP Amendment/Final EIS; see pages I-11 and I-12 of the Proposed RMP Amendment/Final EIS.

The BLM uses best available information, including new scientific studies and government reports that indicate a potential change in assumptions or conditions related to a land use planning effort. The BLM must balance reviewing new information with determining what information is relevant to a decision in light of the BLM's purpose and need. Many commenters highlighted information and studies for the BLM to consider, and the BLM reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft RMP Amendment/Draft EIS. Many of the suggested articles were already included for analysis in the USGS report, including, as this Protest cites, Brooks et al. 2015, Coates et al. 2015, and Coates et al. 2016.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate Proposed RMP Amendments/Final EISs. Overall, submitted studies did not offer information that changed the analysis of the Proposed RMP Amendments/Final EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM identified 11 articles from the studies suggested in comments, which were either references in the bibliography of the USGS Report or considered by the BLM during the RMP Amendment development process and review of comments. Articles were reviewed during comment response development and incorporated into comment responses where appropriate (see comment response Appendix of the Proposed RMP Amendment/Final EIS).

It is not necessary to incorporate Protestor's suggested scientific reports and data into the 2018 Proposed RMP Amendment/Final EIS. The BLM has reviewed the referenced articles (Burkhalter et al. 2018; Lipp, T. W. and A. J. Gregory 2018; and Row et al. 2018) to determine if the information is substantially different than the information considered and cited in the 2018 Proposed RMP Amendment/Final EIS, and it does not provide additional information that would result in effects outside the range of effects already discussed in the 2018 Proposed RMP Amendment/Final EIS.

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

Regarding studies on grass height, as the USGS report demonstrated, recent studies suggest site-specific variation in grass height required for nest cover, which differs from earlier management. By changing the desired condition from a straight 7-inch grass height to adequate nesting cover, the BLM has allowed for new scientific research to improve its management without the need to amend the plans with each new insight.

Accordingly, the BLM has, in fact, relied on high quality information to examine how grazing decreases the risk, size, and severity of wildfires on rangeland, including some of the “many, many studies” that the Protestor has cited in support of their complaint.

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

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: There is a paucity of data suggesting significant adverse impacts to GRSB caused by recreation. Even the Fish and Wildlife Service's numerous reviews have referred only sparingly to recreation and found recreation to be a tertiary factor in grouse population/habitat impacts. See, 75 Fed.Reg. 13987 (Mar. 23, 2010).

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

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

The BLM considered the impacts of recreation on Greater Sage-Grouse in Chapter 3 of the 2015 Approved RMP Amendment/Record of Decision. Based on a review of information and the actions proposed in 2018, it was determined that there would be no new impacts other than those described in 2015. This is described in Section 1.5.3 (page 1-13) of the Proposed RMP Amendment/Final EIS.

Because the BLM has relied on the best available information to analyze the impacts of recreation on Greater Sage-Grouse, the BLM denies this protest.

NEPA—Cooperating Agencies

Harney County Soil and Water Conservation District

Marty Suter-Gould

Issue Excerpt Text: Concluding, the BLM has ignored Harney SWCDs substantive comments at each juncture throughout the 2015 ARMPA process, and again as a Cooperating Agency in this 2018 PRMPA/FEIS process.

Harney County Soil and Water Conservation District

Marty Suter-Gould

Issue Excerpt Text: Despite the adoption of the plan in 2016, the BLM has failed to seek guidance concerning the need for a major plan amendment with local governing bodies residing in the eastern Oregon counties who are directly affected by the implementation of the ARMPA. The BLM has also failed to be consistent with the 2016 land use plan, or at the very least, explain the reasons why inconsistencies exist and cannot be remedied. 43 C.F.R. § 1610.3-1(d)(2), (3); 43 C.F.R. § 1610.3-2(a).

Summary: The BLM violated NEPA because the Proposed RMP Amendment/Final EIS does not comply with its collaboration requirements under FLPMA and NEPA regarding responses to public comments because, according to the Harney County Soil and Water Conservation District, “[a] considerable amount of comments...were mostly ignored by the BLM” and does not comply with the 2016 Harney County Soil and Water Conservation District Land Use Plan, in violation of FLPMA and NEPA.

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

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

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

It is important for the public to understand that the BLM’s comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Proposed RMP Amendment/Final EIS.

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

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

In accordance with this requirement, the BLM has given consideration to state, local, and tribal plans that are germane to the development the Proposed RMP Amendment/Final EIS. The BLM has worked closely with state, local, and tribal governments during preparation of the Proposed RMP Amendment/Final EIS. Chapter 5 describes coordination that has occurred throughout the development of the Proposed RMP Amendment/Final EIS. Because the goal of this amendment was to align with state plans, local and tribal governments are encouraged to work closely with their state governments to ensure their local issues are adequately addressed.

In Section 1.6.2 of the Draft RMP Amendment/Draft EIS and of the Proposed RMP Amendment/Final EIS, the BLM mentions by name the Harney Soil and Water Conservation District (Harney SWCD) land use plan and its relationship to the 2015 plans. The BLM reviewed the Harney SWCD land use plan and found that modifying the proposed action to better conform with that plan would not improve alignment of 2015 decisions with state management of the species, and would therefore would not meet

the purpose and need of the proposed plan. This planning effort is not intended to re-consider the entirety of BLM's 2015 decisions, and reopen consideration of all decisions and their consistency with local plans, but rather, to consider targeted changes in consideration of the state's primary role in management of wildlife. Pursuant to 40 CFR 1506.2(d), the agency will discuss why any remaining inconsistencies between the Proposed RMP Amendment/Final EIS and relevant local, state, and tribal plans cannot be resolved in the record of decision (ROD) for the Oregon Proposed RMP Amendment/Final EIS.

Comments submitted on behalf of Harney SWCD maintain that the District requested participation as a Cooperating Agency. As indicated in Table 5-1 of the Oregon GRSG Proposed Plan/Final EIS, Harney SWCD was granted status as a Cooperating Agency and entered into an updated Memorandum of Understanding with the BLM as part of the planning process.

A list of the local, state, and tribal plans that the BLM considered can be found in Section 1.6. Pursuant to 40 CFR 1506.2(d), the agency will discuss why any remaining inconsistencies between the Proposed RMP Amendment/Final EIS and relevant local, state, and tribal plans cannot be resolved in the ROD for the Proposed RMP Amendment/Final EIS.

The BLM does not violate NEPA because it adequately responded to public comments on the Proposed RMP Amendment/Final EIS and complies with collaboration requirements.

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

***Harney County Soil and Water Conservation District
Marty Suter-Gould***

Issue Excerpt Text: SageCon is neither a federal agency nor a state or local governing body or agency. Neither is it a federally recognized Indian Tribe. Therefore, it is not eligible for Cooperating Agency Status. 40 C.F.R. § 1508.5; 43 C.F.R. § 1610.3-1(b). Further, SageCon is not an entity, it is a process as is stated in this FEIS. "The Oregon-Washington BLM has for many years been an active partner with the State of Oregon (including its many agencies), other local and federal agencies as well as non-governmental organizations in a collaborative Greater Sage-Grouse planning and implementation process called SageCon. Since the October 2017 national BLM NOI initiating the current plan amendment process, BLM Oregon-Washington has continued to actively coordinate and collaborate with the SageCon partnership, including numerous discussions about this plan amendment process." 2018 PRMPA/FEIS 5.2, pg. 5-2. SageCon is not a governing body and therefore has no decision-making authority that would make it eligible for Cooperating Agency Status. 40 C.F.R. § 1508.5; 43 C.F.R. § 1610.3-1(b).

Summary: The BLM inappropriately invited SageCon to participate as a cooperating agency in violation of 40 CFR § 1508.5 and 43 CFR § 1610.3-1(b).

Response: The BLM must invite eligible federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies when revising an RMP or amending an RMP through an EIS (43 CFR 1610.3-1(b)). DOI regulations (43 CFR 46.225(c)) also require the BLM, as lead agency, to consider any request by a government entity to participate as a cooperating agency. An agency must have jurisdiction by law or special expertise to be eligible to participate as a cooperating agency (40 CFR 1508.5).

Both the CEQ and the BLM planning regulations define cooperating agency status, including what cooperating agency status is, who is eligible to become a cooperating agency, and how the lead agency should invite participation as a cooperating agency (40 CFR 1501 and 1508; 43 CFR 1601.0-5).

Cooperating relationships are limited to government entities: state agencies, local governments, tribal governments, and other federal agencies that have jurisdiction by law or special expertise. To be a cooperating agency, the local agency must meet the eligibility criteria set out in the regulations and policies.

All cooperating agency relationships are described in Chapter 5 of the Oregon Proposed RMP Amendment/Final EIS. The BLM sent letters to all eligible local, state, federal, and tribal governments inviting them to be a cooperating agency. Six local, state, and federal governments/agencies agreed to participate in developing the Oregon Proposed RMP Amendment/Final EIS as cooperating agencies.

In addition to the BLM's invitations to a wide variety of agencies to participate as cooperating agencies, from the time that the Notice of Intent was published and throughout the development of the Oregon Proposed RMP Amendment/Final EIS, an agency could notify the BLM requesting cooperating agency status. The Notice of Intent invited all potential cooperating agencies to participate.

The Oregon-Washington BLM has for many years been an active partner with the State of Oregon (including its many agencies), other local and federal agencies, as well as nongovernmental organizations in an collaborative Greater Sage-Grouse planning and implementation process called SageCon. Since the October 2017 national BLM Notice of Intent initiating the current plan amendment process, the BLM Oregon-Washington has continued to actively coordinate and collaborate with the SageCon partnership, including numerous discussions about this plan amendment process. However, SageCon has not functioned as, and is not listed as, a cooperating agency in the Oregon Proposed RMP Amendment/Final EIS.

The BLM properly invited all eligible cooperating agencies to participate in the preparation of the Oregon Proposed RMP Amendment/Final EIS.

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

[NEPA—Cumulative Effects](#)

The Wilderness Society

Nada Culver

Issue Excerpt Text: BLM has also failed to account for and analyze the destruction of vital sage grouse habitat due to wildfires. In 2018, 2,034,318 acres of sage grouse habitat on federal land was damaged by fire. Of these 1,057,309 acres were on BLM land.⁴ The loss of this habitat will have a significant impact on sage grouse survival, yet BLM simply states that these losses to fire are accounted for in the 2015 FEIS. See e.g., Utah FEIS at 4-44. 2018 was one of the worst wildfire seasons on record and it is clear that wildfires will become an increasing problem in the West. BLM must sufficiently analyze the threat of rapidly increasing fire to sage grouse.

The Wilderness Society

Nada Culver

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

The Wilderness Society***Nada Culver***

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

Oregon Natural Desert Association***Peter Lacy***

Issue Excerpt Text: BLM cannot take the hard look NEPA requires without considering the impacts of its actions on a rangewide basis. BLM should prepare a programmatic EIS to disclose and study [3 See also USFWS. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. (stating, for example, that "key research projects that will address uncertainties associated with sage-grouse and sagebrush habitat management is essential" and that "[r]esearch to understand sage-grouse response to [wild] fires should be prioritized so that any appropriate management modifications, including the modification or addition of PACs, can be implemented").].how the many exceptions to enforceable protections written into the PRMPs across the range of the sage-grouse could combine to affect the health of the bird rangewide.

The Wilderness Society***Nada Culver***

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

Harney County Soil and Water Conservation District***Marty Suter-Goold***

Issue Excerpt Text: In violation of NEPA, the BLM did not fully analyze the diffuse socioeconomic effects of the cumulative regulatory measures in the ARMPA, and should have remedied that in the 2018 PRMPA/FEIS. The multitude of restrictions on grazing, road closures restricting access and tourism and mitigation required by Electric Cooperatives will have detrimental economic impacts to struggling rural communities and will have the ability to destabilize Oregon's livestock industry. This is especially egregious considering none of these activities are major threats to sage-grouse and their habitat. Again, this is in direct opposition to SO #3349 and EO #13771.

The Wilderness Society***Nada Culver***

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

Summary: The BLM has failed to account for and analyze the following in its cumulative effects analysis:

- The destruction of vital Greater Sage-Grouse habitat due to wildfires
- Not including conservation measures from the 2015 Approved RMP Amendment/Record of Decision in the 2018 Proposed RMP Amendment/Final EIS
- The increase in oil and gas lease sales under the current administration
- The multiple state plans and the uncertainties associated with the exceptions contained therein on Greater Sage-Grouse across the entirety of its range
- The cumulative effects of the Proposed RMP Amendment/Final EIS on socioeconomic resources with respect to grazing, access, and tourism

Further, the BLM inappropriately incorporates the 2015 Approved RMP Amendment/Record of Decision cumulative impacts analysis into the 2018 Proposed RMP Amendment/Final EIS; this incorporation is deficient, given that the purpose and need of the 2018 Proposed RMP Amendment/Final EIS differs from that in 2015.

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

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

Further, 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 nonfederal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has complied with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.11) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

Additionally, Section 1.5.3 of the Proposed RMP Amendment/Final EIS specifically addresses livestock grazing to manage fire risks; Section 3.3.1 discusses changes based on threats, which includes wildland fire; and Section 4.11, the cumulative impacts section, discusses wildland fire in general.

The BLM adequately analyzes cumulative effects on Greater Sage-Grouse habitat related to wildfire in the Proposed RMP Amendment/Final EIS.

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. In Oregon, part of this mechanism is the Oregon mitigation policy (OARS 635-140-0000 through – 0025), which requires mitigation for direct and indirect adverse effects to sage-grouse and sage-grouse habitat. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the state in all action alternatives in its NEPA analysis, and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. State policy in Oregon employs a prioritized hierarchy of avoidance, minimization, and compensatory mitigation (OARS 635-140-0025). The state statute includes a compensatory mitigation standard “to achieve a net conservation benefit” for sage-grouse, which would be analyzed under all alternatives in its NEPA analysis. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will also evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives. This is taken into account in the discussion of impacts on Sage-Grouse in Chapters 4.5 and 4.11.

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

NEPA—Impacts Analysis—General

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: BLM fails to establish an accurate environmental baseline with regard to the presumed negative economic impacts and also to the conservation and scientific value of the key RNAs. Without this baseline information, it is impossible to undertake an informed assessment of the environmental impacts of BLM’s proposal.

Summary: By not establishing an accurate environmental baseline, the BLM fails to adequately analyze the environmental impacts, specifically with respect to the economics, conservation, and scientific values of the key RNAs.

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

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

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

available information, including new scientific studies and government reports to develop its baseline or affected environment.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not authorizing a certain level of use), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM discusses the socioeconomic impacts of the Proposed RMP Amendment/Final EIS in Section 4.10 and the impacts associated with the values of the key RNAs in Sections 4.5 through 4.10.

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

NEPA—Impacts Analysis—Grazing

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: BLM also fails to provide specific operational or ecological information about livestock grazing and forage availability in the RNAs to support the assertions of lost AUMs and direct impacts. In other words, the assumption-admittedly "qualitative"-is not tied to any data and is therefore pure speculation. FEIS 4-18. At the same time, BLM also makes clear that at the statewide scale the loss of 1,772 AUMs is "negligible." FEIS 3-22. In short, the EIS fails to demonstrate that continuing livestock grazing in the key RNAs is "necessary" to the continuing viability of any affected grazing operation.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: The agency also failed to collect information necessary to accurately assessing conservation value. First, BLM admits that it never actually implemented the 2015 plan's removal of grazing from key RNAs. FEIS ES-9 (stating that "this action has not been implemented and impacts to livestock grazing have not yet been realized" and that "no actual management change or impact would occur on the ground [under proposed plan amendment] since grazing has not been formally removed from the key RNAs"). Therefore, BLM has no idea about the baseline environmental effects of the grazing removal in these thirteen unique habitat areas.

Summary: The BLM violates NEPA because it fails to adequately analyze the impacts of the Proposed RMP Amendment/Final EIS decisions on grazing. Specifically, the BLM fails to link differences in forage availability to material impacts on grazing operations.

Response: The 2015 Approved RMP/Final EIS analyzed the effects of closure of RNAs on livestock grazing in adequate detail. The 2018 Proposed RMP/Final EIS incorporates this by reference (Table 4-1), and provides additional analysis where appropriate (Sections 4.9 and 4.10, table 4-6). NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Proposed RMP Amendment/Final EIS.

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

conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.11) 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 takes into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM fully complies with NEPA because it adequately analyzes the impacts of the Proposed RMP Amendment/Final EIS decisions on grazing; accordingly, the BLM denies this protest.

[NEPA—Impacts Analysis—Oil and Gas](#)

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

Issue Excerpt Text: The Final EISs should, but do not, provide and evaluate the following information:

* The number of applications operators have submitted to receive waivers, exceptions, and modifications, broken down by time and region (e.g. year and state); * The number of waivers, exceptions, and modifications BLM has granted, broken down by time and region; * For each instance where a waiver, exception, or modification was granted, information showing what kind of activity the operator subsequently pursued.

Summary: The BLM fails to adequately examine the environmental impacts of oil and gas leasing as well as removing Sagebrush Focal Areas (SFAs) (including indirect effects from mineral development).

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

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

conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The BLM began a NEPA analysis on the SFA recommendation and determined in the DEIS that less than 10,000 acres range-wide would be impacted by hard rock mining and thus determined that the withdrawal was not necessary and cancelled the application.

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

Pursuant to 40 CFR 1502.22, when an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking. If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the EIS.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 4.11) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

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

The BLM adequately analyzes cumulative effects in the Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

NEPA—Impacts Analysis—Other

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: Alternatively, impacts to recreation must be disclosed and more thoroughly analyzed.

BlueRibbon Coalition

Paul Turcke

Issue Excerpt Text: Unfortunately, these factors are ignored and not coherently considered in the RMPA/FEIS. Unlike its treatment in RMPAs for other project areas, the RMPA lists "recreation" among

issues "dismissed from detailed analysis because they have no potentially significant impacts from actions proposed in this Proposed RMPA/EIS." RMPA at ES-7. As a result, the RMPA fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: BLM completely fails to address the environmental consequences of eliminating the grazing removal from key RNAs with regard to climate change, including those RNAs that lie within BLM-identified climate refugia.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: BLM fails in the FEIS to take the required "hard look" at the effects of the proposal with regard to climate change. As we have pointed out, Secretarial Order No. 3289 (Sept. 14, 2009) requires that BLM must "consider and analyze potential climate change impacts when undertaking long-range planning exercises." This entails, among other things, accounting for the impacts of livestock—for example, in terms of production of greenhouse gases (methane) and in terms of removal of vegetation that reduces the landscape's ability to act as a carbon sink. It also implicates other elements of the proposed land use plan amendment as they intersect with grazing management, including vegetation and soil management, wildland fire, noxious weeds and invasive species, and travel and transportation planning.

Summary: The BLM violates NEPA because it fails to adequately analyze the impacts of the Proposed RMP Amendment/Final EIS on recreation and grazing and has failed to account for the impacts of the Proposed RMP Amendment/Final EIS in relation to climate change.

Response: The 2013 Greater Sage-Grouse Draft RMP Amendment/Draft EIS and the 2015 Greater Sage-Grouse Approved RMP Amendment/Final EIS discuss climate change in a variety of locations throughout Chapter 4, and how it influences approximately 22,000 acres of RNAs.

The protesting party mentioned climate change in its scoping letter for the 2018 GRSG amendment process on page 6. Therein they cite the 2015 RMP Amendment and the purpose of the key RNAs for having undisturbed areas for vegetation comparison. On page 10, Section 3, there is a reference to population declines in Oregon from a variety of factors, including climate change.

The May 2018 Draft RMP Amendment/Draft EIS, under Section 4.6 (Impacts on Vegetation, Including Noxious Weeds, Riparian Areas, and Wetlands), discusses changing climate in relation to impacts to the vegetation communities in the key RNAs.

The protesting party's comment letter on the May 2018 Draft RMP Amendment/Draft EIS did not identify deficiencies or lack of information related to Climate Change. Therefore, no specific changes were made to the discussion/analysis in Section 4.6. However, the BLM substantially revised the cumulative effects analyses between the 2018 Draft EIS and 2018 Final EIS. Section 4.11 on Cumulative Effects Analysis included discussion of changing climate (see for example 4.11.1).

In addition, Section 4.5 of the Oregon November 2018 FEIS was substantially updated to more explicitly and clearly address the impacts to sage grouse habitat and vegetation communities of not having 13 key RNAs closed to livestock grazing. The analysis and discussion more directly answers and responds to the Purpose and Need statements in Section 1.2, Scope of Analysis (updated per EPA comment letter on the draft EIS).

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

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

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

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

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

During the planning process, the BLM determined that the actions proposed in the Proposed RMP Amendment/Final EIS would not have any impacts on recreation, and as such, recreation was not a significant issue; consequently, no need exists for the BLM to analyze the impacts on recreation in the Proposed RMP Amendment/Final EIS, and the BLM properly dismissed recreation from detailed analysis. See Chapter 1 of the Proposed RMP/Final EIS for issues and resources dismissed from detailed consideration.

The BLM complied with NEPA’s requirement to analyze the environmental impacts in the Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

NEPA—Impacts Analysis—Socioeconomics

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: First, BLM provides no meaningful support for its assumption that removing grazing in the RNAs would have a negative socioeconomic impact. See FEIS 4-18 to -20. The agency states that “preliminary analysis” suggests that private individuals holding grazing permits for five of the thirteen RNAs would experience “direct” impacts “due to the loss of AUMs.” FEIS 4-19. (BLM assumes that grazing operations on the other eight RNAs can “absorb” the change without any adverse effects. FEIS 4-19.) But BLM admits it lacks any “financial information about the individual operators” and therefore simply “assumes that a loss of AUMs will result in a socioeconomic impact on permittees.” FEIS 4-18.

Summary: The BLM violates NEPA because it fails to adequately analyze the socioeconomic impacts of changing grazing availability in the RNAs.

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

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

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

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

The BLM’s assumption that a loss of AUMs will result in a socioeconomic impact on permittees complies with the level of detail required in a NEPA analysis. The BLM need not speculate about all conceivable impacts but must only evaluate the reasonably foreseeable significant effects of the proposed action. Because a loss of AUMs could result in a reasonably foreseeable significant socioeconomic impact on permittees, the BLM’s analysis of socioeconomic impacts is adequate.

The BLM complies with NEPA’s requirement to analyze the environmental consequences and impacts to socioeconomics in the Oregon Proposed RMP Amendment/Final EIS.

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

NEPA—Mitigation

The Wilderness Society Nada Culver

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

Oregon Natural Desert Association**Peter Lacy**

Issue Excerpt Text: Here, BLM fails to discuss in any meaningful way whether the vague mitigation measures now outlined in the FEIS will be effective. BLM effectively punts when it states that "applicability and overall effectiveness of voluntary actions cannot be fully assessed until the project level when the specific location, design and impacts are known." FEIS 4-21. And by shifting mitigation responsibility to the State of Oregon through its "voluntary" mitigation scheme, BLM relies on undefined, unknown, and unenforceable measures that simply cannot be assessed for effectiveness in this EIS. See, e.g., FEIS ES-4, 2-7 to 2-8. As BLM notes, "it is speculative to assume the impacts from voluntary compensatory mitigation at the planning level without knowing the frequency with which project proponents will proffer voluntary actions." FEIS 4-21; see also FEIS 2-7 (BLM will evaluate proposed mitigation according to three imprecise, narrative standards that are fundamentally FLPMA resource protection standards). In short, BLM may not farm out mitigation administration to the State of Oregon, and the EIS otherwise fails to adequately evaluate the effectiveness of these purely aspirational mitigation measures.

The Wilderness Society**Nada Culver**

Issue Excerpt Text: Oregon Proposed Amendment, p. 2-10. At some point along the way, BLM would then ostensibly find a manner to make these and other state measures enforceable. Of course, to the extent states require or permit payment of funds, it is unclear how BLM will reconcile this with the prohibition on mandating compensatory mitigation on BLM lands or accepting a monetary contribution for implementing compensatory mitigation set out in IM 2019-18. Overall, in fact, it is unclear how if BLM cannot enforce compensatory mitigation under its own authority, it can then enforce compensatory mitigation that states require and BLM does not provide an explanation.

The Wilderness Society**Nada Culver**

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

Summary: The BLM's compensatory mitigation strategy in the Proposed RMP Amendment/Final EIS is not enforceable nor effective under NEPA.

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).

To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. In Oregon, part of this mechanism is the Oregon mitigation policy (OARS 635-140-0000 through – 0025), which requires mitigation for direct and indirect adverse effects to sage-grouse and sage-grouse habitat. As described in IM 2019-18, the BLM will evaluate any

compensatory mitigation measures required by the state in all action alternatives in its NEPA analysis, and incorporate those measures as an enforceable condition of the BLM's authorization as appropriate. State policy in Oregon employs a prioritized hierarchy of avoidance, minimization, and compensatory mitigation (OARS 635-140-0025). The state statute includes a compensatory mitigation standard "to achieve a net conservation benefit" for sage-grouse, which would be analyzed under all alternatives in its NEPA analysis. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will also evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

The BLM's compensatory mitigation strategy in the Proposed RMP Amendment/Final EIS is sufficient and fully complies with NEPA.

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

NEPA—Public Participation

Harney County Soil and Water Conservation District Marty Suter-Gould

See also NEPA—Public Participation

Issue Excerpt Text: Specific management thresholds needed for renewal or modifications of livestock grazing permits that include SFA and PHMA (2015 ARMPA, MD LG 13) was added in the Final ARMPA and not included in the draft. The public did not have an opportunity to comment on this action. This is a violation of Section 553 of the APA. 5 USC § 553.

Summary: The BLM violates NEPA because it fails to provide the public with an opportunity to comment on changes made to the Proposed RMP Amendment/Final EIS between the draft and final document.

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

The protest relates to livestock management decisions in 2015, and public review under that process. It therefore is not germane to the present RMPA planning process. The current effort builds upon the planning effort BLM completed in 2015, but does not reopen the comprehensive set of decisions contemplate and decided on in 2015. Moreover, the narrow set of decisions that this planning process is revisiting provides for an independent opportunity for public review as part of this process. The planning-level decisions contemplated under the Proposed Plan did not change between the draft and final ARMPA in this process, let alone substantially. Accordingly, this protest is denied.

NEPA—Purpose and Need

The Wilderness Society

Nada Culver

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

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

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: BLM's purpose and need statement is unreasonably narrow. FEIS 1-1 to 1-13. It focuses just on the 13 key RNAs and, as described above, ignores other significant issues raised by the public (e.g., winter habitat and genetic connectivity). The basic purpose of the ARMPA is to conserve, enhance, and restore sage-grouse habitat and to provide the adequate regulatory mechanisms to support the U.S. Fish and Wildlife Service's decision not to list the bird as an endangered species. But there is a disconnect between the proposed amendment's artificially restricted purpose and need and the FEIS's all-or-nothing approach in which the No Action alternative benefits the sage-grouse and the proposed alternative negatively impacts the sage-grouse. See FEIS ES-9. That BLM has unreasonably narrowed the purpose and need statement and the FEIS's environmental analysis also is evident from the BLM ARMPAs in other states' plans, which are significantly more far-reaching in scope-proposing changes like eliminating protected Sagebrush Focal Areas, which are the best of the best habitat remaining across the bird's entire range.

Harney County Soil and Water Conservation District

Marty Suter-Gould

Issue Excerpt Text: Because the Scope of Analysis is limited to grazing on Research Natural Areas (RNAs) in this PRMPA/FEIS, the BLM has not met the purpose and need for this action. In order to meet this, the BLM will need to, at a minimum, address and analyze the additional issues and discrepancies between the 2015 Oregon Greater Sage-Grouse Action Plan and the 2015 ARMPA.

The Wilderness Society

Nada Culver

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

Summary: The BLM violates NEPA by defining the purpose and need too narrowly.

Response: In accordance with NEPA, the BLM has discretion to establish the purpose and need for a 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.

The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

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

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

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

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

The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a range of reasonable alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative. (See *Northwest Ecosystem Alliance v. Rey*, 380 F. Supp. 2d 1175 (W.D. Wash. 2005), which stated that the proposed purpose and need did not violate NEPA because, even though the purpose and need may have reflected the agency's bias and their inclination towards a certain course of action, the agency considered a range of alternatives, including a no-action alternative, that countered such a bias and presented multiple outcomes for consideration). The consideration of two alternatives provides sufficient width to allow multiple conceivable alternatives, including but not limited to the two identified. The two alternatives considered provided a relatively broad decision space that allowed for multiple alternatives between either alternative at the ends of the decision space. Additional alternatives were contemplated but not fully analyzed, for reasons detailed in Chapter 2, Section 2.2.2. Moreover, this effort builds upon the comprehensive effort BLM completed in 2015, which considered a wide-range of alternatives for conservation of Greater-Sage Grouse and its habitat. This planning effort is not intended to re-consider the entirety of BLM's 2015 decisions but rather to consider targeted changes in consideration of the state's primary role in management of wildlife.

The BLM properly establishes the purpose and need for the Oregon Proposed RMP Amendment/Final EIS, providing an appropriate scope for a range of reasonable alternatives.

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

NEPA—Range of Alternatives

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: As we described at length in our prior comments, the BLM's all-or-nothing approach fails to meet the EIS's purpose and need statement. See, e.g., *City of Carmel-by-the-Sea*, 123 F.3d at 1155 (scope of an alternatives analysis depends on goal of proposed project and requires evaluation of all feasible alternatives that are reasonably related to project's purpose). In fact, the alternatives presented here are even less than "all-or-nothing" insofar as both involve continued grazing: because BLM failed to ever implement the 2015 grazing closure, the No Action alternative is essentially a fiction. See also FEIS 2-8 (Table 2-1 describing some, but not all, of the ARMPA's management directions and objectives that relate to key RNAs). ONDA also explained why BLM should study reasonable alternatives that incorporate still-pertinent issues left out of the ARMPA the first time around and also reasonable alternatives that actually address the agency's question whether smaller exclusion areas could satisfy the ARMPA's conservation objectives. BLM completely fails to respond to the former point. See, e.g., FEIS Appendix C (failing to respond to concerns raised with regard to genetic connectivity corridors and winter habitat within Priority Habitat Management Areas). For example, ONDA pointed to an important new study that identified "nodes" that facilitate gene flow and whose loss "could lead to the disintegration of the [genetic] network into smaller, isolated subnetworks."⁴ As ONDA explained, the researchers provided "network models [that] can be used to model gene flow, offering insights into its pattern and process, with application to prioritizing landscapes for conservation." BLM does nothing more than say that it "considered" this study. That is not enough under NEPA. See 40 C.F.R. § 1502.22(a) (requirement to gather and evaluate information "essential to a reasoned choice among alternatives"). And, as described in the preceding section, BLM lacks or has failed to gather the basic information needed to assess smaller exclusion areas in a meaningful way.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Although BLM says that it "considered but eliminated from further review" three additional alternatives, FEIS 2-3, the agency's decision to not examine those important alternatives in detail is arbitrary and capricious. Its justifications—that the alternatives are either not feasible or that the effects are presumed to be similar or the same as existing alternatives—are undermined in particular by the lack of baseline information to inform the speculative socioeconomic and environmental assumptions.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Finally, BLM fails to consider alternatives in between the FEIS's all-or-nothing approach that would, for example, identify which key RNAs are essential from a climate conservation area approach. Although the FEIS is silent on this point, it appears that at least the Lake Ridge, Dry Creek Bench, Rahilly-Gravelly, Fish Creek Rim, and Foley Lake RNAs all are situated within previously-identified Climate Change Consideration Areas. BLM was arbitrary in not considering alternatives that might have evaluated how reintroducing livestock grazing in these key RNAs would impact climate considerations with regard to habitat restoration, mitigation [4 Cross et al. 2018. The genetic network of greater sage-grouse: Range-wide identification of keystone hubs of connectivity. *Ecol. Evol.* 2018:1-19.].actions, conservation partnering, fire suppression, post-fire rehabilitation, and sage-grouse habitat and population monitoring and assessment.

The Wilderness Society**Nada Culver**

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

Summary: The BLM failed to consider a range of alternatives with a variety of measures and objectives, including alternatives proposed by the protesting parties.

Response: When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that 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).

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

The BLM developed a range of reasonable alternatives that meet the purpose and need of the Proposed RMP Amendment/Final EIS and that address resource issues identified during the scoping period. The Proposed RMP Amendment/Final EIS fully analyzed two alternatives, which are described in Section 2.3, and considered three additional alternatives, which are described in Section 2.2. The alternatives analyzed in the Proposed RMP Amendment/Final EIS cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration. The BLM may choose to adopt one of the alternatives or a combination of alternatives. Moreover, this effort builds upon the comprehensive effort BLM completed in 2015, which considered a wide-range of alternatives for conservation of Greater-Sage Grouse and its habitat. This planning effort is not intended to re-consider the entirety of BLM's 2015 decisions but rather to consider targeted changes in consideration of the state's primary role in management of wildlife.

The BLM considers a range reasonable of alternatives in the Proposed RMP Amendment/Final EIS in full compliance with NEPA; accordingly, the BLM denies this protest.

NEPA—Response to Public Comments**Oregon Farm Bureau****Mary Anne Cooper**

Issue Excerpt Text: For these reasons, OCA and OFB believe our July 2018 public comment submittal concerning needed amendments remains relevant and is therefore being included and brought to the BLM's attention again as attachment to these protest comments. (see attachment).

The Wilderness Society**Nada Culver**

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

BlueRibbon Coalition**Paul Turcke**

Issue Excerpt Text: The method of responding to comments here does not comply with NEPA and its implementing regulations. The response to comments here is contained in Appendix C to the RMP A. The comments are summarized and sorted. There is no way to track the issues raised or the response to an individual comment. The approach chosen fails to identify individual comments and the response to them. The agency's method of responding to comments here does not comply with governing regulations or other applicable law.

Summary: The BLM violates NEPA because it fails to consider comments submitted by protesting parties on the Draft RMP Amendment/Draft EIS and its summary and response to those comments is so broad that they do not accurately represent the comments submitted.

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

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

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

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

It is important for the public to understand that the BLM's comment response process does not treat public comments as votes for a particular action; rather, the comment response process ensures that every comment is considered at some point in the planning process when preparing the Proposed RMP Amendment/Final EIS.

The BLM adequately responded to public comments on the Oregon Draft RMPA/Draft EIS.

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

[NEPA—Supplemental EIS](#)

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

Issue Excerpt Text: We have seen the effects of this change in policy through about 1.5 million acres of sage-grouse habitat offered for lease since 2017, with more than 700,000 sold, and more than 2 million acres of habitat up for lease in February and March 2018. The effects of this change on sage-grouse habitat significant and certainly should be analyzed as part of these EISs.

Summary: The BLM violates NEPA because it relies on 2015 analysis concerning habitat availability, which fails to consider existing habitat conditions related to fire since 2015.

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

The Proposed RMP Amendment/Final EIS specifically addresses livestock grazing in relation to the management of fire risk (Section 1.5.3). The BLM concluded that 22,000 acres scattered across the state is too isolated of an area to affect landscape-scale wildfire size and behavior for fires originating outside the key RNAs. Additionally, Section 3.3.1 discusses changes based on threats, which includes wildfire.

The BLM appropriately complies with NEPA because it takes into account existing habitat conditions related to fire.

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

BLM’s NEPA analysis. Further, many of the conservation objectives and management restrictions were carried forward from the Approved 2015 RMP Amendments. Compensatory mitigation at a “net gain” standard represents a small part of the plan.

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

NEPA—Tiering/Incorporation by Reference

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

The Wilderness Society

Nada Culver

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

Summary: The BLM violates NEPA because it uses analyses and alternatives from the 2015 Approved RMP Amendment/Record of Decision in the analysis of the 2018 Proposed RMP Amendment/Final EIS, even though major differences exist between the two plans.

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

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

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

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

Other Laws

Harney County Soil and Water Conservation District Marty Suter-Gould

Issue Excerpt Text: When modifying the boundaries of a grazing district or terminating the Taylor Grazing Act designation of an allotment, the Secretary must classify the land as no longer "chiefly valuable for grazing." May 13, 2003, Solicitor's Memorandum to the Assistant Secretaries for Policy, Management and Budget, Land and Minerals Management and the Director, Bureau of Land Management, clarifying the Solicitor's Memorandum M-37008 (issued October 4, 2002). Thus, except upon the showing that the land is no longer "chiefly valuable for grazing," the Secretary does not have discretion to bar grazing within a grazing district, and must therefore review applications for grazing permits and make a final decision in a timely fashion when they are filed. The 2018 PRMPA/FEIS does nothing to correct this but again reiterates the BLMs plan to consider grass banks (ES.3.2, page ES-3), further ignoring the aforementioned laws.

Issue: The BLM violates FLPMA by failing to recognize that a decision to bar grazing is not legally enforceable before the Secretary has issued a classification that that land is no longer chiefly valuable for grazing.

Response: The Proposed RMP does not modify the boundaries of any grazing district, and therefore a determination that the lands are no longer "chiefly valuable for grazing" is not required. Moreover, the tow areas unavailable to grazing under this plan have been unavailable to livestock grazing since prior to the 2015 plans. All alternatives considered in the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands and meet the purpose and need of the Proposed RMP Amendment/Final EIS. 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. 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 that 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 allocation 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 Taylor Grazing Act 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. Accordingly, the Proposed RMP Amendment/Final EIS applies restrictions on grazing in correspondence with FLPMA, Taylor Grazing Act, and the supporting rules and regulations.

Section 302 of FLPMA provides that the Secretary shall manage the public lands under the 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 used 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 nonrenewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

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

Joe Cahill, Individual

Issue Excerpt Text: BLM must conduct a specific reexamination of the range condition of grazing allotments before eliminating grazing from those public lands, pursuant to 43 U.S.C. § 1752(e).

Summary: The BLM fails to recognize the need to examine the condition of grazing allotments in advance of closure, which is in conflict with grazing regulations found in FLPMA, in the Proposed RMP Amendment/Final EIS.

Response: 43 United States Code (USC) §1752(e) states that the Secretary shall incorporate in grazing permits and leases such terms and conditions as [s]he may reexamine the condition of the range at any time and, if [s]he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use that the condition of the range requires adjustment in the amount or other aspects of grazing, that the permittee or lessee shall adjust his [or her] use to the extent the Secretary deems necessary.

BLM regulations and policies allow for continued implementation of existing plans while new plans or amendments are in development, including monitoring, conducting rangeland health assessments, and processing of permit renewals. These types of actions must comply with the applicable plans, policies, regulations, and laws. The 43 CFR 4100 regulations allow for the BLM to make adjustments to livestock grazing at any time when problems arise (e.g. fire, drought, flood, or unusual events). The BLM will continue to implement its grazing permit administration to ensure the agency achieves land health standards. Where the BLM is not achieving its standards, it will assess causal factors and take appropriate action.

The protestor based his claims on regulations found at Section 402 of FLPMA. However, Section 302 of FLPMA provides that the Secretary shall manage the public lands under the 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 used 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 nonrenewable 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 that 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 allocation 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 Taylor Grazing Act 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. All alternatives considered in the

Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands and meet the purpose and need of the Proposed RMP Amendment/Final EIS. 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. Accordingly, the Proposed RMP Amendment/Final EIS applies restrictions on grazing in correspondence with FLPMA, Taylor Grazing Act, and the supporting rules and regulations.

The Proposed RMP does not eliminate grazing from any public lands.

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

Oregon Farm Bureau

Mary Anne Cooper

Issue Excerpt Text: Grazing permits in grazing districts should be made available for grazing by a bona fide stock owner who qualifies for preference as set out in the Taylor Grazing Act. BLM should follow existing laws and authorities related to permit retirement. Proposed Oregon Greater Sage-Grouse RMP Amendment language should be clarified to reflect this and not expand upon that authority. Where voluntary permit relinquishment occurs, BLM would normally make lands available to another potential permittee or lessee. FEIS at C-94. Proposed Oregon Greater Sage-Grouse RMP Amendment language should recognize this while also recognizing the ability to consider other options within the scope of established law, including consistency with referenced Oregon laws: ORS 215.243(2); OAR 660-015-0000(3) (Statewide Land Use Planning Goal 3 Agriculture); OAR 60-015-0000(9) (Statewide Land Use Planning Goal 9 Economic Development).

Harney County Soil and Water Conservation District

Marty Suter-Gould

Issue Excerpt Text: The key phrase is "or be used for other management objectives, such as reserve common allotments," it does not state that they will be used as common allotments (grass banks), they could also be used in a myriad of other ways such as permanent retirement, wherein livestock grazing would be permanently removed. Not only would such an action be detrimental to rural community economics and that of the cattle industry, it may very likely increase catastrophic wildfire threats (#1 threat to sage-grouse) and subsequently lead to an increase in invasive species (#2 threat to sage-grouse). Of equal importance, the retirement of a permit in this way is in direct violation of the Taylor Grazing Act of 1934 as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976 as amended. Once a grazing district is established, grazing must occur on the land. See generally, *Mountain States Legal Foundation v. Andrus*, 499 F.Supp. 383 (D. Wyo. 1980) (holding that the intent of FLPMA was to limit the ability of the Secretary of the Interior to remove large tracts of public land from the operation of the public land laws). Further, Congress intended that once the Secretary established a grazing district under the TGA, the primary use of that land should be grazing. *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999) aff'd on other grounds, 529 US 728 (2000). The Secretary can modify the boundaries of a grazing district, but unless land is removed from designation as grazing, or the Taylor Grazing Act designation is terminated, the Secretary must use it for grazing. 43 U.S.C. § 315.

Summary: The Proposed RMP Amendment/Final EIS overreaches the authority of the agency in accordance with the Taylor Grazing Act, which requires that voluntary relinquishments be made available to another eligible potential permittee or lessee.

Response: Under IM 2013-184, if the most recent allotment evaluation still reflects the current situation and conditions, the rangeland health standards or other criteria established by the Authorized Officer are being met, the forage should be allocated to other qualified applicants. No further analysis is needed.

BLM regulations and policies allow for continued implementation of existing plans while new plans or amendments are in development, including monitoring, conducting rangeland health assessments, and processing of permit renewals. These types of actions must comply with the applicable plans, policies, regulations, and laws. The 43 CFR 4100 regulations allow for the BLM to make adjustments to livestock grazing at any time when problems arise (e.g. fire, drought, flood, or unusual events). The BLM will continue to implement its grazing permit administration to ensure the agency achieves land health standards. Where the BLM is not achieving its standards, it will assess causal factors and take appropriate action.

The BLM would continue to follow BLM policy on voluntary relinquishments within the confines of applicable laws. For the reasons stated above, the BLM denies this protest.