



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

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

March 15, 2019

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## Contents

Acronyms.....	ii
Protesting Party Index.....	1
Endangered Species Act Consultation.....	1
FLPMA—ACECs and RNAs.....	2
FLPMA—General.....	3
FLPMA—Analysis of the Management Situation.....	4
FLPMA—Mitigation.....	5
FLPMA—Special Status Species.....	6
FLPMA—Unnecessary or Undue Degradation.....	7
NEPA—Best Available Science.....	9
NEPA—Cumulative Effects.....	16
NEPA—Impacts Analysis—General.....	20
NEPA—Impacts Analysis—Grazing.....	25
NEPA—Impacts Analysis—Greater Sage-Grouse.....	26
NEPA—Impacts Analysis—Oil and Gas.....	32
NEPA—Impacts Analysis—Recreation.....	34
NEPA—Impacts Analysis—Other.....	35
NEPA—Mitigation.....	37
NEPA—Public Participation.....	40
NEPA—Purpose and Need.....	42
NEPA—Range of Alternatives.....	44
NEPA—Response to Public Comments.....	46
NEPA—Supplemental EIS.....	48
NEPA—Tiering/Incorporation by Reference.....	50
Other Laws.....	52

## Acronyms

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

## Protesting Party Index

Protester	Organization	Determination
Bruce Pendery, <sup>1</sup> Brian Rutledge, Jayson O'Neill, Mary Greene, Robert McEnaney	The Wilderness Society, <sup>1</sup> National Audubon Society, Western Values Project, National Wildlife Federation, Natural Resources Defense Council	Denied – Issues and Comments
Carrie Mann	Friends of the Earth	Dismissed – Comments Only
Greta Anderson, <sup>2</sup> Nancy Hilding, James Catlin, Michael Saul, Mark Salvo, Karimah Schoenhut, Rebecca Fischer, Steve Holmer	Western Watersheds Project, <sup>2</sup> Prairie Hills Audubon Society, Utah Chapter of the Sierra Club, Center for Biological Diversity, Defenders of Wildlife, Sierra Club Environmental Law Program, WildEarth Program, American Bird Conservancy	Denied – Issues and Comments
Kent Connelly	Wyoming Coalition of Local Governments	Denied – Issues and Comments
Mary Reynolds	Kane County	Dismissed – Comments Only
Michael Wetzel	N/A	Dismissed – No Standing
Paul Turcke	Blue Ribbon Coalition	Denied – Issues and Comments
Wally Johnson	Sweetwater County	Dismissed – Comments Only

<sup>1</sup> This letter was cosigned by multiple parties. In this report, it is referenced as Bruce Pendery, The Wilderness Society

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

## Endangered Species Act Consultation

### The Wilderness Society

#### Bruce Pendery

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

**Summary:** The US Department of the Interior, Bureau of Land Management (BLM) has violated the Endangered Species Act (ESA) by failing to initiate new consultation and instead relying on findings from the 2015 ESA consultations. There are new risks of harm related to the new purpose and need, circumstances, and policies that underly the Proposed Resource Management Plan (RMP) Amendment/Final Environmental Impact Statement (EIS).

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

In 2015, the BLM Utah consulted with the USFWS and determined that the proposed changes would either not effect or were not likely to adversely affect listed species or adversely modify critical habitat (see Appendix J in the 2015 Approved RMP Amendment/Record of Decision). The one exception to this

determination was for the Utah prairie dog, which, as the BLM preliminarily determined, the proposed changes were likely to adversely affect.

After consultation and identification of conservation measures, the USFWS determined that the 2015 Approved RMP Amendment/Record of Decision and associated conservation measures were not likely to jeopardize the continued existence of the Utah prairie dog (see Appendix J in the 2015 Approved RMP Amendment/Record of Decision).

In 2018, the BLM Utah informally consulted with the USFWS on the changes recommended in the Proposed RMP Amendment/Final EIS. Through these consultations, the BLM concluded that the determinations from the 2015 Approved RMP Amendment/Record of Decision would not change; therefore, the BLM has fulfilled its obligations under Section 7 of the ESA.

The protesting party has not provided any new information or other reason to overturn the decision. The protest point is without merit and is therefore denied.

## FLPMA—ACECs and RNAs

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** ... BLM has failed to carry out its FLPMA-mandated obligation to prioritize the designation and protection of areas of critical environmental concern (ACECs) by failing to designate sage-grouse habitat as an ACEC. WWP et al. 2018. As defined in the PRMP, Biologically Significant Units (BSUs) contain “relevant and important” habitat for sage-grouse. Consequently, they meet the criteria for designation as ACECs. 43 C.F.R. § 1610.7-2. Nevertheless, BLM never even considered designating sage-grouse ACECs in the process of producing the PRMP, let alone prioritizing such designation. This violated NEPA and FLPMA.

**Summary:** The BLM has violated the Federal Land Policy Management Act (FLPMA) by failing to prioritize the designation and protection of areas of critical environmental concern (ACECs) by not designating Greater Sage-Grouse habitat as an ACEC. The BLM violated the National Environmental Policy Act (NEPA) by not considering Greater Sage-Grouse habitat nominated as an ACEC when producing the Proposed RMP Amendment/Final EIS.

**Response:** The BLM must review all nominated ACECs for the presence of relevant and important values, which is required for a potential ACEC designation (BLM Manual Section 1613.2C). The BLM must carry forward all potential ACECs as recommended for designation in at least one alternative in the draft of an RMP amendment (BLM Manual Section 1613.22.B). There is no requirement to carry forward potential ACECs into the Proposed RMP Amendment/Final EIS.

The BLM has full discretion in selecting ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the Proposed RMP Amendment/Final EIS. BLM Manual 1613.33.E provides direction for when it may choose not to designate potential ACECs. An ACEC must require special management attention unique to the relevant and important values identified to be designated (BLM Manual Section 1613.12).

The BLM properly considered the Greater Sage-Grouse habitat nominated as an ACEC as part of the land use planning process. The BLM found all priority habitat management areas (PHMA) met the relevance and importance criteria to be considered as potential ACECs. It analyzed the designation of these ACECs in Alternative C in the 2015 Approved RMP Amendment/Record of Decision, to which the 2018 Proposed RMP Amendment/Final EIS is tiered. No new information suggests it is necessary to

reconsider the BLM’s evaluation of these potential ACECs. Under the 2018 Proposed RMP Amendment/Final EIS, the BLM concluded that the Greater Sage-Grouse relevant and important values would be protected by the management directive under the Proposed Plan Amendment, and no special management attention was warranted. As such, the BLM is precluded from designating the PHMA as ACECs.

While the potential ACECs were not selected for designation, the BLM evaluated each under at least one action alternative in the 2015 Approved RMP Amendment/Record of Decision (see pages 2-233 through 2-236). Contrary to the protesting party’s assertions, the BLM did not violate FLPMA as it pertains to the consideration and designation of ACECs. For the reasons stated above, the protest point is without merit and is therefore denied.

## **FLPMA—General**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Finally the plan abdicates too much federal authority to the states. There are multiple problems with the proposed approach that gives increased and undue authority to the state. First, there is no legal or regulatory basis for giving state governments’ interests more consideration than other interested parties. While it’s true that FLPMA, by its own terms, does not diminish states’ authority to manage wildlife, neither does FLPMA instruct BLM to defer to the states. States’ views are but one of many perspectives that the agency should consider, just as extractive uses should not be given preferential treatment under the “multiple use” mandate. Second, the states have already shown that they are poor managers of sage-grouse, as demonstrated by the discussion of current regulatory mechanisms in FWS’s 2010 “warranted but precluded” decision. Finally, BLM has an affirmative obligation to manage federal lands for wildlife conservation, even if states have different views. According to Nie et al.’s (2017) review of federal wildlife management authority, federal agencies are often too deferential to states, and the management scheme described in the FEIS would exacerbate this shortcoming. We protest on this basis.

**Summary:** The BLM has violated FLPMA by improperly abdicating too much authority to the states when developing the Proposed RMP Amendment/Final EIS.

**Response:** In accordance with NEPA (40 CFR 1502.13), the BLM has discretion to establish the purpose of and need for a proposed action. The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, and laws (BLM Handbook H-1790-1, Section 6.2). The BLM established the purpose of and need for the Proposed RMP Amendment/Final EIS 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. It declared it the policy of the United States to coordinate planning with the land use planning and management programs of other federal, state, and local governments, consistent with the laws governing the administration of the public lands.

Under the land use planning regulations, the BLM is obligated to coordinate its planning processes with local government land use plans, to provide the state and local governments with meaningful involvement in the development of RMPs, and, if possible, to develop RMPs in collaboration with cooperating agencies (43 Code of Federal Regulations [CFR] 1610.3-1(a)(3), (4), and (5)). Further, the BLM’s RMP 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)).

The analysis of alternatives is guided by the BLM’s purpose and need. Agencies have considerable discretion to define the purpose and need of a project. In determining what a reasonable purpose is, agencies must look at the factors relevant to the definition of the purpose, such as congressional directives, statutory authority, and the specific needs and goals of parties involved in the sanction of a specific plan.

The BLM has not abdicated authority to the states where it has legal authority to make a decision. Consistent with FLPMA and BLM policy, the proposed plan requires coordination of information and management with the “appropriate State of Utah agency” (see, for example, MA-SSS-3B, Objective SSS-3, MA-SSS-6, MA-SSS-1, and MA-SSS-7).

The State of Utah has managerial jurisdiction of game species not listed on the ESA. Additionally, as described under decision MA-MR-3, the oil and gas exception process under the Proposed RMP Amendment/Final EIS removes requirements for state and USFWS concurrence. This allows the BLM alone to retain the authority to grant or deny a proposed waiver, exception, or modification.

To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-018, the BLM will evaluate any compensatory mitigation measures the state requires in all action alternatives in its NEPA analysis, and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

The purpose of and need for the Proposed RMP Amendment/Final EIS includes direction for the BLM to design alternatives to “enhanc[e] cooperation and coordination with Utah and tribes where applicable” (PRMPA/FEIS, I-3); as such, any reasonable alternative must address this purpose and need. In identifying this as part of the purpose and need, the BLM has focused on the purpose and need to pursue management that complements and is in close coordination with state management.

The BLM has properly coordinated management of the Proposed RMP Amendment/Final EIS through the land use planning process. It has established a purpose and need that focuses this coordination. Contrary to the protesting party’s assertions, the BLM did not violate FLPMA by improperly abdicating authority to the states. The protesting party has not provided any new information or other reason to overturn the decision. For the reasons stated above, the protest point is without merit and is therefore denied.

## **FLPMA—Analysis of the Management Situation**

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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 C.F.R. § 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 C.F.R. § 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), sagebrush focal areas (SFA) 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 has violated the land use planning regulations (43 CFR 1610.4-4) and policy (BLM’s Land Use Planning Handbook, H-1601-1) by failing to prepare a new analysis of the management situation.

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

The BLM analyzed the management situation, in full compliance with its regulations and policies. It evaluated inventory and other data and information, partnering with the US Geological Survey (USGS) and coordinating extensively with the 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 (SO) 3353 (August 4, 2017). Among other things, the report describes how the BLM coordinated “with each State to gather information related to the [Secretary’s] Order, including State-specific issues and potential options for actions with respect to the 2015 GRSG Plans and IMs to identify opportunities to promote consistency with State plans” (Report to the Secretary at 3). This process overlapped to some degree with the BLM’s scoping process, which also helped to identify the scope of issues to be addressed and significant issues. It also overlapped with coordination with the State of Utah occurring after the report was issued. In addition, as described in Chapter 3 of the Proposed RMP Amendment/Final EIS, the BLM determined that the current management situation is similar to that assessed in 2015.

The BLM incorporated by reference the 2015 Approved RMP Amendment/Record of Decision inventory data and other information. It augmented this with pertinent new information in the Proposed RMP Amendment/Final EIS. By doing this, the BLM has appropriately disclosed the information, required by the planning regulations, to determine the ability of the planning area to respond to identified issues and opportunities (43 CFR 1610.4-4). The protesting party has not provided any new information or other reason to overturn the decision. For the reasons stated above, the protest point is without merit and is therefore denied.

## **FLPMA—Mitigation**

### ***Wyoming Coalition of Local Governments*** ***Kent Connelly***

**Issue Excerpt Text:** BLM Failed to eliminate the Net Conservation Gain mitigation standard in violation of the plain language of Federal Land Policy and Management Act (“FLPMA”) and Secretarial Order 3360 and IM 2018-93;

**Summary:** The BLM’s authorization of a net mitigation standard violates the plain language of FLPMA.

**Response:** IM 2019-18 states that, “Except where the law specifically requires or as described in this IM, the BLM must not require compensatory mitigation from public land users. While the BLM will consider voluntary proposals for compensatory mitigation, and state-mandated compensatory mitigation, the BLM will not accept any monetary payment to mitigate the impacts of a proposed action. In all instances, the BLM must refrain from authorizing any activity that causes unnecessary or undue degradation (UUD), pursuant to FLPMA Section 302(b).”

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. The standard used by a state compensatory mitigation program—including “net gain”—is up to the state to define, not the BLM.

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. It will incorporate those measures as an enforceable condition of its authorization, as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

The BLM’s approach to mitigation fully complies with the plain language of FLPMA; accordingly, this protest is denied.

## **FLPMA—Special Status Species**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The claim that the 2018 planning process complies with the special status species policy (Utah PRMP/FEIS at 2-1, footnote 1) is unfounded based on the fundamental undermining of the commitments from the 2015 plans. The PRMP/FEIS claims that it is in conformance with BLM Manual 6840. However, ... the cumulative effect of this new plan is that sage grouse numbers will not only continue to decline in Utah but at a more rapid rate than under the current plan.... This Manual requires “management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA.”

**Summary:** The BLM’s Proposed RMP Amendment/Final EIS violates its special status species (SSS) policy. This is because it reduces protections and conservation measures for Greater Sage-Grouse such that it will likely be listed under the ESA.

**Response:** Section 302(a) of FLPMA directs the Secretary of the Interior 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.

BLM Manual 6840 describes how the BLM should address BLM sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of initiating “proactive conservation

measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA”(6840.02(B)).

As with the 2015 Approved RMP Amendment/Record of Decision, the Proposed RMP Amendment/Final EIS will also comply with the BLM policy outlined in the SSS manual. The Proposed RMP Amendment/Final EIS is consistent with this policy, using a different management approach than that approved in 2015. The citation that Greater Sage-Grouse numbers would decline at a more rapid rate is applicable only to those small populations in areas identified as General Habitat Management Area (GHMA) in the 2015 Approved RMP Amendment/Record of Decision (see the Proposed RMP Amendment/Final EIS, pp. 4-20 and 4-21).

The Proposed RMP Amendment/Final EIS clearly notes that population trends in areas identified as PHMA reflect increasing populations. It further states that increasing habitat in and next to PHMA throughout Utah would replace the potential loss of birds from areas outside PHMA (see Proposed RMP Amendment/Final EIS, P. 4-21). This approach is consistent with the strategies identified in the BLM’s 6840 Manual; there, the focus is not on protecting every individual BLM sensitive species but on managing the species as a whole to avoid a need for listing it.

The BLM has appropriately determined that the Proposed RMP Amendment/Final EIS is in compliance with BLM SSS policy. The protesting party has not provided any new information or other reason to overturn the decision; therefore, for the reasons stated above, the protest is denied on this point.

## **FLPMA—Unnecessary or Undue Degradation**

### **Wyoming Coalition of Local Governments**

#### **Kent Connelly**

**Issue Excerpt Text:** Aside from Wilderness Study Areas, FLPMA provides that public lands shall be managed to avoid “undue and unnecessary degradation.” 43 U.S.C. §1732(b). The courts have found that Section 302 of FLPMA inherently allows some degradation. See *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 76-78 (D.C. Cir. 2011) (FLPMA’s unnecessary or undue degradation standard must be read in light of BLM’s responsibility under FLPMA to ensure public lands are managed under multiple use and sustained yield.); *Gardner v. U.S. Bureau of Land Mgmt.*, 638 F.3d 1217, 1222-1223 (9th Cir. 2011) (Section 1732(b) does not mandate BLM to adopt restrictions that would completely exclude off-road vehicle use in a specific area.). Thus, the BLM may not “commit” or otherwise require mitigation that would “improve” habitat without also violating FLPMA. See Attach. 11, 080218 CLG DEIS Comment Letter at 16-17.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** FLPMA’s definition of “multiple use” calls for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” 43 U.S.C. § 1702(c) (emphasis added).

This prohibition on permanent impairment of the environment in FLPMA’s definition of multiple-use is unique and purposeful. ... The COT report went on to make conservation recommendations.. to prevent undue and unnecessary degradation to the species’ habitat. The current plans do not comport with the COT report recommendations .... Since these proposed actions are inconsistent with that standard, the plans fail to comply with FLPMA’s overarching mandate.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** BLM is obligated to manage lands “without permanent impairment of the productivity of the land and quality of the environment. . . .” . . . For sage-grouse habitat, we have measurements of both the productivity of wildlife numbers and plant community production. We have standards described in Connelly et al . (2000) and in ecological site descriptions to use to gauge if impairment has been found. Based on our field data and experience where habitat conditions are known, we often find that its productivity and quality have been degraded. By continuing practices that lead to those conditions, this plan perpetuates such degradation. By perpetuating impairment, this plan makes such impairment permanent. This is a violation of FLPMA and a violation of the plan’s criteria (page I-5).

**Summary:** The BLM has violated FLPMA’s unnecessary or undue degradation standard with the Proposed RMP Amendment/Final EIS’s requirement to commit to improve Greater Sage-Grouse habitat.

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

Section 202 of FLPMA vests the Department of the Interior with land use planning authority. It provides that such planning shall “use and observe the principles of multiple use and sustained yield set forth in this and other applicable laws.” This includes the establishment of resource condition goals and objectives within a land use plan (43 CFR 1601.0-5(n)). BLM Manual 6840 describes how the BLM should address BLM sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of initiating “proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA”(6840.02(B)).

The BLM’s Proposed RMP Amendment/Final EIS is consistent with FLPMA’s mandate against undue and unnecessary degradation. 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, 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. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

In addition, adoption of the proposed plan would not violate FLPMA’s requirement to prevent UUD because adoption of the proposed plan would not authorize any public land uses, much less any that would result in UUD.

The protesting party’s supposition that the allowance of any degradation equates to “permanent impairment” is unjustified. It is not consistent with the analysis presented in the Proposed RMP Amendment/Final EIS, which adjusts habitat objectives to be consistent with data collected from Greater Sage-Grouse sites in Utah.

The current amendment does not change the language concerning implementation of the objectives table. As the original table was intended to convey, the indicators and values for the habitat objectives are meant to inform evaluation of land health standards. This is clarified in the 2018 Proposed RMP/Final EIS. Land use authorizations will contain terms and conditions regarding actions needed to achieve or make progress towards achieving habitat objectives and land health standards, as was the case under the 2015 Approved RMPA/Final EIS. Establishing the habitat objectives in this manner, based on local data, and incorporating them into site-specific authorizations is designed to avoid undue or unnecessary degradation. It also improves the quality and quantity of Greater Sage-Grouse habitat in PHMA.

The USFWS's Conservation Objectives Team (COT) Report does not define what the BLM considers is undue or unnecessary degradation for Greater Sage-Grouse. The BLM considered information presented in the COT Report in both the Proposed RMP Amendment/Final EIS and the 2015 Approved RMP Amendment/Record of Decision. Although the COT Report was not the sole source of information, it was considered along with other science.

All alternatives considered in Section 2.3 of the Proposed RMP Amendment/Final EIS provide an appropriate balance of uses on the public lands. The alternatives allow some level of all uses in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. In the Proposed RMP Amendment/Final EIS, the BLM also clearly notes that its management changes would address conservation of Greater Sage-Grouse and its habitats. This would come about by minimizing or eliminating threats affecting the status of the species and improving the condition of its habitat. This is consistent with the policies for agency sensitive species identified in BLM Manual 6840.

The BLM's Proposed RMP Amendment/Final EIS does not contradict the unnecessary or undue degradation (UUD) standard set out in FLPMA. The protesting parties have not provided any new information or other reason to overturn the decision; so, for the reasons stated above, the protest is denied.

## **NEPA—Best Available Science**

Western Watersheds Project

Greta Anderson

**Issue Excerpt Text:** BLM's reliance on faulty sage grouse population and trend is inconsistent with direction the agency should follow to integrate science into management. BLM is obligated to use science in making decisions following these principles and practices: 1. use high- quality information relevant to the problem or decision being addressed, relying on peer-reviewed literature when it exists; 2. recognize the dynamic and interrelated nature of socioecological systems within which the BLM operates; 3. acknowledge, describe, and document assumptions and uncertainties; 4. use quantitative data when it exists [and applicable qualitative data], in combination with internal and external professional scientific expertise; and 5. use transparent and collaborative methods that consider diverse perspectives. BLM failed to use the highest quality information relevant to the problem, failed to provide independent peer review this analysis, failed to document assumptions, and failed to have a transparent and inclusive process to consider diverse perspectives. For this reason, this FEIS fails to follow agency policy.

***The Wilderness Society***

***Bruce Pendery***

**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.

**BlueRibbon Coalition**

**Paul Turcke**

**Issue Excerpt Text:** The agencies, including BLM, seem to continue to rely on the 2014 USGS analysis as the singular source on lek buffering prescriptions. This attempted nothing more than a summary of research, but cannot legitimately be offered as the “best available science” on lek buffering.

**Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** The agency has inexplicably abandoned the science that shows sage-grouse needs at least 7 inches of perennial grass cover during the nesting and early brood-rearing period. As noted above, this table cites to Dahlgren, et al., an unpublished reference.

**Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** Modifying objectives based on aridity might make sense except the proposed plan actually lowers even the high end requirements without citation. This is unscientific and biased, arbitrary and capricious, and wholly inconsistent with three decades of research on sage-grouse habitat needs. WWP et al. (2018) commented that the agency’s reliance on and analysis of the recent studies regarding grass height and nest success was flawed. We provided more information for the agency to consider regarding the need for better analysis and to include Habitat Objectives for forbs, based on the scientific support for the sage-grouse’s nutritional need for forbs. Id. And yet, the agency did not address this oversight as it revised its habitat objectives, despite NEPA’s instructions to incorporate scientific analysis of impacts.

**Wyoming Coalition of Local Governments**

**Kent Connelly**

**Issue Excerpt Text:** BLM Failed to adequately address and resolve the scientific debates regarding conservation measures that were adopted in the 2015 Plans and failed to address the significant controversy regarding the science upon which those conservation measures were based

**Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** BLM’s misuse of data leads to results that are contrary to sound scientific analysis and misrepresent conditions on the ground.

**Western Watersheds Project**

**Greta Anderson**

**Issue Excerpt Text:** This violates two key policies, the DOI Policy for the Integrity of Scientific and Scholarly Activities (Part 305; Chapter 3 DOI Manual § 3.4.C: “ Document the scientific and scholarly findings considered in decision making and ensure public access to that information and supporting data through established Departmental and Bureau procedures...”) and WO IM 2017-030 (“Ensure that the process for engaging experts is transparent, well-documented, and responsive to public input.”)

**The Wilderness Society**

**Bruce Pendery**

**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***

***Bruce Pendery***

**Issue Excerpt Text:** Prioritizing leasing and development outside of both GHMA and PHMA is strongly supported by the best available science, which 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 RODs also identify prioritizing oil and gas leasing and development outside habitat as a “key component” and a “key management response.”

***The Wilderness Society***

***Bruce Pendery***

**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.

***Wyoming Coalition of Local Governments***

***Kent Connelly***

**Issue Excerpt Text:** The 2015 Plan and now the 2018 Plan implements a three percent disturbance cap. Neither the 2015 FEIS nor the 2018 DEIS cites to any authority for a three percent disturbance cap. The best available science does not support a three percent disturbance cap. Because the three percent is adopted as mitigation for energy development, BLM must reconsider this cap to determine if this cap aligns with new BLM policy and case law. See IM 2018-093; 83 Fed. Reg. 36472 (July 30, 2018) . See Attach. 11, 080218 CLG DEIS Comment Letter at 13.

**Summary:** The BLM did not rely on best available science due to the following:

- Failing to use the highest quality information relevant to Greater Sage-Grouse populations and trends
- Failing to provide independent peer review of this analysis
- Failing to document assumptions
- Failing to have a transparent and inclusive process to consider diverse perspectives
- Failing to analyze habitat connectivity and weakening protections of non-PHMA habitat
- Mischaracterizing the impact of recreation on Greater Sage-Grouse and its habitat
- Relying solely on the 2014 USGS analysis for lek buffering prescriptions, which does not meet the criteria of scientific research
- Overlooking data regarding the grass height requirements for Greater Sage-Grouse reproduction
- Not addressing and resolving the scientific debates regarding the conservation measures adopted in the 2015 Approved RMP Amendment/Record of Decision
- Misusing data and mischaracterizing environmental conditions

- Eliminating the prioritization of oil and gas leasing outside of Greater Sage-Grouse habitat, contrary to what the BLM previously identified in the 2015 Approved RMP Amendment/Record of Decision as the best available science
- Asserting that there are no impacts of the actions encompassed under the Proposed RMP Amendment/Final EIS, against the conclusions of the COT Report
- Failing to demonstrate that a 3 percent disturbance cap is based on best available science

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

The BLM Handbook H-1790-1 (p. 55) 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.” Under the BLM’s guidelines for implementing the Information Quality Act (Pub.L. 106-554), the BLM applies the principle of using the best available data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM Utah coordinated closely with the State of Utah Division of Wildlife Resources (DWR) to obtain State-collected population data. In this effort, the BLM has used the best and most current population data available. It worked with the DWR wildlife biologists to interpret and depict population trends based on that data. No additional or conflicting lek data was presented during scoping or the comment period on the Proposed RMP Amendment/Final EIS. While concerns raised in comments regarding methods used to calculate population trends, the BLM addressed those concerns in its response to comments (see Proposed RMP Amendment/Final EIS Appendix 2, pp. App-2-42 and 2-45).

As noted on pages 2-27 and 2-28 of the Proposed RMP Amendment/Final EIS, both alternatives include areas open to cross-country off-highway vehicle (OHV) use. Both alternatives leave most Greater Sage-Grouse habitat open to the designation and use of routes by OHV operators. The 2015 Approved RMP Amendment/Record of Decision (pp. 4-52 through 4-54 and 4-134 through 4-135) includes an analysis of the impacts of OHVs on Greater Sage-Grouse. On page 4-22, the Proposed RMP Amendment/Final EIS included impacts from the travel decisions. The best available information has been used in both the 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS.

The management action associated with lek buffers (MA-SSS-3C and Appendix B of the Proposed RMP Amendment/Final EIS) rely on more than the summary of literature found in Conservation Buffer-Distance Estimates for Greater Sage-Grouse—A Review (Open File Report 2014-1239). As clearly noted in the Proposed RMP Amendment/Final EIS, Appendix B, the buffer distances identified are a starting point. Managers can consider justifiable departure that can “decrease or increase these distances from the lek where variability is anticipated, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations and state regulations).” This language is critical to allow consideration of local circumstances that may result in different needs to protect Greater Sage-Grouse leks. Further, in the Proposed RMP Amendment/Final EIS, the BLM adjusted the starting point of buffers for tall structures based on studies recently completed in Utah. They identified the effect that transmission lines had on lek persistence. The Proposed RMP Amendment/Final EIS language provides for additional changes based on local conditions, as the BLM assesses and addresses impacts on Greater Sage-Grouse lek persistence.

In determining changes to the habitat characteristics, the BLM used an analysis of vegetation characteristics collected from confirmed Greater Sage-Grouse sites. It used telemetry to track birds in

habitats throughout Utah. The research uses local data across a range of environmental variations. Use of this data and analysis is consistent with the Connelly et al. 2000 article “Guidelines to manage sage grouse populations and their habitats.” The article’s authors noted that “Because of gaps in knowledge and regional variation in habitat characteristics, the judgement of local biologists and quantitative data from population and habitat monitoring are necessary to implement the guidelines correctly.” Consistent with CEQ’s NEPA regulations and the BLM’s NEPA Handbook, the BLM sought the best available information most directly applicable to the planning area. That included objectives for both forb height and canopy cover.

As the USGS report (<https://pubs.er.usgs.gov/publication/ofr20181017>) demonstrated, recent studies suggest site-specific variation in grass height required for nest cover, which differs from earlier management. Notice that the 2018 Proposed RMP Amendment/Final EIS also carried forward avoidance requirements from the 2015 Approved RMP Amendment/Final EIS. The 2018 Proposed RMP Amendment/Final EIS changes the desired condition from a uniform, inflexible 7-inch grass height standard (Selected in 2015) to an adaptive standard which accounts for precipitation variation. In doing so, the plan better reflects the achievability of such standards. The Proposed Plan retained objectives to provide adequate nesting cover based on the habitat potential. Based on this, the BLM has incorporated the best available local data. It has also allowed for new scientific research to improve its management without the need to amend the plans with each new insight.

Neither the National Technical Team (NTT) Report nor the COT Report included any language on prioritizing fluid mineral leasing outside Greater Sage-Grouse habitat. As with most of the research related to the effects of fluid mineral development on Greater Sage-Grouse, the issue was that the development would have many impacts. These impacts are discussed at length in Section 4.3 of the 2015 Approved RMP Amendment/Record of Decision.

As clearly documented in Section 4.6.1 of the Proposed RMP Amendment/Final EIS, prioritization merely addresses when a given parcel may be leased, not what stipulations may apply to the lease. As such, the Proposed RMP Amendment/Final EIS is clear that prioritization alone offers no certainty of protection from the effects of oil and gas leasing. In the presence of regulatory actions, such as no surface occupancy (NSO) stipulations identified in MA-MR-3, the objective to prioritize is absent of conservation value. The best available science notes that oil and gas development has impacts. Delaying those impacts by prioritization does not ensure protection, but applying stipulations and conservation measures does.

In addition to being more consistent with best available science, removing the prioritization objective is more consistent with BLM policy. Appendix C in the BLM’s planning handbook (BLM-1601-1) states that a land use planning decision for fluid minerals is “consistent with the goals and objectives for natural resources.” This would apply to the following areas:

- Those that are open to leasing, subject to the terms and conditions of the standard lease form
- Those that are open to leasing, subject to moderate constraints, such as seasonal and controlled use restrictions
- Those that are open to leasing, subject to major constraints, such as NSO
- Those that are closed to leasing

In language similar to that in the Energy Policy and Conservation Act, the handbook also notes that “when applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used” (BLM-1601-1, Appendix C, p. 24).

The Proposed RMP Amendment/Final EIS and the 2015 Approved RMP Amendment/Record of Decision identified PHMA as open to leasing, subject to NSO stipulations; however, the 2015 Approved RMP Amendment/Record of Decision’s combination of the “open to leasing subject to NSO” stipulation and the “prioritize leasing outside PHMA and GHMA” has created a confusing situation over whether PHMA is open for leasing or not and with what stipulations.

Additionally, the analysis in the Proposed RMP Amendment/Final EIS Chapters 3 and 4 shows that prioritization can be eliminated, while maintaining sufficient protections for Greater Sage-Grouse.

Finally, prioritization is an implementation-level tool that the BLM uses to manage staff and budgets. With the removal of the objective, the plan language is more consistent with BLM planning guidance and with state, local, and tribal plans.

As noted in the Proposed RMP Amendment/Final EIS response to comments (see page App-2-42), the efforts by the State of Utah and its partners to find new leks have increased over time. This has resulted in the identification of more, but often smaller, leks that previously were not detected due to their smaller size. Using a total male trend avoids the bias that such efforts would have on a males-per-lek trend. Similarly, using a males-per-lek trend could mask increases in total population; for example, identifying 50 more birds using 5 temporary satellite leks would suggest a decrease in males-per-lek for a population, when in reality it would be an increase.

Different trends can serve different purposes, such as males-per-lek, total males over long periods of time, and lambda calculated by individual leks or populations. This concept was added to the Proposed RMP Amendment/Final EIS on page 3-6. This is why the BLM and the State of Utah have used both the males-per-lek trend and lambda when monitoring to determine if adaptive management triggers have been met. For the purposes of population-level and state-wide analyses in the Proposed RMP Amendment/Final EIS, the BLM used a method that would capture the long-term trend of the entire populations, regardless of how many leks they use.

Further, in developing the Proposed RMP Amendment/Final EIS, the BLM specifically partnered with the USGS to review the best available information and incorporate the management implications of that information into the EIS. The USGS report is available at <https://pubs.er.usgs.gov/publication/ofr20181017> and is referenced throughout the Proposed RMP Amendment/Final EIS. This evaluation of recent literature is consistent with the conclusions in the Proposed RMP Amendment/Final EIS and the 2015 Approved RMP Amendment/Record of Decision: that oil and gas can affect Greater Sage-Grouse and appropriate stipulations are needed for conservation assurances.

The BLM places great importance on the best available information, including new scientific studies and government reports that indicate a potential change in the assumptions or conditions related to land use planning. 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 Proposed RMP Amendment/Final EIS. Many articles that the BLM suggested were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the Proposed RMP Amendment/Final EIS. The BLM has included, where appropriate, updates to analyses in appropriate EISs. Overall, submitted studies did not offer information that changed the analysis and did not offer any new conditions or other information that the BLM had not considered already.

BLM scientists and NEPA specialists reviewed known and new studies, and each BLM State Office staff reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analyses in the appropriate EISs. Overall,

submitted studies did not offer information that changed the analyses in the plans/EISs and did not offer any new conditions or other information that the BLM had not considered already.

The BLM reviewed all new information and the studies suggested in comments received rangewide and in specific states. Further, the BLM takes new information seriously and identified 11 articles from the studies suggested. These 11 studies are sorted below by whether they were cited in the USGS Report, or referenced in the bibliography of the USGS Report, or considered during the Proposed RMP Amendment/Final EIS development and review of comments. Articles were reviewed during comment response development and incorporated into comment responses where appropriate (see comment response report appendix of the Proposed RMP Amendment/Final EIS).

Accordingly, the BLM has relied on high quality information to examine changes made or planning decisions retained between the Proposed RMP Amendment/Final EIS 2015 and Approved RMP Amendment/Record of Decision.

The BLM has relied on high quality information to examine changes made or planning decisions retained between the 2015 and 2018 Plans. The protesting party has not provided any new information, specific sources of data or science the BLM failed to use, or other reason to overturn the decision. For the reasons stated above, the protest point is without merit and is therefore denied.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** FEISs actually points to the need to sustain the direction in the 2015 Sage-grouse Plans, including maintaining a landscape-scale approach, retaining priority and general habitat management areas and preserving protections from oil and gas development. However, many of these elements of the plans are being weakened or removed altogether in contravention of this accepted science. In addition, more recent science has only reinforced this interpretation of the weight of existing, applicable science (including BLM's USGS Synthesis). For instance, a report by Burkhalter et al. 2018 found that landscapes associated with a higher abundance of males on leks were those located in highly connected, sagebrush-dominated areas with limited energy development. A report by Lipp, T.W. and Gregory, A.J. 2018 found that, as energy demands continue to increase, and with multiple species of grouse listed or nominated for listing under the ESA, negative impacts attributed to energy development are likely to continue. And a study by Row, et al., finds that, although population strongholds will likely have much higher suitability values, maintaining areas outside of these regions should help maintain connectivity between these existing protection areas. This new science emphasizes the importance of retaining protections from energy development, maintaining connectivity and ensuring that management is conducted at a landscape-scale.

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

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

BLM Handbook H-1790-1 (p. 55) 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.” Under its guidelines for implementing the Information Quality Act, the BLM applies the principle of using the best available data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

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

In developing the Proposed RMP Amendment/Final EIS, the BLM partnered with the USGS to review the best available information and to incorporate the management implications of that information into the Proposed RMP Amendment/Final EIS. The OFR from the USGS is available at <https://pubs.er.usgs.gov/publication/ofr20181017> and is referenced throughout the Proposed RMP Amendment/Final EIS. The BLM also addressed this issue in its response to comments on the Proposed RMP Amendment/Final EIS and remains committed to using the best available information.

Finally, Appendix 3 in the Proposed RMP Amendment/Final EIS was added to present the actual current conditions of oil and gas leases and development, fragmented landownership patterns, small populations, and severely fragmented nature of GHMA. Models conducted on the relatively homogenous Wyoming landscape with extensive sagebrush may indicate the connective nature of GHMA in that landscape; however, the topographically diverse and vegetatively scattered nature of sagebrush systems in Utah do not have the same connectivity. Appendix 3 summarizes the best available science related to connectivity, as informed by local genetic and VHF and GPS studies.

The BLM relied on high quality information and the best available data in preparing the Proposed RMP Amendment/Final EIS; accordingly, this protest is denied.

## **NEPA—Cumulative Effects**

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** BLM has also changed its approach to prioritizing oil and gas leasing and development outside habitat. The 2015 Sage-grouse Plans commit to prioritizing both leasing and development outside sage-grouse habitat. See, e.g., Record of Decision for the Rocky Mountain Region, p. 1-25. In the 2018 Proposed Amendments, the approach is formally removed from the Utah plan and from GHMA in the Wyoming plan. However, the requirement is also generally removed from all of the plans in guidance issued in December 2017 through IM 2018-026, which states: “the BLM does not need to lease and develop outside GRSG habitat management areas before considering any leasing and development within GRSG”, which revoked the prior guidance interpreting the 2015 Sage-grouse Plans. As shown by the ongoing volume of leasing in sage-grouse habitat, leasing is clearly not being prioritized outside of habitat. The impacts of the formal proposed changes to the 2015 Sage-grouse Plans and the implementation of the new guidance (if it is retained) must also be analyzed across the range, with regard to current and future leasing.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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 acres 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.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** the BLM fails to conduct a thorough analysis of other past, present, and reasonably foreseeable actions. For example, 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.

**Summary:** The Proposed RMP Amendment/Final EIS failed to analyze the cumulative impacts of removing prioritization of fluid mineral leasing outside Greater Sage-Grouse habitat.

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

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 BLM considered the effects of planning, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions, including large-scale oil and gas projects. Section 4.7 of the Proposed RMP Amendment/Final EIS 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 determined 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 adequately analyzed cumulative effects of oil and gas leasing in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

### ***Western Watersheds Project***

#### ***Greta Anderson***

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

management of minerals, and the failure to adequately address this overlap and the impacts of proposed management in tandem with the related USFS actions is an outstanding failure.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Without examining impacts on a rangewide basis, an adequate cumulative impact analysis is not possible. Nevertheless, the agency elected to examine cumulative effects only at the WAFWA management zone level. Moreover, the so-called “cumulative effects analysis” in the PRMP EIS is woefully inadequate. The statement, “[c]onditions on public land also have changed little since the 2015 Final EISs, and to the extent that there have been new actions or developments, the impacts associated with those actions or developments are in line with the projections in the 2015 Final EISs regarding reasonably foreseeable actions and effects,” is inaccurate. As WWP (2018) explained, the analysis must meaningfully inform the public about how further weakening the already-inadequate protections in the 2015 ARMPAs will have combined impacts that could harm or otherwise affect sage-grouse. Rather than considering and disclosing likely impacts in a meaningful and informative way, the analysis makes vague statements and refers to previous discussions in the 2015 RMP EISs (which did not take a rangewide hard look).

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** WWP has raised these, and other, issues requiring a hard [3 Carter, John, James Catlin, Neil Hurwitz, Allison Jones, and Jonathan Ratner. 2017. Upland Water and Deferred Rotation Effects on Cattle Use in Riparian and Upland Areas. *Rangelands* (July/August) p. 112-118 Society for Range Management.] look throughout this process and BLM has nevertheless failed to review the impacts of its actions on a rangewide basis. This rangewide perspective is particularly important in light of the projected effects of climate change. WWP et al. 2018. Climate mapping projects that sage-grouse range will constrict severely over the next several years, forcing sage-grouse into smaller and lower quality habitats. Without this rangewide hard look, BLM has not considered how its decisions to permit sage-grouse habitats to become degraded, or even destroyed, will contribute to species-level declines.

**Summary:** In its cumulative impacts analysis, as required under NEPA, the BLM failed to take a range-wide look at cumulative impacts (including those related to climate change) and to account for actions affecting Greater Sage-Grouse habitat on USFS lands.

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

The BLM has complied fully with 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 BLM considered the effects of planning, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 4.7 of the Proposed RMP Amendment/Final EIS identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

As explained in Section 4.7.2 of the Utah Proposed RMP Amendment/Final EIS, consistent with the 2015 plans, the WAFWA management zones are the appropriate unit of evaluating cumulative effects because they define habitat areas which share similar issues, threats, and vegetation communities. WAFWA management zones therefore provide a more meaningful unit of context in which to analyze cumulative

impacts than a single, range-wide look. Importantly, Section 4.13 analyzes the effects of the proposed action on a zone-by-zone basis for all effected WAFWA zones, in effect, taking a range-wide look for all of the relevant, effected zones.

The BLM took into account the relationship between the proposed action and these reasonably foreseeable actions. This determined 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 adequately analyzed cumulative effects in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The Utah PRMP/FEIS fails to take the legally required ‘hard look’ at the cumulative impacts of sage-grouse hunting, taken together with the habitat degradation permissible under the PRMP.

**Summary:** The BLM failed to analyze the cumulative impacts of actions of hunting and habitat degradation permissible under the Proposed RMP Amendment/Final EIS.

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

The BLM does not manage greater sage-grouse hunting and the BLM has limited jurisdiction regarding predation. The 2015 FEIS does address predation, to the extent the BLM has jurisdiction (see 2015 FEIS page 4-9 and Appendix M). The 2018 changes do not deviate from this analysis. As such, it is not addressed in detailed analysis or in the cumulative impact analysis.

As explained in Section 4.7.2 of the Utah Proposed RMP Amendment/Final EIS, consistent with the 2015 plans, the WAFWA management zones are the appropriate unit of evaluating cumulative effects because they define habitat areas which share similar issues, threats, and vegetation communities. WAFWA management zones therefore provide a more meaningful unit of context in which to analyze cumulative impacts than a single, range-wide look. Importantly, Section 4.13 analyzes the effects of the proposed action on a zone-by-zone basis for all effected WAFWA zones, in effect, taking a range-wide look for all of the relevant, effected zones.

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

The BLM adequately analyzed cumulative effects in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

### **The Wilderness Society**

#### **Bruce Pendery**

**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:** BLM erred in relying on the 2015 cumulative impacts analysis. The change in purpose and need between the 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS change regulatory circumstances. This would have environmental effects that are not accounted for in the 2015 cumulative impacts analysis.

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

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impacts analysis based on the broad nature and scope of the proposed management options. The BLM considered the effects of planning, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The purpose and need driving a given change in management does not change the effect of that management; the direct, indirect, or cumulative effect is related to the action, not the purpose for taking the action. Section 4.7 of the Proposed RMP Amendment/Final EIS 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 BLM took into account the relationship between the proposed action and these reasonably foreseeable actions. This determined the level of analysis performed. The information presented in the Proposed RMP Amendment/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

## **NEPA—Impacts Analysis—General**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** In the Utah PRMP/FEIS, BLM fails to take the legally required ‘hard look’ at land health status. The FEIS provides extensive analysis of other land uses but fails to include habitat condition information that the agency has collected.

**Summary:** The BLM failed to take a hard look at land health status that NEPA requires.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. Moreover, 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, the analysis of land use plan alternatives is typically broad and qualitative, rather than focused on site-specific or temporally limited actions or effects. The baseline data provide the necessary basis to make informed land use plan-level decisions. The land health status of allotments has the potential to change yearly. Any actions taken to resolve standards not being met is an implementation level decision. In addition, an updated snapshot of allotment land health status from year to year would not change the effects analysis of the RMP-level actions analyzed over the years that were considered in the EIS. Accordingly, the BLM has adequately examined the land health status for this land use planning decision.

The decisions under consideration by the BLM are programmatic and would not result in on-the-ground planning decisions or actions; for example, the BLM is not authorizing a certain level of use. Because of this, the scope of the analysis was conducted at a regional programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could 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.

For the reasons stated above, this protest is denied.

### **Western Watersheds Project Greta Anderson**

*See also: NEPA—Response to Public Comments*

**Issue Excerpt Text:** We asked that this correction be noted in the FEIS. BLM rejected our analysis and recommendations, offering no scientific basis for this other than the political desire to follow state recommendations. Because BLM failed to modify the plan as recommended and failed to cite “the sources, authorities, or reasons which support the agency’s position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response,” the agency violated 40 C.F.R. § 1503.4(a). Finally, as WWP et al. 2018 mentioned in comments, the BLM has failed to take a hard look at the issues of: vegetation treatments (including the adverse impacts of fire, chaining, mowing, crushing, and herbicide application); the exemption of vegetation treatments from lek buffers; the effectiveness of vegetation treatments and fuel breaks (Shinneman et al. 2018); the stress responses of sage-grouse to the presence of livestock; the direct effects of trampling, forage competition and nest abandonment; the management paradigm that allows NEPA and land health evaluations to be indefinitely deferred; the lack of response to WWP’s study showing that it is possible to meet the habitat objectives in grazing exclosures; the wishy-washy and uncertain structure of “outcome-based grazing;” and the increase of predators in places with livestock grazing. We protest that the BLM did not respond to our substantive comments on all of these issues and that the final FEIS is inadequate to address the real and immediate impacts of livestock grazing on sage-grouse habitat.

**Summary:** The BLM did not respond meaningfully to public comments on the DEIS and failed to take a hard look at the impacts of vegetation treatments, fires, and livestock on Greater Sage-Grouse.

**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, p. 23-24). NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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.

Regarding the BLM's failure to take a hard look at the impacts of vegetation treatments, fires, and livestock on Greater Sage-Grouse, land use planning-level decisions are broad in scope. For this reason, an analysis of the impacts in 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. The decisions under consideration are programmatic and would not result in on-the-ground planning decisions or actions; for example, the BLM is not authorizing a certain level of use. Because of this, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could 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 Proposed RMP Amendment/Final EIS contemplates updates and modifications to a subset of decisions from 2015, and its analysis is narrower in scope. Some issues were analyzed in 2015 and not analyzed in detail in the Proposed RMP Amendment/Final EIS. The issues identified in the protest are resources that, for reasons laid out in the document, would not be reasonably expected to substantially change as a result of the Proposed RMP Amendment/Final EIS, nor would they assist in making an informed decision among alternatives. (See the Proposed RMP Amendment/Final EIS, Section 1.5, for a list of issues carried forward and those that were not.

Nonetheless, planning criteria included consideration of how planning decisions may affect future listing determinations for the Greater Sage-Grouse under the ESA. Accordingly, in the Proposed RMP Amendment/Final EIS, the BLM took a hard look at the direct, indirect, and cumulative impacts that may occur as a result of changes made to the 2015 Approved RMP Amendment/Record of Decision.

For the reasons stated above, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Lacking information about how many acres within the PHMA would be exempt from the PRMP requirements makes a hard look at the effects of the plan impossible, and we protest on this basis. It also goes against the explanation provided in Idaho for why protecting “non-habitat” is integral to the sage-grouse conservation strategy: “While areas of non-habitat, such as canyons, water bodies, and human disturbances, in and of themselves may not provide direct habitat value for Greater Sage-Grouse, these areas may be crossed by birds when moving between seasonal habitats; therefore, these habitat management areas are not strictly about managing habitat but are about providing those large landscapes that are necessary to meet the life-stage requirements for Greater Sage-Grouse.” Idaho PRMP/FEIS at 1-3. Thus, the BLM's choice in Utah is fundamentally at odds with the conservation perspective applied in Idaho; the plan is arbitrary and capricious and we protest on this basis.

**Summary:** The BLM failed to take a hard look at the impacts on Greater Sage-Grouse from the exemptions to PHMA designations and failed to take a hard look at the impacts of planning decisions on non-habitat that the BLM has deemed important to landscape-scale conservation of the species.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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.

As noted on page 4-14 of the Proposed RMP Amendment/Final EIS, several alternatives in the 2015 Approved RMP Amendment/Record of Decision analyzed options to exempt decisions associated with PHMA on a project-by-project basis if the project were in non-habitat and met specified criteria. That included the 2015 Approved RMP Amendment/Record of Decision Alternative D, E1, and the proposed plan. Those analyses were incorporated by reference into the Proposed RMP Amendment/Final EIS. As such, the BLM has met the hard look requirement of NEPA.

Concerning consistency with the BLM's strategy in Idaho, there is no legal requirement that the BLM manage similar resources similarly; however, there must be a rationale for the differences to avoid being arbitrary.

Across the Greater Sage-Grouse range, the BLM identified PHMA, in coordination with each state's wildlife management agency. As such, there is no consistency from state to state in the designation approach. As noted on page 1-4 of the Proposed RMP Amendment/Final EIS, "PHMA largely coincides with the State of Utah's Sage-Grouse management areas (SGMA)." The boundaries of the State of Utah's mapped SGMAs "are for informational and management purposes only" and "are not meant to represent a survey-grade boundary, nor are they intended to be the final authority for habitat delineations" (Proposed RMP Amendment/Final EIS, p. 15). This fact is made clear on page 3-13, where it notes that the "PHMA boundaries were drawn at a broad scale; thus, they include interspersed areas of habitat and non-habitat (see Appendix K). Most of the areas of non-habitat are predominantly small tracts of vegetation that could be used for transitional zones or that could be affected by public land uses, in concert with adjacent tracts of habitat. However, some of these non-habitat areas in PHMA are so large that they are unlikely to provide habitat for Greater Sage-Grouse populations." Simply put, the PHMA boundaries in Utah "include high-quality habitat, and may also include areas with poor or potential habitat, and non-habitat" (Proposed RMP Amendment/Final EIS, p. 1-4).

Language in Appendix K (p. App-K-3) of the Proposed RMP Amendment/Final EIS gives some indication of the scale of the non-habitat areas in PHMA, where vegetation types not associated with sagebrush comprise approximately 41 percent of the PHMA areas. Obviously these areas are interspersed, and not every such acre would meet the criteria contained in MA-SSS-1; however, as noted on page App-K-3, 3.1 million acres in PHMA are comprised of groups larger than 50 acres of vegetation types where sagebrush is not a dominant or primary component.

Given this situation, the exception language in MA-SSS-1 was designed to avoid applying management to protect Greater Sage-Grouse in areas that they do not use and from uses that would not affect the functionality of the habitat. The specific criteria that must be met would be documented on a project-by-project basis and would only apply to that specific project. Additionally, the exemption would apply only to the management of PHMA for that given project; the area would remain PHMA. Further, any subsequent project, even a similar project in the same area, would require a separate analysis to

determine if it would not result in “direct or indirect impacts on adjacent seasonal habitats that would impair their biological function . . .” (see MA-SSS-1, pp. 2-28 and 2-29).

In this case, the one-time case- and site-specific exemptions to PHMA management in the Proposed RMP Amendment/Final EIS balance the risk of uncertainty against the benefits of management flexibility accorded to the states in the subregion; therefore, changes in policy between Utah and Idaho is neither unexpected or contrary to the objectives of the Proposed RMP Amendment/Final EIS. Accordingly, the BLM’s analysis of the impacts is sufficient.

For the reasons described above, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The PRMP also proposes new exceptions for the disturbance cap, allowing it to exceed 3 percent if “a technical team” determines that the project will “improve” the condition of GRS habitat within the project analysis area or within the PHMA in the population where the project is located. Utah PRMP/FEIS at 2-11. This vague scale changes the boundaries at which the disturbance cap applies and allows greater discretion from an unspecified team to grant exemptions. Utah PRMP/FEIS at 2-11. Approval for such exceptions is strictly within the purview of the BLM. Utah PRMP/FEIS at 2-12. This effectively eliminates the hard limits on disturbance and density caps set in the 2015 ARMPA and replaces it with an opportunity for a subjective allowance of exceedance. Utah PRMP/FEIS at 2-6. The expanded opportunity for exceptions and modifications of the NSO standards also reduces the certainty that NSO will actually be applied in PHMA and removes the protections entirely on the acres that have been downgraded from PHMA in the proposed plan. Utah PRMP/FEIS at 2-6. The proposed plan also removes the prioritization of oil and gas leasing outside of PHMA (and GHMA) and relies on the NSO stipulations to protect habitat. Utah PRMP/FEIS at 2-7. But the exceptions and modifications provided by the proposed plan make that an insufficient and uncertain measure. Utah PRMP/FEIS at 2-18. These include provisions related to “non-habitat” within PHMA, a distinction that undermines the habitat integrity of the PHMA as an area of refuge for the species and neglects the travel, foraging, and buffer distances that the species needs between and among habitat types. The lack of an analysis of these new measures that cut away at the meaning of PHMA and NSO undermines the effectiveness of the proposed plan to protect and conserve Greater Sage-Grouse, and we protest on this basis.

**Summary:** The Proposed RMP Amendment/Final EIS fails to identify the scale to which exemptions apply and fails to recognize the uncertainty in impacts associated with such exemptions. It also fails to identify the uncertainties of eliminating prioritization in Greater Sage-Grouse habitat.

**Response:** NEPA (40 CFR 1502.22) directs that when an agency is evaluating reasonably foreseeable, significant, adverse effects on the human environment, and there is incomplete or unavailable information, the agency always makes clear that such information is lacking. It also provides context of its relevance, available information, and alternative approaches to obtaining information to reach a decision.

In the Proposed RMP Amendment/Final EIS, the BLM analyzes the effects of the exceptions to the disturbance cap (pp. 4-16 and 4-17), the NSO exceptions (pp. 4-19 and 4-20), oil and gas prioritization (p. 4-22), and conditional, case- and site-specific exceptions to management in PHMA (p. 4-14). In each instance, the analyses disclose the effects of the increased flexibility, based on the required criteria associated with each exception. As with all analyses, the agency evaluates the effects of implementing the actions, as written, including complying the documentation required before any exception is granted.

Land use planning-level decisions are generally broad in scope. For this reason, the analysis is typically broad and qualitative, rather than quantitative or focused on site-specific actions. It is not possible to discern every potential circumstance and situation where an exception may be requested. The baseline data provide the necessary basis to make informed decisions at the land use plan-level. The decisions under consideration by the BLM are programmatic and would not directly result in on-the-ground actions; for example, the BLM is not approving an application for permit to drill. Because of this, the scope of the analysis was conducted at a corresponding scale; thus, it is speculative to say that the planning level decisions described in the Proposed RMP Amendment/Final EIS would cause unaccounted for impacts in certain areas. It assumes that the BLM would not apply the criteria defined in the Proposed RMP Amendment/Final EIS.

The expanded opportunity for exceptions and modifications of NSO standards was intended to provide a greater degree of site-specific tailoring of management decisions. By doing this, the BLM can maintain the integrity of leks, while providing a tool for avoiding unwarranted restrictions on use. Under the Proposed RMP Amendment/Final EIS, the BLM would grant waivers, exemptions, and modifications only when specific criteria are met to advance the management goals and objectives in the Proposed RMP Amendment/Final EIS. The BLM's proposed plan balances the risk of uncertainty against the benefits of management flexibility, when considering changes to the 2015 Approved RMP Amendment/Record of Decision.

For the reasons stated above, this protest is denied.

## **NEPA—Impacts Analysis—Grazing**

### **Western Watersheds Project**

**Greta Anderson**

*See also: NEPA—Public Participation*

**Issue Excerpt Text:** We protest that the PRMP/FEIS makes a number of substantive changes to the 2015 ARMPA through various extra-planning actions. These changes defy legitimate planning processes because they are unclear, defer actual decisions, lack analysis of their impacts, do not allow appropriate public input, and are inaccurate. The PRMP/FEIS also mentions the BLM's commitment to outcome-based grazing. Utah PRMP/FEIS at 1-2. However, there is no analysis of outcome-based grazing in the PRMP and the extent to which the BLM anticipates applying it in Utah. Outcome-based grazing is a concept that BLM came up with well after 2015, so it could not have been considered in the 2015 ARMPA process. Therefore, in reality BLM will implement a new management paradigm for grazing outside the planning process, with virtually no public input or analysis. Paired with the removal of grazing management (outlined above), the public has no assurance that the BLM will be managing grazing to be meet the habitat needs of sage-grouse.

**Summary:** The RMPA fails to analyze the effects of outcome-based grazing on Greater Sage-Grouse.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 Proposed RMP Amendment/Final EIS does not commit the BLM to developing “outcome-based grazing.” Rather, the discussion of outcome-based grazing that the protester identifies in her protest is background language contained in the introduction (Section 1.1). This language recognizes the BLM’s broader position to support adaptive management activities for livestock grazing. The decisions to which the BLM is committing to in the Record of Decision are limited to those outlined as land use planning decisions, discussed in Chapter 2 and detailed in Table 2-2. Because the outcome-based grazing that the BLM references in Section 1.1 is not a land use planning-level decision that the BLM is committing to, it is not necessary for it to conduct an impacts analysis of outcome-based grazing in the Proposed RMP Amendment/Final EIS. As described on page 1-10, other grazing actions that were eliminated were removed to eliminate duplicated regulations, policies, or management in other portions of the Proposed RMP Amendment/Final EIS. The environmental consequences for each relevant resource are analyzed in Chapter 4.

The BLM complied with NEPA’s requirement to analyze the relevant environmental consequences of grazing in the Proposed RMP Amendment/Final EIS. Accordingly, this protest is denied.

## **NEPA—Impacts Analysis—Greater Sage-Grouse**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** But here, the state does not follow the best available science in estimating population levels and trends. One example helps explain the nature of the problem. We performed a regression analysis on the lek data that UDWR provides. One example demonstrates what we found. If you perform a regression analysis on the last 20 years of data for Rich-Morgan-Summit Counts for males/lek, the population slope is downward. If you conduct a regression analysis for the same 20 years for the same counties counting the total males, the sage grouse population slope is up. A downward slope indicates a continued decrease in population number and an upward slope an increase in population over time. The males/lek data show that the populations for most sites in Utah are in decline. BLM incorrectly based its analysis on methods that misrepresent sage grouse populations and, thus, BLM failed to identify problems and take needed action.

### **Wyoming Coalition of Local Governments**

#### **Kent Connelly**

*See also: Other Laws*

**Issue Excerpt Text:** According to the FEIS, the BLM would “defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action.” FEIS at 2-38. ...The Draft EIS never disclosed that the BLM would “defer” “commit” or otherwise apply wholesale the Utah Department of Natural Resources mitigation policy on federal lands.

... when the BLM states in the 2018 Plan that it will “defer” to the State’s framework, the BLM assumes that it may defer to the State’s framework when it is clear that the State has no authority over federal lands and the standard that the State would impose conflicts with federal law (i.e. FLPMA). The BLM may attempt to be consistent with the State’s framework, but the BLM may not contract the scope of federal law to match a State program. 43 U.S.C. 1712(c)(9). The adoption of the State’s framework and standard therein is arbitrary, capricious, or otherwise not in accordance with established law. See Attach. 11, 080218 CLG DEIS Comment Letter at 17-18.

**Wyoming Coalition of Local Governments**  
**Kent Connelly**

**Issue Excerpt Text:** NEPA imposes an affirmative duty on federal agencies to ‘insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statements.’” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1181 (10th Cir. 2002) as modified on reh’g, 319 F.3d 1207 (10th Cir. 2003) (quoting 40 C.F.R. § 1502.24). The BLM’s continued reliance on the NTT Report violates the basic tenant of NEPA that BLM must perform a hard look especially when comments reveal a persistent and significant scientific controversy. The BLM’s failure to use the ample means to address these problems (e.g. adding an appendix as the Coalition suggested) is inexcusable and dooms the FEIS.

**Wyoming Coalition of Local Governments**  
**Kent Connelly**

*See also: Other Laws*

The 2015 Plan relied heavily, if not exclusively on the 2011 National Technical Team report (“NTT”), 2013 Conservation Objectives Team report (“COT”) and articles compiled into the USGS Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat (“Monograph”).<sup>1</sup> The Coalition, cited the IQA petitions filed by a consortium of western counties and the Western Energy Alliance and independent reviews of the Monograph and identified in its 2018 Draft EIS comments how the 2018 EIS that must develop the analysis and disclose the flaws in the Monograph to ensure a durable and defensible Record of Decision. See Attach. 11, 080218 CLG DEIS Comment Letter at 1, 2-15. The FEIS, however, does not discuss any of the problems that the Coalition and other groups have identified in the NTT Report or the Monograph and, therefore, the BLM has committed the same error it made in 2015. Interior has never addressed the flaws identified in March 2015 and by CLG in its earlier comments.

**Summary:** The BLM failed to rely on best available science by relying on the NTT Report and the Monograph, without addressing these reports’ scientific controversies.

**Response:** The 2015 Approved RMP Amendment/Final EIS included an alternative designed around the NTT Report. This alternative was not selected, and the BLM does not have reason to reopen that decision and reanalyze the issue based on a purpose and need of improving alignment of the existing plans with state management. In response to public comments in the 2018 Draft RMP/Draft EIS (see comment response report Appendix), we addressed this point specifically. See page App-2-21, App-2-40, and most directly on App-2-43 (which responds in most detail to this point exactly).

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).

BLM Handbook H-1790-1 (p. 55) 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.” Under its guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

In developing the Proposed RMP Amendment/Final EIS, the BLM 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 at <https://pubs.er.usgs.gov/publication/ofr20181017> and is referenced throughout the EIS.

The BLM places great importance on the best available information, including new scientific studies and government reports that indicate a potential change in the assumptions or conditions related to land use planning. 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 Proposed RMP Amendment/Final EIS. Many suggested articles were already included in the report and may have been missed by commenters in the initial review of the Proposed RMP Amendment/Final EIS. The BLM has included, where appropriate, analysis updates in the Proposed RMP Amendment/Final EIS. Overall, submitted studies did not offer information that changed the analysis and did not offer any new conditions or other information that the BLM had not considered already.

BLM staff, including scientists and NEPA specialists, reviewed both known and new studies; staff in 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 analyses in the Proposed RMP Amendment/Final EIS. Overall, submitted studies did not offer information that changed the analysis and did not offer any new conditions or other information that the BLM had not considered already.

The BLM has reviewed all new information and suggested studies from comments received range-wide and in specific states. Further, the BLM takes new information seriously and identified 11 articles from the studies suggested in comments. These studies were sorted by whether they were cited in the USGS report, referenced in the bibliography of the USGS report, or considered by the BLM during the RMP Amendment development and review of comments. Articles not specifically addressed below were also still reviewed during comment response development; thus, the BLM reviewed for controversies or inconsistencies any available data submitted to it as part of the 2015 planning process; this included the NTT report. Further, the BLM relied on information submitted during the public participation period to update the information on which the Proposed RMP Amendment/Final EIS was based. Any changes to the best available science have thus been incorporated into the USGS report and relied on in the development of the Proposed RMP Amendment/Final EIS.

The BLM has relied on high quality information related to the impacts on Greater Sage-Grouse to examine changes made or planning decisions retained between the 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS. This included any changes or updates that were made to the studies on which the original plans were based; thus, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The FEIS further fails to adequately disclose environmental consequences by contending that the impacts of eliminating prioritization are encompassed within other alternatives analyzed in the 2015 ARMPA FEISs. Utah PRMP/FEIS at 4-22. This obscures the fact that the current proposed changes, by eliminating in the tandem both GHMA protections and the prioritization requirement, would both eliminate essentially all safeguards for GHMA and increase the likelihood of leasing within and development within or proximate to PHMA. The FEIS contains, for example, no analysis whatsoever of which individual grouse populations may be affected by areas where GHMA adjoins PHMA; with the elimination of both GHMA and prioritization, the proposed plan will substantially increase the likelihood that those habitats will suffer adverse impacts from drilling facilities and activity accessing PHMA minerals from GHMA surface.

**Summary:** The Proposed RMP Amendment/Final EIS fails to analyze the impacts on Greater Sage-Grouse and their habitat from the elimination of both GHMA and prioritization.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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.

As noted by its absence in the 2015 effects analysis and clearly documented in Section 4.6.1 of the Proposed RMP Amendment/Final EIS, prioritization of leasing outside PHMA and GHMA merely addresses the issue of when a given parcel may be leased, not what stipulations may apply to the lease. As such, the Proposed RMP Amendment/Final EIS is clear that prioritization alone offers no certainty of protection from the effects of oil and gas leasing. In the presence of regulatory actions, such as NSO, identified in MA-MR-3, the objective to prioritize is absent of conservation value.

Further, the 2015 Approved RMP Amendment/Record of Decision was clear that the management associated with GHMA could result in “localized Greater Sage-Grouse habitat loss, and continued population decreases. These areas on public lands are naturally fragmented, and various human developments (e.g., roads, transmission lines, and oil and gas development) have further isolated and impacted these habitats and their associated populations” (see page 4-21 of the Proposed RMP Amendment/Final EIS). As such, removing GHMA would not change the end effect, compared with the No Action Alternative.

Further, Figure I-1 of the Proposed RMP Amendment/Final EIS plainly shows where GHMA abuts PHMA. Similarly and more clearly, the maps in the Proposed RMP Amendment/Final EIS, Appendix 3, show each GHMA area and its relationship to PHMA, as well as the presence of existing oil and gas infrastructure and leases. Based on the analysis from the Approved RMP Amendment/Record of Decision (see Appendix R and pp. 4-27 through 4-29 and 4-123) and these maps, it is easy to determine that only a few portions of the Carbon Population Area and the Uintah Population Area southwest of Vernal include areas where there is a potential for oil and gas development next to PHMA. Given stipulations associated with leks near the border of PHMA (see MA-SSS-6), indirect effects from oil and gas activities outside PHMA would not affect nesting and breeding activities in PHMA.

A land use planning-level decision is broad and programmatic. 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 and land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic and would not result in on-the-ground project decisions or actions, the scope of analysis was conducted at a regional, programmatic level; for example, the BLM is not approving an application for permit to start drilling. This analysis focuses on the direct, indirect, and cumulative impacts that could result if the programmatic direction of the Proposed RMP Amendment/Final EIS were applied to on-the ground projects.

The BLM sufficiently disclosed impacts that would occur on Greater Sage-Grouse and conservation measures available to limit those impacts; accordingly, this protest is denied.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** Without any scientific support, BLM falsely claims that these developments did not harm sage-grouse. Under the current plan, adaptive management under pressure from livestock interests has been warped and does not lead to required habitat improvement sage-grouse need. BLM must correct this problem in its amendment of the Utah ARMPA by defining actions that harm grouse, including (but not limited to) fencing and low structures associated with livestock operations.

**Summary:** The BLM has failed to examine the impacts on Greater Sage-Grouse of fencing and low structures associated with livestock operations.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 impact caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The 2015 Approved RMP Amendment/Final EIS contained management actions concerning fences. This change from previous management was consistent with the state plan and was therefore not modified by the 2018 Proposed RMP Amendment/Final EIS planning effort. The only change to MA-LG-16 (the action related to fencing) in 2018 is the removal of a reference to SFAs. This issue is entirely apart from the changes brought about in 2015. The 2018 Proposed RMP Amendment/Final EIS did not consider additional changes in the management of fences, and instead retained the management direction from 2015. The 2015 analysis analyzes effects from fencing and other grazing infrastructure on page 4-49 and 4-50 of the Approved RMP Amendment/Final EIS.

The BLM sufficiently disclosed impacts on Greater Sage-Grouse and conservation from livestock grazing; accordingly, this protest is denied.

**Western Watersheds Project****Greta Anderson**

**Issue Excerpt Text:** The Utah PRMP/FEIS proposes to open two new areas to cross-country OHV travel in the Sheeprocks population areas. Utah PRMP/FEIS at 2-27. In total, this would open 14,220 acres of sage-grouse habitat to unrestricted motorized use. *Ibid.* These areas were previously within GHMA. Utah PRMP/FEIS at 2-28. The analysis of this change states that since a subsample of the Sheeprocks population doesn't use the areas proposed for reopening to cross-country use, and since the areas are probably already degraded (no evidence is provided that BLM ever actually assessed the habitat values of this), "this change is not anticipated to result in impacts on Greater Sage-Grouse or its habitat." Utah PRMP/FEIS at 4-22. This is a) unfounded, and b) disregards the indirect impacts of OHV use on sage-grouse habitat as well.

...

The decision to reopen these two areas to cross-country travel and yet leave two other areas (Bald Hills and Fillmore) limited to existing routes (Utah PRMP/FEIS at 2-28) is unexplained and arbitrary. Given the trend of the Sheeprocks population (declines of 40 percent in 4 years) and the \$1 million

dollar investment in the restoration of habitat in this area in 2017, the BLM's choice to allow additional impacts in the immediate vicinity of this population is inexplicable, and we protest on this basis.

**Summary:** The BLM failed to examine or explain how opening two new areas to cross-country travel would affect Greater Sage-Grouse populations and habitat in the vicinity.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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 baseline data provide the necessary basis to make informed land use plan-level decisions. No additional data were presented during planning, other than vague calls for on-the-ground surveys; this has not been part of land use plan decision-making at the landscape level. The analysis focuses on the direct, indirect, and cumulative impacts that could result from on-the-ground changes. The BLM identified impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Proposed RMP Amendment/Final EIS (p. 3-19) clearly notes that two areas were opened by an RMP decision in 1992 (Five Mile Pass) and 1987 (Little Sahara Sand Dunes). As such, there has been cross country use in these areas for 23 and 28 years, respectively. In the 3 years since the 2015 Approved RMP Amendment/Record of Decision, these areas have not been abandoned or reclaimed. As such, in the Proposed RMP Amendment/Final EIS, the BLM correctly notes that past and current adjacent use would not result in habitat loss. The effects of OHV use in these areas have already occurred.

There are no leks anywhere near either area (see the Proposed RMP Amendment/Final EIS, Appendix 3, p. App-3-29, and Figure 2-13b). Telemetry data do not indicate any current Greater Sage-Grouse use anywhere near these areas. Given past and present use in these areas, combined with other information presented in the Proposed RMP Amendment/Final EIS, there is no indication that opening these areas would introduce impacts on Greater Sage-Grouse, other than the overlap with a coarsely drawn boundary used to delineate GHMA in 2015.

Other areas of GHMA changed to limited in the 2015 Approved RMP Amendment/Record of Decision—Bald Hills and Fillmore—were designated open to cross-country OHV use as the default designation in place at the time. Current BLM policy is that if the area is not specifically designated as open or closed, it should be designated as limited. Since the Five Mile Pass and Little Sahara areas were specifically designated as open, that designation has been restored as part of the Proposed RMP Amendment/Final EIS. In Chapter 4 (p. 4-22) there are no new significant impacts from actions considered about opening comprehensive travel and transportation management beyond those impacts already asserted in the 2015 Approved RMP Amendment/Record of Decision; accordingly, the BLM has adequately examined and disclosed impacts from grazing on Greater Sage-Grouse at this level of analysis.

The BLM sufficiently disclosed impacts that would occur on Greater Sage-Grouse and conservation related to travel and transportation management; accordingly, this protest is denied.

## ***NEPA—Impacts Analysis—Oil and Gas***

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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 FWS, 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***

#### ***Bruce Pendery***

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

**Summary:** The BLM failed to adequately examine the environmental impacts of removing sagebrush focal areas (SFAs) and, indirectly, opening such areas to mineral entry.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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.

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). CEQ regulations define cumulative effects as “. . . the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has complied fully with the requirements of 40 CFR 1508.7. It 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. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 4.7 of the Proposed RMP Amendment/Final EIS identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The Proposed RMP Amendment/Final EIS (p. 4-12) incorporates by reference the analysis in the 2015 Approved RMP Amendment/Record of Decision and the 2016 SFA Withdrawal Draft EIS. In these documents, the BLM comprehensively analyzed the direct, indirect, and cumulative impacts associated with the designating SFAs and recommending them for withdrawal.

The BLM took into account the relationship between the proposed action and reasonably foreseeable actions, such as hardrock mining. 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. In consideration of this, the level of detail of the NEPA analysis is 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, as it has done here.

The BLM adequately analyzed cumulative effects in the Utah GRSG PRMA/FEIS; accordingly, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Utah PRMP/FEIS at 4-22. This conclusory dismissal of the effects of eliminating the prioritization requirement is incorrect for two reasons. First, the BLM’s current characterization of the prioritization requirement as an issue only of “staff capacity,” not a substantive management requirement, is a mischaracterization of the plain language and intent of the 2015 ARMPAs, which incorporated the prioritization requirement to both authorize and require BLM to evaluate sage-grouse habitats prior to leasing and permitting in order to avoid those leases and projects with the greatest unavoidable adverse impacts. Second, it mischaracterizes the actual practice that Utah BLM has employed in prior cases under the 2015 ARMPA, where, as in the December 2017 Vernal Lease sale, BLM did engage in analysis of nominated parcels to evaluate which proposed areas would have the greatest and least negative impact to sage-grouse habitat conservation.

**Summary:** BLM failed to provide and adequately examine information on the effects of dismissing the prioritization requirement.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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.

Research is clear that oil and gas development has impacts on Greater Sage-Grouse, though the impacts are associated with the presence of the development. These impacts are discussed at length in Section 4.3 of the 2015 Approved RMP Amendment/Record of Decision. As noted by its absence in the 2015 effects analysis and clearly documented in Section 4.6.1 of the Proposed RMP Amendment/Final EIS, prioritization of leasing merely addresses the issue of when a given parcel may be leased, not what stipulations may apply to the lease. As such, in the Proposed RMP Amendment/Final EIS, the BLM is clear that prioritization alone offers no certainty of protection from the effects of oil and gas leasing. In the presence of such regulatory actions as NSO stipulations identified in MA-MR-3, the objective to prioritize is absent of conservation value. If prioritization were intended to preclude development in Greater Sage-Grouse habitat, the BLM would have closed PHMA to leasing. In 2015 the BLM considered alternatives that closed PHMA but did not select them.

Further, in developing the Proposed RMP Amendment/Final EIS, the BLM partnered with the USGS to review the best available information and incorporate the management implications of that information into the EIS. The report from USGS is available at <https://pubs.er.usgs.gov/publication/ofr20181017> and is referenced throughout the EIS. This evaluation of recent literature is consistent with the conclusions in the 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS: that oil and gas can affect Greater Sage-Grouse and that appropriate stipulations are needed for conservation.

In addition to being more consistent with best available science, removing the prioritization objective is more consistent with BLM policy. Appendix C in the BLM’s planning handbook (BLM-1601-1) identifies what is a land use planning decision for fluid minerals. A land use plan is to identify, “consistent with the goals and objectives for natural resources,” the following areas:

- Those that are open to leasing, subject to the terms and conditions of the standard lease form
- Those that are open to leasing, subject to moderate constraints, such as seasonal and controlled use restrictions
- Those that are open to leasing, subject to major constraints, such as NSO
- Those that are closed to leasing

The BLM Handbook 1601-1 (Appendix C, p. 24) also notes, similar to language from the Energy Policy and Conservation Act, that “when applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used.” The 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS identifies areas as open to leasing, subject to NSO stipulations; however, the 2015 Approved RMP Amendment/Record of Decision’s combination of the “open to leasing subject to NSO” stipulation and the “prioritize leasing outside PHMA and GHMA” has created a situation that has confused BLM staff and the public over whether PHMA is open for leasing or not, and, if so, with what stipulations. Additionally, the analysis in the 2018 Draft RMP/Draft EIS Chapters 3 and 4 shows that prioritization can be eliminated, while maintaining sufficient protections for the Greater Sage-Grouse. Finally, prioritization is an implementation-level tool that the BLM uses to manage staff and budget resources.

In the Proposed RMP Amendment/Final EIS, the BLM complied with NEPA’s requirement to analyze the environmental consequences and impacts of removing the fluid mineral leasing prioritization; thus, this protest is denied.

## [NEPA—Impacts Analysis—Recreation](#)

### ***BlueRibbon Coalition***

#### ***Paul Turcke***

**Issue Excerpt Text:** ...there is a paucity of data suggesting significant adverse impacts to GRSG caused by recreation. Even the Fish and Wildlife Service’s numerous reviews have referred only sparingly to recreation, and found recreation to be a tertiary factor in grouse population/habitat impacts. See, 75 Fed.Reg. 13987 (Mar. 23, 2010). Unfortunately, these factors are ignored and not coherently considered in the RMPA/FEIS. ... With this foundation, there is little surprise that the RMPA fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions. ... impacts to recreation must be disclosed and more thoroughly analyzed.

**Summary:** The BLM has violated NEPA’s requirement to disclose and thoroughly analyze recreation management in the Proposed RMP Amendment/Final EIS.

**Response:** The BLM must comprehensively consider a proposed action to evaluate different courses of action; that is, take a hard look at the environmental consequences (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 [1976], n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 [1989]). The agency may not rely on incorrect assumptions or data when analyzing effects (*Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 [9th Cir. 2005]). The BLM takes a hard look when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n v. BLM*, 606 F.3d 1058, 1072 [9th Cir. 2010], citing *State of California v. Block*, 690 F.3d 753, 761 [9th Cir. 1982; Biodiversity Conservation Alliance et al., 171 IBLA 218, 226 [2007]; internal citations omitted).

The BLM took the requisite hard look at the environmental effects of recreation management in the Proposed RMP Amendment/Final EIS. The proposed alternative includes no changes to recreation goals, objectives, management actions or designations adopted by the 2015 Approved RMP Amendment/Record of Decision. The BLM analyzed the effects of the recreation planning decisions in detail in the 2015 Final EIS and Approved RMP Amendment/Record of Decision. In that analysis, the BLM evaluated the direct, indirect, and cumulative effects of recreation planning decisions on recreation use and opportunities in the decision area. It did not identify any new potentially significant impacts on recreation to warrant new disclosure in the Proposed RMP Amendment/Final EIS (see p. 4-37).

The BLM has complied with NEPA’s disclosure and analysis requirements. The protesting party has not provided any new information or other reason to overturn the decision, so the protest is denied.

## **NEPA—Impacts Analysis—Other**

### ***Wyoming Coalition of Local Governments Kent Connelly***

**Issue Excerpt Text:** The 2018 Plan and FEIS like the 2015 Plan and FEIS fail to acknowledge or address the significant impacts on mineral development. At a minimum Section 7 of the NMMPRDA requires Interior to disclose the deposits adversely affected and those where development that might stop. Utah priority habitat overlays energy rich land. The 2018 FEIS neither discloses the impacts nor provides measures that will allow such development to proceed.

**Summary:** The BLM has failed to properly analyze certain impacts of the Proposed RMP Amendment/Final EIS on mineral development.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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.

The decisions under consideration by the BLM are programmatic and would not result in on-the-ground planning decision or actions; for example, the BLM is not approving an application for permit to drill. Because of this, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In Chapter 4 of the Proposed RMP Amendment/Final EIS is an analysis of the impacts of various proposed management actions on mineral development, including nonenergy leasable minerals, coal, locatable minerals, mineral materials, and oil shale and tar sands; therefore, the BLM properly analyzed the impacts of the Proposed RMP Amendment/Final EIS on mineral development.

The BLM complied with NEPA’s requirement to analyze the environmental consequences and impacts on mineral development in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

***BlueRibbon Coalition***

***Paul Turcke***

**Issue Excerpt Text:** The proposed buffer sizes seem to primarily affect recreation through inclusion of distance prescriptions for “linear features (roads)...” RMPA at App-B-1. Neither BLM nor any other agency has ever properly analyzed the impacts of differing types of “linear structures” and their associated uses.

***BlueRibbon Coalition***

***Paul Turcke***

**Issue Excerpt Text:** Unfortunately, these factors are ignored and not coherently considered in the RMPA/FEIS. For example, the RMPA discussion of “recreation” and “travel management” cursorily adopts by reference the 2015 discussion. See, e.g., RMPA at 3-18 (“recreation in the planning area is described in the 2015 Final EIS in Section 3.17 (pgs. 3-165 through 3-171)” and “remains the same as described in the 2015 EIS...”). With this foundation, there is little surprise that the RMPA fails to provide meaningful discussion or disclosure of recreation management and associated prescriptions.

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

**Summary:** The BLM has failed to properly analyze certain impacts of the Proposed RMP Amendment/Final EIS on recreation.

**Response:** NEPA (40 CFR 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. It also states that NEPA document preparers 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 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.

As clarified in the Proposed RMP Amendment/Final EIS, the lek buffers are not areas where various activities are prevented, such as linear features within 3.1 miles of leks. Instead, the changes clarify that the lek buffers are merely to assess and address impacts on leks, based on local conditions for the purpose of maintaining lek persistence. Given this clarification, there would be no significant impacts on recreation, trails, or travel management. These land use planning-level decisions are broad in scope; therefore, 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.

The decisions under consideration by the BLM are programmatic and would not result in on-the-ground planning decision or actions; for example, the BLM is not designating or closing routes. Because of this, the scope of the analysis was conducted at a broad, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could 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.

After reviewing the proposed changes in the Proposed RMP Amendment/Final EIS, interdisciplinary team members identified which actions could affect each resource or resource use. After identifying potential impacts, team members reviewed the 2015 Approved RMP Amendment/Record of Decision. They found that the potentially significant impacts from the proposed changes had already been analyzed. For recreation, there were no new significant impacts from the actions considered in Chapter 2 of the Proposed RMP Amendment/Final EIS beyond those already addressed in the 2015 Approved RMP Amendment/Record of Decision; therefore, the BLM did adequately analyze the impacts on recreation in the Proposed RMP Amendment/Final EIS.

The BLM complied with NEPA's requirement to analyze the environmental consequences and impacts in the Proposed RMP Amendment/Final EIS; thus, this protest is denied.

## **NEPA—Mitigation**

### ***The Wilderness Society***

#### ***Bruce Pendery***

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

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** Of course, to the extent states require or permit payment of funds, it is unclear how BLM will reconcile this with the prohibition on mandating compensatory mitigation on BLM lands or accepting a monetary contribution for implementing compensatory mitigation as 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 of this.

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

**Response:** NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f) and 1502.16(h)). Potential forms of mitigation are as follows (40 CFR 1508.20):

- Avoiding the impact altogether by not taking a certain action or parts of an action
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment
- Reducing or eliminating the impact over time using preservation and maintenance operations during the life of the action
- Compensating for the impact by replacing or providing substitute resources or environments

To align planning with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM would consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis. Moreover, it would incorporate those measures as enforceable conditions of its authorization. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the State recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

For the reasons stated above, this protest is denied.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover 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's approach to compensatory mitigation violates FLPMA requirement to prevent UUD.

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

M-37039 has been revoked by M-37046. Furthermore, the Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing it, 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.

To align this planning effort with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the state in all action alternatives in its NEPA analysis. It will incorporate those measures as an enforceable condition of the BLM's authorization, as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

For the reasons stated above, this protest is denied.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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 abandoning compensatory mitigation as a tool to prevent habitat degradation would violate FLPMA and other applicable laws.

**Response:** NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f) and 1502.16(h)). Potential forms of mitigation as follows (40 CFR 1508.20):

- Avoid the impact altogether by not taking a certain action or parts of an action
- Minimize impacts by limiting the degree or magnitude of the action and its implementation
- Rectify the impact by repairing, rehabilitating, or restoring the affected environment
- Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action
- Compensate for the impact by replacing or providing substitute resources or environments

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

To align planning with the BLM's compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation

measures required by the state in all action alternatives in its NEPA analysis. It will incorporate those measures as an enforceable condition of its authorization. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

For the reasons stated above, this protest is denied.

## **NEPA—Public Participation**

### **Western Watersheds Project**

#### **Greta Anderson**

See also: *NEPA—Response to Public Comments*

**Issue Excerpt Text:** BLM has failed to satisfy NEPA’s notice and comment requirements, by failing to make the PRMP/FEIS available for public review online for several days during the 30-day protest period....

**Summary:** The BLM has failed to satisfy NEPA’s notice and comment requirements by failing to make the Proposed RMP Amendment/Final EIS available for public review online for several days during the 30-day protest period and by failing to respond to public comments.

**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 and 24).

Regarding protest procedures, 43 CFR 1610.5-2(a)(1) states the following: “Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process. The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the Federal Register. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.”

The protestor does not explain how the unavailability of the document online effected the protestor’s ability to protest. In any event, the BLM extended the protest period for the Proposed RMP Amendment/Final EIS by 6 days, from January 9 to January 15, 2019. Consequently, the BLM complied with the requirements outlined in 43 CFR 1610.5-2.

The BLM adequately responded to public comments on the Proposed RMP Amendment/Final EIS and complied with the protest procedure requirements outlined in 43 CFR 1610.5-2; thus, this protest is denied.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Contrary to BLM’s representation, the changes introduced between the Utah DEIS and FEIS are highly significant. Major changes since the DEIS include BLM’s (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental

harm. Utah PRMP/FEIS at 2-36. Under NEPA, the agency cannot delay providing information on such significant changes to the FEIS stage.

### **Western Watersheds Project**

#### **Greta Anderson**

*See also: NEPA—Impacts Analysis—Grazing*

**Issue Excerpt Text:** We protest that the PRMP/FEIS makes a number of substantive changes to the 2015 ARMPA through various extra-planning actions. These changes defy legitimate planning processes because they are unclear, defer actual decisions, lack analysis of their impacts, do not allow appropriate public input, and are inaccurate. The PRMP/FEIS also mentions the BLM’s commitment to outcome-based grazing. Utah PRMP/FEIS at 1-2. However, there is no analysis of outcome-based grazing in the PRMP and the extent to which the BLM anticipates applying it in Utah. Outcome-based grazing is a concept that BLM came up with well after 2015, so it could not have been considered in the 2015 ARMPA process. Therefore, in reality BLM will implement a new management paradigm for grazing outside the planning process, with virtually no public input or analysis. Paired with the removal of grazing management (outlined above), the public has no assurance that the BLM will be managing grazing to be meet the habitat needs of sage-grouse.

**Summary:** The BLM did not provide the public with an opportunity to comment on changes made to the proposed plan between the draft and final document.

**Response:** When changes are made between the draft and final document, such changes would be open to public review and comment only if they are a part of a supplemental EIS. NEPA requires agencies to prepare supplemental EISs if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)).

“Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-I, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-I, p. 29).

None of the changes between publication of the Draft and Final EISs raised substantial new concerns or otherwise materially change the analysis. See NEPA—Supplemental EIS section for a full discussion of this issue.

### **The Wilderness Society**

#### **Bruce Pendery**

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

**Summary:** The BLM’s proposed amendments are not clear enough for the public to understand the intended action and its effectiveness. The BLM has also failed to provide the public with an opportunity to comment on changes to the proposed plan between the draft and final document.

**Response:** 40 CFR 1500.2(b) states that “Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.” Further, when changes are made between the draft and final document, such changes would be open to public review and comment only if they are a part of a supplemental EIS. NEPA requires agencies to prepare supplemental EISs if the agency makes substantial changes to the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)).

“Substantial changes” in the proposed action relevant to environmental concerns are those that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-I, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative or a combination of alternatives already analyzed (BLM Handbook H-1790-I, p. 29).

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

Regarding the coherence of the Proposed RMP Amendment/Final EIS, the BLM outlined its intent regarding management actions and the likelihood of effectiveness of these actions in a clear and concise manner in Chapter 1 (Purpose of and Need for Action) and throughout the analyses in the Proposed RMP Amendment/Final EIS. Any incoherence or discrepancies were addressed in Appendix 2: Responses to Substantive Public Comments on the Draft EIS; consequently, the BLM has met its obligations under 40 CFR 1500.2(b) to produce a concise, clear, and scientifically supported Proposed RMP Amendment/Final EIS.

The Proposed RMP Amendment/Final EIS complies with the requirements of 40 CFR 1500.2(b). See *NEPA—Supplemental EIS* for a full discussion of the supplemental EIS issue; thus, the protest is denied.

## **NEPA—Purpose and Need**

### ***The Wilderness Society***

#### ***Bruce Pendery***

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

### ***The Wilderness Society***

#### ***Bruce Pendery***

**Issue Excerpt Text:** 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. . . .”

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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).

**The Wilderness Society****Bruce Pendery**

**Issue Excerpt Text:** The original purpose and need of the 2015 Sage-grouse Plans ... is being abandoned without explanation in favor of a policy of “energy dominance” which has no legal basis and is contradictory to BLM’s multiple use mandate. The stated purpose and need will help defeat the FWS not warranted finding and move the bird toward an ESA listing, and it represents an abandonment of the regulatory certainty that was a hallmark of the 2015 Sage-grouse Plans which allowed the FWS to issue the not warranted finding. Therefore, BLM’s invalid purpose and need provides no basis for eliminating GHMA in Utah.

**Summary:** The BLM purpose and need is unjustified and unreasonably narrow so as to forgo a range of reasonable alternatives.

**Response:** The NEPA document must briefly specify the underlying purpose and need to which the agency is responding (40 CFR 1502.13). The analysis of alternatives is guided by the agency’s purpose and need. Agencies have considerable discretion to define the purpose and need of a project. Agencies, in determining what a reasonable purpose is, must look at the factors relevant to the definition of the purpose, such as congressional directives, statutory authority, the specific needs and goals of parties involved in the sanction of a specific plan.

The BLM has properly defined the purpose of and need for the Proposed RMP Amendment/Final EIS, which is described at Section 1.2.

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, consistent with the laws governing the administration of the public lands, to 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, the Proposed RMP Amendment/Final EIS, in Section 1.1, summarized the purpose of and need: to modify the approach to Greater Sage-Grouse management in existing land use plans through the following actions:

- Enhance cooperation and coordination with Utah and tribes, where applicable
- Align with the Department of the Interior and BLM policy directives that have been issued since 2015
- Incorporate updated local science, research, and information to better align with Utah’s Greater Sage-Grouse conservation plan

The BLM incorporated the full range of its statutory authorities applicable to these BLM-administered lands when crafting the purpose and need statement. The protesting parties inaccurately construe the BLM’s decision to initiate land use plan amendments reflective of an external proponents desires. The focus of the purpose and need statement instead reflects the focused opportunity to improve alignment existing plans with state management to more fully comply with BLM’s statutory authorities. 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 purpose and need for an action dictates that the range of alternatives that must be analyzed. This is because action alternatives are not reasonable if they do not respond to the purpose of and need for the action. The purpose and need provide the appropriate scope to allow the BLM to analyze a reasonable number of alternative approaches for managing the public lands in the planning area.

In the purpose and need, the BLM made a range of reasonable alternatives available for consideration such that any foreordained outcome was not the only one available; rather, the BLM considered a no action alternative and a Management Alignment Alternative. The BLM may choose to adopt one of these alternatives or a combination of alternatives.

The protesting parties have not provided any new information or other reason to overturn the decision, so the protests are denied on these points.

## NEPA—Range of Alternatives

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** By failing to consider correcting the obvious deficiencies in the 2015 Utah ARMPA in regards allowing development inside PHMA in non-habitat without applying adequate sage-grouse protections to restrict such development, BLM has violated NEPA’s range of alternatives requirements and the requirements to use a scientific foundation for its NEPA analysis.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** By failing to consider correcting the obvious deficiencies in the 2015 Utah ARMPA in regards to allowing development inside PHMA in non-habitat without applying adequate sage-grouse protections to restrict such development, BLM has violated NEPA’s range of alternatives requirements....

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The Utah PRMP/FEIS considers just two alternatives: The status quo and the proposed changes. Utah PRMP/FEIS at 2-5. The BLM rejected suggestions to consider additional or increased management “constraints” on land uses or ground-disturbing activities to protect GRSG. Id. at 2-1. ... In our Draft EIS comments, WWP et al. (2018) pointed out the inadequacies of the 2015 Utah ARMPA (at p. 14), the significance of the National Technical Team (2011) report (at p. 3), the significance of the Conservation Objectives Team (2013) report (at p. 10), the failure to designate spatially adequate Priority Habitat Management Areas (at p. 15), and failure to follow science-based habitat protections (at p. 16). Based on these inadequacies, we recommended that BLM create and fully analyze a Conservation Alternative based on the best available science to correct the myriad deficiencies in the 2015 Utah ARMPA. WWP et al. 2018. ... Yet BLM failed to even consider such an alternative, even though it would be eminently reasonable and implementable. In failing to consider a range of reasonable alternatives, BLM’s PRMP EIS for Utah violates NEPA’s ‘range of alternatives’ requirement. BLM also did not analyze an alternative that would have maintained any protections in the GHMA.

### **The Wilderness Society**

#### **Bruce Pendery**

**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 SFA, 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. See The Wilderness Society et al. comments on the Utah DEIS, submitted August 2, 2018 at 12 (presenting our proposed alternative as Exhibit I, which was attached to the comments). BLM did not evaluate any of these alternatives.

**Summary:** The BLM has violated NEPA by failing to analyze the following:

- A conservation alternative
- An alternative that would have maintained any protections in GHMA
- An alternative that provides areas to be open to motorized vehicle use
- An alternative restricting development in non-habitat in the PHMA to protect Greater Sage-Grouse
- An alternative maintaining the SFA
- An alternative that strengthened protections from oil and gas development and improved consistency with state plans
- An alternative that maintained net conservation gain

**Response:** When an agency is preparing an EIS, NEPA requires it to rigorously explore and objectively evaluate all reasonable alternatives and those were eliminated from detailed study. The agency also must briefly discuss the reasons for having eliminated those alternatives (40 CFR 1502.14(a)). The BLM is required to include a discussion of a range of reasonable alternatives to the proposed action, alternatives that are technically and economically feasible and that meet the purpose and need and which have a lesser environmental impact (42 USC 4332(2)(C); 40 CFR 1502.14 and 1508.9(b); 43 CFR 46.420(b)). The BLM is not required to consider a range of alternatives that extends beyond those reasonably related to the purpose of the project (*City of Angoon v. Hodel*, 803 F.2d 1016, 1021 [9th Cir. 1986]).

The 2018 Proposed RMP Amendment/FEIS responds to a focused purpose and need with a commensurately focused set of alternatives, which appropriately evaluate the range of reasonable options to improve alignment with state management plans. Issues outside of the purpose and need for the 2018 Proposed RMP Amendment/FEIS that were part of the 2015 plans were responded to and analyzed as needed, where new circumstances had arisen or changes in conditions had occurred. For resources that were substantially the same in condition as they were 2015, related issues were extraneous to the purpose and need of this planning effort, and were therefore not germane to revisit within the scope of this analysis.

The BLM has appropriately considered both an alternative that would provide additional conservation protections and an alternative that maintained the protections of the GHMA. It considered an alternative that would provide additional conservation protections in Section 2.2.1, Varying Constraints on Land Uses and Development Activities, of the Proposed RMP Amendment/Final EIS. An alternative that would restrict development in non-habitat in the PHMA was included in this category of alternative evaluated and discussed in the Proposed RMP Amendment/Final EIS. This alternative identified the BLM's consideration of protections to the Greater Sage-Grouse by providing "constraints beyond those in the current [2015] management plan" (Proposed RMP Amendment/Final EIS 2-1). As described in the Proposed RMP Amendment/Final EIS, the BLM considered this alternative; however, it did not analyze it in detail because it was found not to meet the purpose and need for this plan amendment.

The BLM determined that an alternative that increased conservation protections would apply constraints on land uses and ground-disturbing activities, which would not be reasonable. This is because

it would not meet the purpose and need to better align the BLM’s action to individual state plans and conservation measures.

The BLM determined that the no action alternative maintained SFAs, net conservation gain, and the protections of the GHMA established by the 2015 Approved RMP Amendment/Record of Decision. The no action alternative in the Proposed RMP Amendment/Final EIS continues management that is consistent with the 2015 Approved RMP Amendment/Record of Decision, which includes a GHMA and all the management and protections associated with it (Proposed RMP Amendment/Final EIS page 2-5).

Both alternatives analyzed in detail by the BLM in the Proposed RMPA/Final EIS include areas designated as open to OHV use. The no action alternative continues to be consistent with the 2015 Approved RMP Amendment/Record of Decision, which includes 525 acres as open to cross-country motorized vehicle use (Proposed RMP Amendment/Final EIS page 2-27). The Proposed RMPA/Final EIS also tiers to the 2015 Approved RMP Amendment/Record of Decision. It includes the management alternatives analyzed therein, thereby incorporating an analysis of a range of OHV-open and OHV-closed acreages. The Proposed RMP Amendment/Final EIS alternative includes 14,745 acres as open to cross-country motorized vehicle use (Proposed RMP Amendment/Final EIS page 2-27). This approach is consistent with BLM policy (BLM Manual 1626, Section 06A2a) that “open areas will be limited to a size that can be effectively managed and geographically identifiable. . . . Expansive open areas allowing cross-country travel, without a corresponding and identified user need or demand will not be designated in RMP revisions. . . .” OHV use in most of the remaining Greater Sage-Grouse habitat is limited to designated routes that will be defined in implementation-level travel management plans.

In the 2015 FEIS and Approved RMP Amendment/Record of Decision, the BLM analyzed alternatives that looked at differing levels of protection for Greater Sage-Grouse from oil and gas development. It reviewed these analyses to establish a comprehensive foundation of protections and management previously considered in developing alternatives for the Proposed RMP Amendment/Final EIS. In that document, the BLM determined that an alternative that provided substantively different levels of protection from oil and gas development would not meet the purpose and need. The BLM is not required to explore alternatives that are substantially similar; it need analyze only those alternatives necessary to permit a reasoned choice (40 CFR 1502.14).

The BLM appropriately considered a range of reasonable alternatives, including the specific alternatives identified above, in the Proposed RMP Amendment/Final EIS, in full compliance with NEPA. The protesting parties have not provided any new information or other reason to overturn the decision, so the protests are denied on these points.

## **NEPA—Response to Public Comments**

### ***BlueRibbon Coalition***

#### ***Paul Turcke***

**Issue Excerpt Text:** The method of responding to comments here does not comply with NEPA and its implementing regulations.

The approach chosen fails to identify individual comments and the response to them. The agency’s method of responding to comments here does not comply with governing regulations or other applicable law.

**Wyoming Coalition of Local Governments**  
**Kent Connelly**

**Issue Excerpt Text:** NEPA requires the BLM to “respond to comments” on the draft EIS and “discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.” 40 C.F.R. § 1502.9; see also 40 C.F.R. § 1503.4. ... The FEIS does not respond to the Coalition’s comments...

**The Wilderness Society**  
**Bruce Pendery**

**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 range-wide response to 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.

**Summary:** The BLM has violated NEPA by failing to appropriately consider and use the comments submitted, including failing to appropriately respond to comments, failing to modify the FEIS or analysis in response to information provided in comments, and failing to justify this decision.

**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 and 24). When the comments are especially voluminous, CEQ allows for similar comments to be grouped or summarized and addressed in a single response (40 CFR 1503.4(a); BLM NEPA Handbook 1790-1, p. 67).

The BLM considered all relevant, appropriate, and available information in the Proposed RMP Amendment/Final EIS. In compliance with NEPA, it considered all public comments submitted on the draft 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 2 of the Proposed RMP Amendment/Final EIS presents the BLM’s responses to all substantive comments.

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

The BLM is not required to provide a response to comments that are not substantive. It evaluated all comments and noted in the decision file explanations as to why comments did not warrant further agency response. The process ensured that every comment was considered and that all substantive comments were summarized and responded to.

The BLM adequately responded to public comments on the Proposed RMP Amendment/Final EIS. The protesting parties have not provided any new information or other reason to overturn the decision, so the protests are denied on these points.

## NEPA—Supplemental EIS

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Contrary to BLM’s representation, the changes introduced between the Utah DEIS and FEIS are highly significant. Major changes since the DEIS include BLM’s (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental harm. Utah PRMP/FEIS at 2-36. Under NEPA, the agency cannot delay providing information on such significant changes to the FEIS stage.

### **The Wilderness Society**

#### **Bruce Pendery**

**Issue Excerpt Text:** BLM’s new legal interpretation and guidance (set out in IM 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**

#### **Bruce Pendery**

**Issue Excerpt Text:** In fact, this type of change requires BLM to conduct analysis, because the plans have changed from incorporating specific commitments to ensuring there is a gain of habitat to no longer making such a commitment. Simply “stating without further analysis” that analysis is not required does not fulfill NEPA’s hard look requirement or absolve BLM of supplementing the NEPA analysis conducted for the 2015 Sage-grouse Plans, as discussed in further detail below in Section II.G., the Supplemental NEPA Section.

**Summary:** Changes made regarding compensatory mitigation between the draft Proposed RMP Amendment/Final EIS and the Proposed RMP Amendment/Final EIS warrant preparation of a Supplemental EIS.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns with bearing on the proposed action or its impacts (40 CFR 1502.9(c)). Substantial changes in the proposed action relevant to environmental concerns are those that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29).

A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

The clarification to the BLM’s mitigation policy does not represent a substantial change from the draft Proposed RMP Amendment/Final EIS; rather, the BLM is clarifying the role that state requirements play in guiding its decision to evaluate compensatory mitigation as part of the proposed actions. The BLM will still evaluate compensatory mitigation in the same way BLM includes other state requirements as part of a proposed action in BLM’s NEPA analysis. In addition, the clarification of compensatory mitigation between the draft Proposed RMP Amendment/Final EIS and the Proposed RMP Amendment/Final EIS does not amount to a substantial change. This is because the 2015 Approved RMP Amendment/Record of Decision, which the Proposed RMP Amendment/Final EIS incorporates by reference, fully considered impacts from compensatory mitigation. It also considered no mitigation under the No Action Alternative; thus, these impacts have been made publicly available.

Further, independent of mitigation, the BLM has followed through on its broader aspirations in habitat goals and objectives, which are retained in this Proposed RMP Amendment/Final EIS.

As discussed in Chapter 3 of the Proposed RMP Amendment/Final EIS, over the past 2 years, the BLM has improved 163,000 acres of habitat through agency-funded programs. The RFD for oil and gas does not include coal, mineral materials, or phosphate; however, it is by far the biggest anticipated disturbance, at 9,218 acres over 15 years. Assuming a 4-to-1 ratio recommended by the State, this totals to 36,872 acres (an average of 2,458 acres per year) to compensate for the oil and gas disturbances. On an acre-by-acre basis, most restoration of habitat is being motivated by agency action apart from compensatory mitigation. As such, removing the requirement for proponents to pay for compensation will have a marginal effect on how much habitat is improved, compared with what the BLM and the State are treating.

For the reasons stated above, this protest is denied.

### ***The Wilderness Society***

#### ***Bruce Pendery***

**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 analyses. 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.

**Summary:** Fire has changed habitat conditions since 2015; therefore, an analysis of habitat warrants preparation of a supplemental EIS. The BLM has erred by relying on the 2015 Approved RMP Amendment/Record of Decision concerning habitat availability. It fails to account for recent changes and to reflect existing conditions.

**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 those that would result in significant effects outside the range of those 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, not a variation of an alternative, and not a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

Range-wide, there have been large fires in Nevada and Idaho; however, as noted on Table 3-9 on page 3-15 of the Proposed RMP Amendment/Final EIS, in the past 3 years, there have only been 61,262 acres of wildfire in PHMA and GHMA in Utah, an average of 20,420 acres per year. That is lower than the annual average over the past 13 years of 33,732 per year (see Table 3.53 in the 2015 Approved RMP Amendment/Record of Decision). As such, the rate of burning is well within expected levels, and no supplemental analysis is necessary for the Utah amendments.

For the reasons stated above, this protest is denied.

**The Wilderness Society****Bruce Pendery**

**Issue Excerpt Text:** We have seen the effects of this change in [mitigation] policy through about 1.5 million acres of sagegrouse habitat offered for lease since 2017, with more than 700,000 acres sold, and more than 2 million acres of habitat up for lease in February and March 2019. The effects of this change on sage-grouse habitat is significant and certainly should be analyzed as part of these EISs.

**Summary:** The change in the legal interpretation and guidance for mitigation (set out in IM 2019-018) is a significant new circumstance or information relevant to environmental concerns and bearing on the proposed action or its impacts. As such, preparation of a supplemental EIS is merited. The BLM has erred by preparing a final EIS. Recent trends in oil and gas leasing demonstrate substantial changes in leasing, resulting from the change in mitigation policy.

**Response:** NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). Substantial changes in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29).

A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

The clarification to the BLM's mitigation policy does not represent a substantial change from the draft Proposed RMP Amendment/Final EIS. Rather, the BLM is clarifying the role that state requirements play in guiding its decision to evaluate compensatory mitigation as part of the proposed actions. The BLM will evaluate compensatory mitigation in the same way BLM includes other state requirements as part of a proposed action in BLM's NEPA analysis.

The Reasonably Foreseeable Development (RFD) scenario is the analytic assumption tool that the BLM uses to estimate impacts. Recent development is within what was analyzed in the 2015 Approved RMP Amendment/Final EIS in relation to anticipated levels of oil and gas development under the 15-year RFD. Section 3.15 in the 2018 Proposed RMP/Final EIS updated all the oil and gas activity over the past three years (leasing and wells). It also bears noting that leasing and development are distinct, though related, activities, and that leasing of lands does not always correspond with realized impacts to the species.

For the reasons stated above, this protest is denied.

**NEPA—Tiering/Incorporation by Reference****The Wilderness Society****Bruce Pendery**

**Issue Excerpt Text:** BLM seeks to incorporate by reference discussion of proceeding without SFAs in analyzing alternatives in the 2015 Sage-grouse Plans and deciding not to proceed with the mineral withdrawals in 2017. See Utah FEIS at 4-38 and 4-42. BLM cannot rely on these previous discussions as analyzing the impacts of removing SFAs.

**The Wilderness Society****Bruce Pendery**

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

**The Wilderness Society****Bruce Pendery**

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

**The Wilderness Society****Bruce Pendery**

**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 incorporation by reference of the 2015 EISs' cumulative impact analysis or range of alternatives.

**Summary:** The BLM violated NEPA regulations by incorporating by reference the impacts of removing SFAs in the 2015 Approved RMP Amendment/Record of Decision. This is because there are major differences in plan components between the 2015 Approved RMP Amendment/Record of Decision and the Proposed RMP Amendment/Final EIS.

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

The BLM is using incorporation by reference to streamline its analysis, which is consistent with administrative priorities. Incorporating the 2015 Approved RMP Amendment/Record of Decision into the Proposed RMP Amendment/Final EIS by reference is allowable under BLM regulations and is appropriate in this circumstance. This is because the purpose of this action builds on the goals and objectives of the 2015 2015 Approved RMP Amendment/Record of Decision. In addition, by incorporating the 2015 plans by reference, the BLM avails itself of a larger range of management options previously analyzed in a broadly distributed EIS.

The purpose of the Proposed RMP Amendment/Final EIS is different from the 2015 Approved RMP Amendment/Record of Decision. The alternatives considered in the 2015 Approved RMP Amendment/Record of Decision inform the range of alternatives analyzed in detail in the Proposed RMP Amendment/Final EIS; thus, the protestor's argument that there are major differences in the plans misapprehends how the two plans relate to one another. The BLM has summarized and referenced applicable aspects of the 2015 Approved RMP Amendment/Record of Decision throughout the Proposed RMP Amendment/Final EIS, especially in Chapters 2 and 4.

The BLM has appropriately followed direction established by the NEPA regulations to incorporate by reference. The protesting parties have not provided any new information or other reason to overturn the decision, for the reasons stated above; thus, the protests are denied on these points.

## Other Laws

### Wyoming Coalition of Local Governments

#### Kent Connelly

See also: *FLPMA—Mitigation*

**Issue Excerpt Text:** According to the FEIS, the BLM would “defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action.” FEIS at 2-38. The State of Utah, however, does not have authority to impose any standard or requirement on federal lands, let alone a standard that may conflict with federal law. See Utah Department of Natural Resources 2016 Annual Report at 11 (“In those instances where disturbance cannot be avoided, mitigation should provide net conservation gain for the species. The State Plan has established a mitigation framework and corresponding mitigation ratios to ensure that the goal is met.”). The Draft EIS never disclosed that the BLM would “defer” “commit” or otherwise apply wholesale the Utah Department of Natural Resources mitigation policy on federal lands. I. State Program on Federal Lands Violates Property Clause and Supremacy Clause The Property Clause of the U.S. Constitution gives Congress the right “to control their occupancy and use, to protect them from trespass and injury, and to prescribe the conditions upon which others may obtain rights in them . . . .” *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917); see also *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976). And, when Congress exercises its authority vested by the Property Clause, federal law preempts conflicting state laws pursuant to the Supremacy Clause of the U.S. Constitution. Article VI, Clause 2. Thus, when the BLM states in the 2018 Plan that it will “defer” to the State’s framework, the BLM assumes that it may defer to the State’s framework when it is clear that the State has no authority over federal lands and the standard that the State would impose conflicts with federal law (i.e. FLPMA). The BLM may attempt to be consistent with the State’s framework, but the BLM may not contract the scope of federal law to match a State program. 43 U.S.C. 1712(c)(9). The adoption of the State’s framework and standard therein is arbitrary, capricious, or otherwise not in accordance with established law. See Attach. 11, 080218 CLG DEIS Comment Letter at 17-18.

**Summary:** The BLM violates the Property Clause and the Supremacy Clause of the US Constitution by deferring to the State of Utah’s compensatory mitigation framework for managing Greater Sage-Grouse habitat on federal lands.

**Response:** Article IV, Section 3, of the US Constitution states that “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.”

Congress delegated land use planning authority on public lands to the Secretary of the Interior in FLPMA (Section 202). Section 202(a)(9) requires the Secretary to “coordinate the land use inventory, planning, and management activities” of public lands with the “land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located.” It goes on to state that “Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him.”

Further, the Supremacy Clause of the Constitution (Article VI, Clause 2) establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority constitute the supreme law of the land. It provides that state courts are bound by the supreme law; in case of conflict between federal and state law, the federal law must be applied.

The Proposed RMP Amendment/Final EIS states on p. 2-9 that “The BLM will defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action.” On p. 4-8, it states that “the BLM is committed to implementing beneficial habitat management actions to reduce the threats of fire and invasive species to Greater Sage-Grouse.”

The BLM is pursuing agreements with the States of Colorado, Idaho, Nevada, Oregon, Utah, and Wyoming to clarify how the BLM, project proponents, and state management agencies will collaborate to implement a State’s compensatory mitigation plan. The BLM will defer to a state method for habitat quantification if such a tool exists. It will incorporate the State’s assessment into the appropriate NEPA documentation. 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. The Proposed RMP Amendment/Final EIS further clarifies the application of the mitigation standard as a planning-level goal and objective for Greater Sage-Grouse habitat conservation. The BLM commits to cooperating with the State to analyze applicant-proffered or State-imposed compensatory mitigation to offset residual impacts. The BLM may then authorize such actions consistent with NEPA analysis and the governing resource management plan. Contrary to the protestor’s contention, this clarification does not violate the Property or Supremacy Clauses of the Constitution; rather, the BLM retains management authority over authorizations on federal land, and the terms and conditions over those authorizations. The protestor is simply incorrect that states lack any authority whatsoever on federal lands; the state retains its police powers unless they conflict with federal law. The protestor has not identified how BLM’s coordination with the state on compensatory mitigation and deference to it on habitat quantification would do so.

For the reasons stated above, this protest is denied.

### **Wyoming Coalition of Local Governments**

#### **Kent Connelly**

**Issue Excerpt Text:** Imposition of any of the land use restrictions on locatable mineral activities would be inconsistent with the MMPDA, the Mining Law, and the Critical Minerals Executive Order 13817. The restrictions on energy development also contradict presidential executive orders on energy independence. The above issues are omitted from the 2018 Plan and FEIS, even though Utah is a major energy and mineral producing state.

**Summary:** The Proposed RMP Amendment/Final EIS directly conflicts with the Mineral and Petroleum Resources Development Act’s (MPRDA) requirement that the Secretary of the Interior must manage public lands to respond to the nation’s needs for minerals. This is because it restricts the opportunity for entry, use, and occupancy to develop minerals on public lands.

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

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

submits an application for permit to drill, the BLM will ensure that any management actions from the plan will be applied in a manner that is consistent with the terms and conditions of the underlying oil and gas lease.

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

Notwithstanding that the "requirements" of FLPMA and MMPRDA identified by the protester are in fact policy directives and thus are not mandatory obligations for the BLM to follow in its planning decisions, the purpose and need of the Proposed RMP Amendment/Final EIS identifies a need to align with DOI and BLM policy directives issued since 2015. These directives support the policies identified in the MMPRDA and FLPMA regarding the nation's need for a domestic source of natural resources. The BLM squarely addresses this consideration in the Proposed RMP Amendment/Final EIS on page 1-2, where it referenced SO 3349, American Energy Independence. This SO ordered agencies in the DOI to reexamine practices "to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families." Accordingly, the Proposed RMP Amendment/Final EIS clearly aligns those policies found in FLPMA and MMPRDA.

For the reasons stated above, this protest is denied.

### **Wyoming Coalition of Local Governments**

#### **Kent Connelly**

*See also: Best Available Science*

**Issue Excerpt Text:** The 2015 Plan relied heavily, if not exclusively on the 2011 National Technical Team report ("NTT"), 2013 Conservation Objectives Team report ("COT") and articles compiled into the USGS Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat ("Monograph").<sup>1</sup> The Coalition, cited the IQA petitions filed by a consortium of western counties and the Western Energy Alliance and independent reviews of the Monograph and identified in its 2018 Draft EIS comments how the 2018 EIS that must develop the analysis and disclose the flaws in the Monograph to ensure a durable and defensible Record of Decision. See Attach. 11, 080218 CLG DEIS Comment Letter at 1, 2-15. The FEIS, however, does not discuss any of the problems that the Coalition and other groups have identified in the NTT Report or the Monograph and, therefore, the BLM has committed the same error it made in 2015. Interior has never addressed the flaws identified in March 2015 and by CLG in its earlier comments.

**Summary:** In the 2015 Approved RMP Amendment/Record of Decision and incorporated in the Proposed RMP Amendment/Final EIS, the BLM failed to analyze or disclose problems with the technical reports that it relied on. This is in violation of the Information Quality Act.

**Response:** The BLM is directed to disclose what it knows about the quality of information it relies on and to ensure integrity, objectivity, and transparency in the information it uses in decision-making (BLM Information Quality Guideline #2, promulgated in accordance with 44 USC 3504(d)(1) and 3516).

In developing the Proposed RMP Amendment/Final EIS, the BLM specifically partnered with the USGS to review the best available information and to incorporate the management implications of that information into the EIS. The report from the USGS is available at <https://pubs.er.usgs.gov/publication/ofr20181017> and is referenced throughout the Proposed RMP Amendment/Final EIS.

The BLM places great importance on the best available information, including new scientific studies and government reports that indicate a potential change in assumptions or conditions related to land use planning. 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 Proposed RMP Amendment/Final EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and draft Proposed RMP Amendment/Final EIS. The BLM has included, where appropriate, analysis updates in the Proposed RMP Amendment/Final EIS. Overall, submitted studies did not offer information that changed the analysis of and did not offer any new conditions or other information that the BLM had not considered already.

BLM staff, including scientists and NEPA specialists, reviewed both known and new studies, and staff in 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 analyses in the Proposed RMP Amendment/Final EIS. Overall, submitted studies did not offer information that changed the analysis and did not offer any new conditions or other information that the BLM had not considered already.

The BLM has reviewed all new information and suggested studies from comments received range-wide and in specific states. Further, the BLM takes new information seriously and identified 11 articles from the studies suggested in comments. These studies are sorted by whether they were cited in the USGS report, referenced in the bibliography of the Report, or considered by the BLM during the development of and review of comments on the Proposed RMP Amendment/Final EIS.

Articles not specifically addressed below were also still reviewed during comment response development; thus, the BLM reviewed for controversies or inconsistencies any available data submitted as a part of the 2015 Approved RMP Amendment/Record of Decision, including the NTT report. Further, the BLM relied on information submitted during the public participation period to update the information on which the Proposed RMP Amendment/Final EIS was based. Any changes to the best available science have thus been incorporated into the USGS report, and the BLM relied on it when developing the Proposed RMP Amendment/Final EIS.

For the reasons stated above, this protest is denied.

### ***Wyoming Coalition of Local Governments***

#### ***Kent Connelly***

**Issue Excerpt Text:** To the extent the 2018 FEIS adopts state program conditions that burden mining or energy development, it will violate the holding in *Granite Rock v. Calif. Coastal Comm'n*, 480 U.S. 572 (1987) that a state program cannot supersede or interfere with mineral development on federal land. In *Granite Rock*, the Court held that mining on the National Forest was governed by federal law that preempted state coastal regulation. Thus the Coastal Commission denial of a permit violated federal preemption doctrine.

**Summary:** By adopting state program conditions that burden mining or energy development, the BLM violates *Granite Rock v. Calif. Coastal Comm'n*, 480 U.S. 572 (1987), which held that a state program cannot supersede or interfere with mineral development on federal land.

**Response:** *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987), is a US Supreme Court case addressing the question of whether the United States Forest Service regulations, federal land use statutes and regulations, or the Coastal Zone Management Act of 1972 preempt the California Coastal Commission's imposition of a permit requirement on operation of an unpatented mining claim in a national forest. The court ruled that even if federal land is not included in the Coastal Zone Management

Act's interpretation of coastal zone, the act does not automatically preempt all state regulation of activities on federal lands.

The holding does not actually support the contention made in this protest. In fact, the Supreme Court ruled in favor of the Coastal Commission and held that under these circumstances, a state condition could be imposed on mineral development of federal land.

For the reason stated above, this protest is denied.