



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

**Utah Sub-Regional
Greater Sage-Grouse Land Use
Plan Amendment / Final
Environmental Impact Statement**

September 15, 2015

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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-UT-GRSG-15-10-XX
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

Issue Excerpt Text:
Direct quote taken from the submission

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

Summary
General statement summarizing the issue excerpts (optional).

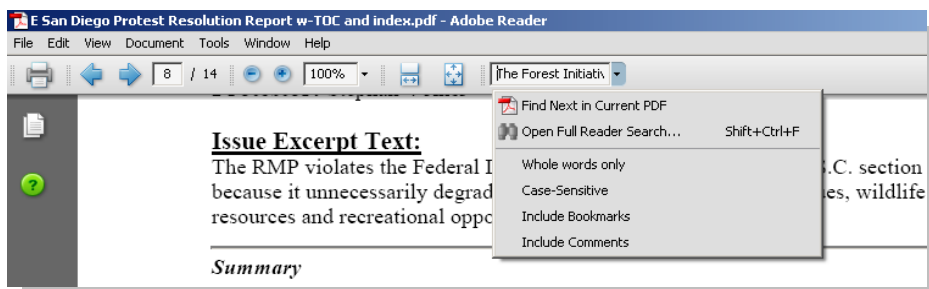
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

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

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

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission Number	Determination
John Keeler	Utah Farm Bureau Federation	PP-UT-GRSG-15-01	Denied— Comments, Issues
Garth Oden	Sevier County Commissioner	PP-UT-GRSG-15-02	Denied— Comments, Issues
R. Jeff Richards	Rocky Mountain Power (PacifiCorp)	PP-UT-GRSG-15-03	Denied— Comments, Issues
Casey Hopes	Carbon County Commission	PP-UT-GRSG-15-04	Denied— Comments, Issues
Joan Powell	Mayor, Wellington City	PP-UT-GRSG-15-05	Denied— Comments, Issues
Joe Piccolo	Mayor, Prince Municipal Corporation	PP-UT-GRSG-15-06	Denied— Comments, Issues
Doug Parsons	Mayor, City of East Carbon	PP-UT-GRSG-15-07	Denied— Comments, Issues
Mike Erkkila	Mayor, Scofield Town	PP-UT-GRSG-15-08	Denied— Comments, Issues
Edward Chavez	Mayor, Helper City	PP-UT-GRSG-15-09	Denied— Comments, Issues
Ronald Winterton	Duchesne County Commissioner	PP-UT-GRSG-15-10	Denied— Comments, Issues
Paul Poister	Utah Phosphate Company	PP-UT-GRSG-15-11	Denied— Comments, Issues
(none)	(none)	PP-UT-GRSG-15-12 (number not used due to clerical issue)	(none)
Newell Harward	Wayne County Commission	PP-UT-GRSG-15-13	Denied— Comments, Issues
Logan Wilde	Morgan County	PP-UT-GRSG-15-14	Denied— Comments, Issues
Brian Bremner	Garfield County	PP-UT-GRSG-15-15	Denied— Comments, Issues
Dale Brinkerhoff	Iron County Commission	PP-UT-GRSG-15-16	Denied— Comments, Issues
Alan Prouty	Simplot Livestock	PP-UT-GRSG-15-17	Denied— Comments, Issues
Erik Molvar	WildEarth Guardians, et al.	PP-UT-GRSG-15-18	Denied— Comments, Issues
Bret Sumner	Beatty & Wozniak obo Exxon Mobil/XTO Energy	PP-UT-GRSG-15-19	Denied— Comments, Issues
Richard Ranger	American Petroleum Institute	PP-UT-GRSG-15-20	Denied— Comments, Issues

Laura Skaer	American Exploration and Mining Assn.	PP-UT-GRSG-15-21	Denied— Comments, Issues
Michael Connor	WWP	PP-UT-GRSG-15-22	Denied— Comments, Issues
No Name	Public Lands Council / National Cattlemen's Beef Assn / UT Cattlemen's	PP-UT-GRSG-15-23	Denied— Comments, Issues
Constance Brooks	CE Brooks & Associates obo Vermillion Ranch	PP-UT-GRSG-15-24	Denied— Comments, Issues
Denise Dragoo	Snell & Wilmer obo: Alton Coal Development LLC	PP-UT-GRSG-15-25	Denied— Comments, Issues
Constance Brooks	CE Brooks & Associates Oobo Wyoming Coalition of Local Governments	PP-UT-GRSG-15-26	Denied— Comments, Issues
J. Mark Ward	Utah Association of Counties	PP-UT-GRSG-15-27	Denied— Comments, Issues
Stan Summers	Box Elder County Commission	PP-UT-GRSG-15-28	Denied— Comments, Issues
Darcy Helmick	Simplot Livestock	PP-UT-GRSG-15-29	Denied— Comments, Issues
Byard Kershaw	DBA North Rim Counseling obo: Kane County Commission	PP-UT-GRSG-15-30	Dismissed-Only Comments
Matthew Mead	Governor, State of Wyoming	PP-UT-GRSG-15-31	Denied— Comments, Issues
Kathleen Clarke	Director for the Governor, State of Utah	PP-UT-GRSG-15-32	Denied— Comments, Issues
Karen Perry	Daggett County Commissioner	PP-UT-GRSG-15-33	Denied— Comments, Issues
Mike Best	APLIC	PP-UT-GRSG-15-34	Denied— Comments, Issues
Craig Kauffman	Safari Club International	PP-UT-GRSG-15-35	Dismissed-Only Comments
Mike Dettamanti	Individual	PP-UT-GRSG-15-36	Dismissed-Only Comments
Mark Salvo	Defenders of Wildlife	PP-UT-GRSG-15-37	Denied— Comments, Issues
Rick Blackwell	Chairman, Paiute County	PP-UT-GRSG-15-38	Denied— Comments, Issues
Wade Bitner	Tooele County Commission	PP-UT-GRSG-15-39	Denied— Comments, Issues
Clinton Painter	Juab County Commission	PP-UT-GRSG-15-40	Denied— Comments, Issues
Michael Dalton	Beaver County Commission	PP-UT-GRSG-15-41	Denied— Comments, Issues

Michael McKee	Uintah County Commission	PP-UT-GRSG-15-42	Denied— Comments, Issues
Don Amador	Blue Ribbon Coalition, Inc.	PP-UT-GRSG-15-43	Denied— Comments, Issues

Issue Topics and Responses

FLPMA- General/Other

Issue Number: PP-UT-GRSG-15-13-5

Organization: Wayne County Commission

Protestor: Wayne County Commission

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR's current primacy of jurisdiction over management of the GRSG.

Issue Number: PP-UT-GRSG-15-14-5

Organization: Morgan County Commission

Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR's current primacy of jurisdiction over management of the GRSG.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The State Director's decision erred and is not supported by the record before BLM in that this federal land management planning document cannot prescribe prohibitions and restrictions on state or private lands. Federal Land Management Plans Cannot Mandate Private Land Management The PLUPA for Utah is primarily based on Alternative D from the DEIS. Simplot noted that Alternative D had unique aspects in regards to the inclusion of private lands.

Issue Number: PP-UT-GRSG-15-18-10

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM proposes to seek withdrawal of important GRSG habitats from locatable mineral entry in Focal Areas only (FEIS at 2-17). PHMAs and GHMAs would be open to future hard-rock mining claims (FEIS at 2-35). Given that the BLM's position (erroneous, yet driving project approval policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, the BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA as well as BLM and Forest Service Sensitive Species policy and NFMA viability requirements.

Issue Number: PP-UT-GRSG-15-18-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

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

Issue Number: PP-UT-GRSG-15-18-22

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA's mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, the BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs, yet has instead developed a new, less-restrictive designation for them, the BLM has failed to put designation of ACECs first, in violation of FLPMA.

Issue Number: PP-UT-GRSG-15-19-5

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the LUPA's imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the Endangered Species Act (ESA).

Issue Number: PP-UT-GRSG-15-19-6

Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: FWS has not developed a recovery plan pursuant to the ESA, and the BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery plan in violation of FLPMA.

Issue Number: PP-UT-GRSG-15-20-33

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-43

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Trades maintain the Proposed LUPA's proposal to prioritize leasing outside of PHMA and to make PHMA open for leasing with NSO stipulations that cannot be waived or modified constitutes a de facto withdrawal under FLPMA. (See 43 USC § 1702(j) (defining "withdrawal"), 1714(l)(1) (referencing withdrawals resulting from closure of lands to leasing under the Mineral Leasing Act of 1920)). FLPMA requires that the Secretary of the Interior notify both houses of Congress of withdrawals of five thousand acres or more no later than the effective date of the withdrawal; as part of this notification, FLPMA also imposes additional procedural requirements (Id. § 1713(g)). At a minimum, the Secretary of

the Interior must report its decision to exclude a principal or major use of the public lands (mineral leasing) from tracts of land more than 100,000 acres to the House of Representatives and Senate, and complete additional procedural requirements (Id. § 1712(e)). Accordingly, the Secretary of the Interior must comply with FLPMA and notify Congress of the de facto withdrawals of PHMA from mineral leasing.

Issue Number: PP-UT-GRSG-15-20-6

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA confirms that a “net conservation gain” is beyond BLM’s authority under FLPMA. BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the “net conservation gain strategy is in response to the overall landscape goal to enhance, conserve, and restore [GRSG] and its habitat.” Proposed LUPA/Final EIS at 2-4. BLM’s stated goal of “enhance, conserve, and restore” is beyond BLM’s authority under FLPMA.

Issue Number: PP-UT-GRSG-15-24-4

Organization: CE Brooks & Associates
obo: Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS suppresses or prohibits the oil and gas development, including production, transportation, and new development based on reported research that fails to meet the Information Quality Act (IQA) criteria, Pub. L. No. 106-55, §515, without complying with procedures in Federal Land Management and Policy Act (FLPMA).

Issue Number: PP-UT-GRSG-15-26-21

Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: Further, MS 1794 is severely flawed. FLPMA would require BLM to institute rulemaking procedures as MS 1794 is more than an interpretive rule. 5 USC §553(a)(3)(A); 43 USC §1740; Gen. Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1565 (D.C. Cir. 1984). Similarly, no law or rule authorizes regional or landscape-scale mitigation in addition to onsite and compensatory off-site mitigation. As proposed, MS 1794 or Appendix D will impermissibly condition project authorizations on regional mitigation.

Issue Number: PP-UT-GRSG-15-29-2

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: Agencies cannot irrationally or unlawfully close grazing allotments, particularly without providing for the payment of the value of range improvements per FLPMA and applicable grazing regulations and without notification to congress to the extent 100,000 is implicated.

Issue Number: PP-UT-GRSG-15-32-18

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The State of Utah protests BLM's proposed review process for waivers and exemptions from the general stipulation requiring No Surface Occupancy (NSO) for fluid mineral operations within priority habitat. The proposed review process features the requirement for unanimous agreement among the BLM, the state and the U.S. Fish and Wildlife Service. This proposed requirement for a decision to

be made by unanimous approval of a committee rests upon an improper assumption of authority by the BLM, given that the state is the entity with constitutional authority to manage the species. The state does not waive its constitutional authority over management of the species, and determinations concerning the use of the habitat for this purpose.

Issue Number: PP-UT-GRSG-15-32-6

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The BLM has not demonstrated compliance with the provisions of the Defense Authorization Act of 2000. The National Defense Authorization Act for Fiscal Year 2000 (Act), directs the Secretary of Defense to conduct a study to evaluate the impact upon military training, testing, and operational readiness of any proposed changes in "Utah national defense lands." These lands are defined in the Act as "Public Lands under the jurisdiction of the Bureau of Land Management in the State of Utah that are adjacent to or near the Utah Test and Training Range and Dugway Proving Ground or beneath the Military Operating Areas, Restricted Areas, and airspace that make up the Utah Test and Training Range." Specifically, "until the Secretary of Defense submits to Congress a report containing the results of the study, the Secretary of the Interior may not proceed with the amendment of any individual resource management plan for Utah national defense lands...." The BLM admits that "None of the comments the US Department of Defense has provided on the Proposed

Summary:

The BLM overstepped its jurisdiction and authority under FLPMA by crafting a Greater Sage Grouse management strategy that:

- usurps the jurisdiction of the state of Utah to manage wildlife within the state;

LUPA/Final EIS represent the study or analysis referenced in either law.”

Issue Number: PP-UT-GRSG-15-32-7

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: Within Section 6.3.4 of the FEIS, BLM acknowledges the obligation to procure a study of the impact upon military training, testing, and operational readiness of the proposed changes affecting the GRSG areas.³⁵ Nonetheless, the FEIS proposes amendments to four LUPs within areas applicable to the Act, including all or portions of the Sheeprocks, Ibapah, and Box Elder GRSG population areas.

Issue Number: PP-UT-GRSG-15-33-5

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR's current primacy of jurisdiction over management of the GRSG.

Issue Number: PP-UT-GRSG-15-42-5

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR's current primacy of jurisdiction over management of the GRSG.

- uses a non-legislated standard of “net conservation gain”, creating a de facto recovery plan that exceeds the “unnecessary or undue degradation” standard;
- abrogates the BLM’s authority over federal land and the state of Utah’s authority over wildlife by instituting a three-party approval group (BLM, USFWS, Utah) for exceptions to lease stipulations in PHMAs; and,
- proscribes management of state and private lands.

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

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

BLM has not complied with the requirements of the National Defense Authorization Act of 2000, which required the Department of Defense to submit studies regarding impacts of public land management on certain Utah counties before the BLM amends or revises certain Land Use Plans.

Response:

The FLPMA details the BLM’s broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy and Forest Service Sensitive Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B; Forest Service Manual 2672.1 (“Sensitive species... must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”)).

The Utah GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve greater GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore Greater GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM and the Forest Service developed the Utah GRSG PLUPA/FEIS with involvement from cooperating agencies, including Federal agencies (USFWS, DOD, others), state agencies (through a state-wide MOU), and tribal governments to ensure that a balanced

multiple-use management strategy to address the protection of Greater GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

Wildlife Management

The first Special Status Species goal of the Utah GRSG PLUPA/FEIS, detailed on Page 2-13, is to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners.”

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

Three-Party Organization to approve stipulation exceptions

The Utah GRSG PLUPA/FEIS does not improperly delegate BLM authority. MA-MIN-15 details the process the BLM, State of Utah, and USFWS will use to approve exceptions to lease stipulations such as No Surface Occupancy (NSO) for new leases in PHMAs. The lease stipulations outlined in MA-MIN-15 (and the process for getting exemptions from them, if any) will be incorporated into any new lease at the time the leases are issued. Section XI of Onshore Order #1 details the process for seeking exceptions, modifications, and waivers from stipulations included in a Federal oil and gas lease. Rather than a delegation, BLM will appropriately seek input from the state wildlife agency and USFWS in an area of their expertise (biological impacts on a sensitive species). There is a reasonable connection between BLM’s determination as to whether to grant a waiver and the biological input of those agencies. Moreover, neither this determination nor any other part of the proposed plan usurps the State’s authority over wildlife; rather, it lawfully implements the BLM and Forest Service’s authority to manage the public lands for multiple uses, including wildlife values.

Management of State and Private Lands

The Utah GRSG PLUPA/FEIS does not make decisions with respect to non-federal lands. Management Action MA-GRSG-3, detailed on p. 2-18, provides details on how the disturbance cap concept will be applied within BSUs. This regime does not prescribe prohibitions or management actions on state and private land – it only applies to projects that would disturb federal lands or federal mineral estate. While the disturbance cap would count all applicable disturbances within a Biologically-Significant Unit (BSU), including those on non-federal lands, the BLM would have no authority under the plan to limit development outside of Federal lands or Federal mineral estate.

The Utah GRSG PLUPA/FEIS does not allow unnecessary or undue degradation of the public lands. Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary

or undue degradation of the lands.” The Utah GRSG PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Utah GRSG PLUPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Utah GRSG PLUPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

In Section 2.4.2, the Utah GRSG PLUPA/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 4 million acres from mineral entry. BLM’s decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-3, is based on the value of the habitat to the Greater GRSG. Also, MA-MIN-11, detailed on page 2-35, provides additional information on how the BLM would manage mineral resources in PHMA and GHMA areas to avoid, minimize, and mitigate impacts of that resource use on the GRSG habitat.

For the development of fluid minerals under existing leases, the Utah GRSG PLUPA/FEIS details BLMs objectives in MIN-1 and MIN-2 on pages 2-37 to 2-38 to “work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources.” Actions MA-MIN-17 through MA-MIN-24 detail the BLM’s approach for managing existing fluid mineral leases in GRSG habitats, including unitization, mitigation, master development plans, Conditions of Approval, and other tools that the agency can use to minimize impacts while respecting valid, existing rights. Any COAs for permits to drill on existing leases, including measures necessary to prevent unnecessary or undue degradation, will be evaluated at the project level.

The Utah GRSG PLUPA/FEIS will not result in “unnecessary or undue degradation of public lands.

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

The PLUPA/FEIS recommends the withdrawal of approximately 228,500 acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy. Moreover, under 43 CFR 1610.6, which addresses the implementation of this requirement, the BLM is not required to provide such a report until the PLUPA/FEIS is finalized and the BLM begins implementation.

In addition, the management actions governing oil and gas leasing are not “withdrawal” decisions triggering compliance with the withdrawal provisions of section 204 of FLPMA. While a withdrawal may be one tool to close areas to oil and gas leasing, it is not the only one. The proposed plan’s actions with respect to oil and gas leasing invoke BLM’s planning authority under section 202 of FLPMA, not the withdrawal authority of section 204. To the extent withdrawals are contemplated by the proposed plan, they are “recommended” for withdrawal not made as part of this planning effort. There is no “de facto” withdrawal.

Finally, the Utah GRSG PLUPA/FEIS does not violate the 2000 NDAA. Section 2815 of that act contains two distinct prongs that prohibit BLM from taking certain actions until the Department of Defense (DOD) submits to Congress a study on the impact of any changes in land designation or management on DOD’s ability to use the Utah Test and Training Range (UTTR). The first prong prohibits BLM from amending any individual land use plan for lands under or near the UTTR. The second prong prohibits BLM from undertaking any statewide environmental impact statement (EIS) or land use plan package that “addresses wilderness characteristics or wilderness management issues” with respect to such lands. The Utah GRSG PLUPA/FEIS is statewide, not individual, and therefore only the second prong applies. And since the PLUPA/FEIS does not consider or propose changes in management to protect or otherwise manage for wilderness characteristics, the 2000 NDAA does not prohibit the BLM from amending the plans in accordance with the Utah GRSG PLUPA/FEIS.

Valid Existing Rights

Issue Number: PP-UT-GRSG-15-03-3

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: The LUPA identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Rocky Mountain Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights. In the LUPAs, pipeline restrictions and how they would pertain to operation and maintenance of existing facilities is vague. It is unclear what activities may take place during the seasonal buffers. The seasonal

buffers outlined would not provide sufficient time during the year to appropriately maintain a natural gas pipeline.

Additionally, what constitutes “ground disturbance” is not clearly identified and could hinder regular pipeline maintenance. Maintenance for all types of existing infrastructure must still be allowed as an excepted activity from proposed triggers.

Issue Number: PP-UT-GRSG-15-20-44

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Agencies have not adequately explained or justified the proposal to designate all PHMA as right-of-way avoidance areas. Lessee’ ability to develop their leases could be significantly impacted if the Agencies inappropriately

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

Issue Number: PP-UT-GRSG-15-15-26
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The proposed OHV plan is inconsistent with Garfield County's OHV ordinance, OHV plan and existing resource management plan. It violates valid existing rights.

Issue Number: PP-UT-GRSG-15-17-11
Organization: Simplot Livestock
Protestor: Alan Prouty

Issue Excerpt Text: The PLUPA needs to be clear that these features, both for existing mines and for future mines (in which there is an existing right), are not subject to the disturbance cap and density cap. This includes being able to access pipelines, such as the ore slurry pipeline that carries phosphate ore from the Vernal Mine to the phosphate mineral processing facility in Rock Springs, WY.

Issue Number: PP-UT-GRSG-15-19-1
Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: Here, the Utah LUPA proposes to impose new lease stipulations through permit COAs on valid existing leases, an action that vastly exceeds XTO's original lease contract terms. For example, the LUPA proposes requiring NSO requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a net conservation gain standard; and imposing disturbance and density caps on development. These management prescriptions would unduly and unreasonably restrict XTO's right and ability to develop its leases.

Issue Number: PP-UT-GRSG-15-19-2
Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The Utah LUPA's mandate for compensatory mitigation for any disturbance within GrSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO's ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM's authority under FLPMA.

Issue Number: PP-UT-GRSG-15-19-3
Organization: Beatty & Wozniak obo: Exxon-Mobil and XTO Energy
Protestor: Dave Galt

Issue Excerpt Text: With the Utah LUPA, however, the Agencies are, in effect, disregarding economic impacts and instead planning to revise and restrict XTO's valid existing lease rights through the imposition of a net conservation gain standard, development and disturbance caps, and additional restrictive measures added to the proposed LUPA since release of the draft document.

Issue Number: PP-UT-GRSG-15-20-24

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the Agencies' decisions to impose new restrictions on existing federal oil and gas leases

Issue Number: PP-UT-GRSG-15-20-25

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-26

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The BLM's Land Use Planning Manual reinforces that RMPs must respect existing lease rights. "All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases..." (See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00)). The BLM must comply with the provisions of its

planning manual and recognize existing rights. Any attempts to modify a federal lessee's existing rights would violate the terms of its leases with the BLM and the BLM's own policies.

Issue Number: PP-UT-GRSG-15-20-27

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-29

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

breaching or repudiating its oil and gas leases.

Issue Number: PP-UT-GRSG-15-20-31

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The BLM lacks authority to impose the new lek buffer distance requirement on leases with NSO or CSU stipulations under 43 C.F.R. § 3101.1-2. Furthermore, the lek buffer distance is inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO and CSU stipulations.

Issue Number: PP-UT-GRSG-15-20-32

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: If an oil and gas lease has a seasonal restriction attached it, the Agencies cannot unilaterally expand the stipulation through the land use planning process.

Issue Number: PP-UT-GRSG-15-21-2

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The vast majority of claim holders with claims in GRSG strongholds face almost certain invalidation and forfeiture of their mining claims because very few mining claims can withstand the rigorous economic evaluation, known as a claim validity examination, to which they would be subjected. The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many

references to VERs in the PLUPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, legitimate exploration activity will cease on lands withdrawn pursuant to the Proposed Plan. Indeed, upon information and belief, the Protesting Parties believe that investment of legitimate exploration is already being impacted by the mere recommendation of an area of withdrawal identified in the PLUPA/FEIS, regardless of whether the withdrawal actually ever happens.

Issue Number: PP-UT-GRSG-15-24-2

Organization: CE Brooks & Associates
obo: Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The matrix of management standards, the size of the Priority and Greater Habitat Management Areas (PHMA and GHMA) Utah LUPA/FEIS, Chapter 2, Map 2-6, respectively, increased management in Sagegrouse Focal Areas (SFAs), and additional operating terms found in the appendices of the Utah LUPA/FEIS effectively sterilize millions of acres in Utah from resource use and mineral development.

Issue Number: PP-UT-GRSG-15-24-7

Organization: CE Brooks & Associates
obo: Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS impair valid existing rights and rights-of-way that are assured under the Mineral Leasing Act and FLPMA and fail to address how the standards will be applied to the

extensive transmission and pipelines that transect several of the PHMA and GHMAs; Utah LUPA/FEIS 2-15.

Issue Number: PP-UT-GRSG-15-26-20

Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS does not incorporate or correctly reflect the county public roads and classifies these areas as avoidance or exclusion areas (Utah LUPA/FEIS Map 2-15). The management restrictions especially in PHMAs appear to preclude road maintenance and reconstruction work. The LUPA/FEIS ignores these roads and instead adopts large areas of right-of-way avoidance areas and additional closures. The Utah LUPA/FEIS does not address let alone resolve the conflicts with the county road system, which

Summary:

The Utah GRSG PLUPA/FEIS violates valid, existing rights by imposing disturbance caps restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

Response:

The Utah GRSG PLUPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)), (Utah GRSG PLUPA/FEIS, p. 1-20). For example, p. 2-17 includes the following language: “In all GRSG habitat, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation.” Additionally, in chapter 2 the following direction would be applied regarding Disturbance Caps: “If the 3 percent anthropogenic disturbance cap is exceeded on all lands (regardless of land ownership) within GRSG PHMA in any given BSU, then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the Mining Law of 1872 (as amended), valid existing rights, etc.) will be permitted by the BLM within GRSG PHMA in any given BSU until the disturbance has been reduced to less than the cap.” (p. 2-18).

With respect to oil and gas leasing specifically, the BLM and FS may restrict development of an existing oil and gas lease through Conditions of Approval (COA) consistent with the rights granted in the lease. When making a decision regarding discrete surface-disturbing activities

includes the “two-tracks” over which the BLM appears to assume jurisdiction. BLM must recognize these rights and easements, FLPMA, 43 USC §1769(a); 43 CFR §1610.3-2(a) (plans are subject to valid rights and regulations).

Issue Number: PP-UT-GRSG-15-26-6

Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The BLM arbitrarily and on the basis of flawed science, selects an unstated buffer when that buffer may have no benefit to GRSG breeding (due to topography or otherwise). The buffers will operate to prevent existing leases from any anthropogenic disturbing activities in these areas, a term not previously included in the lease and therefore counter to the MLA.

(e.g. Application for Permit to Drill) following site-specific environmental review, the BLM and FS have the authority to impose reasonable measures (e.g. COA) to minimize impacts on other resource values; including restricting the siting or timing of lease activities as noted in 43 CFR 3100, 43 CFR 3160, IBLA 2006-213, 2006-226, IBLA 2008-197, 2008-200, and 36 CFR 228. In their LUPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Utah GRSG PLUPA/FEIS provides management direction for conditions of approval on valid existing leases “Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts on the extent compatible with lessees’ rights to drill and produce fluid mineral resources” (Utah GRSG PLUPA/FEIS, p. 2-36), it does so only consistent with lessees’ valid existing rights.

Statutory rights of access are discussed in FSM 2734.5 and 2734.6. Appropriate access to non-Federal land to use and manage that land constitutes entry for a lawful and proper purpose and must be allowed. (See FSM 2703) The standard for appropriate and reasonable access is determined by the present or future use of the non-Federal land. Undue restrictions to access may affect the purpose for seeking access and violate the right established. Location, type and method of access can be reasonably limited considering the purposes for which the National Forest System was established and is administered.

Access rights to non-Federal land are not affected by Forest Service land management planning considerations or procedures. However, exercising the right may involve land management planning. Statutory rights of access attach to the land, therefore application for access must be made by the landowner, and access authorization shall be issued only to the landowner. Application for access across National Forest System land will be evaluated through the NEPA process. The analysis will address such points as the type, location, and conditions of the access sought; whether other adequate access exists; and requirements of any grant. Restrictions only apply to future requests and provides options if the alternative is impracticable.

Net Conservation Gain – Compensatory Mitigation

Post-ROD procedures and timeframes for establishing a Regional Mitigation Strategy are described in Chapter 2 and Appendix G of the Utah GRSG PLUPA/FEIS. As stated, a Regional Mitigation Strategy will be developed “to inform the mitigation components of NEPA analyses for BLM/Forest Service management actions and third-party actions that result in habitat loss and degradation. The Regional Mitigation Strategy will be developed within one year of the issuance of the Record of Decision on this EIS. The BLM’s Regional Mitigation Manual MS-1794 will serve as a framework for developing the Regional Mitigation Strategy” (p. 2-51). The Regional Mitigation Strategy should provide further mitigation guidance on avoidance, minimization, and compensation, and include, as part of compensation, “discussion of impact/project valuation, compensatory mitigation options, siting, compensatory project types and costs, monitoring, reporting, and funds administration” (Appendix G, p. G-2).

One protest requested that operations and maintenance activities be considered exempt from these hard and soft triggers as a condition of the valid and existing rights. Appendix B of the Utah GRSG PLUPA/FEIS provides specific direction regarding the application of hard and soft triggers which states that “adopt the PHMA boundary from Alternative B and apply management as described in the Proposed Plan”, as such actions connected to valid existing rights would be provided for by the same management options as available under the proposed plan.

Other protests suggest that:

- travel management and ROW avoidance/exclusion interfere with VER (mining claims and leases),
- county roads are not recognized as VER;
- the use of “valid existing rights” with respect to locatable minerals is misleading because most mining claims will not pass the VER test and it will chill investment.

These points are addressed under the Travel Management Section of this report.

[Multiple Use Mandate](#)

Issue Number: PP-UT-GRSG-15-17-14

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: As described in Simplot’s comments and in this protest document, federal land management agencies are required by statute to manage lands for multiple uses. It is important that the LUPA provide the process for this multiple use to happen along with measures needed for the protection of the GRSG. Simplot’s own work at the Vernal Mine has strived to achieve this multiple use- concept.

Issue Number: PP-UT-GRSG-15-17-7

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The proposed restrictions and effective withdrawals from mineral entry directly conflict with FLPMA’s requirement that the Secretary must manage public lands to respond to the Nation’s needs for minerals.

Issue Number: PP-UT-GRSG-15-19-9

Organization: Beatty & Wozniak obo:

Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Utah LUPA could be interpreted as imposing a “no significant impact” standard for oil and gas operations. This de facto insignificance standard violates the BLM’s statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a “major use” of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

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

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (see FEIS Sections 2.6.2, 2.6.3 and Table 2.4), and the widespread travel and transportation restrictions (Id.) are not in compliance with the specific directive pertaining to minerals in FLPMA Section

102(a)(12) that the public lands [shall] be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 USC 21a . . . (43 USC 1701(a)(12)).

Issue Number: PP-UT-GRSG-15-21-6
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: By withdrawing millions of acres of land in the Western United States from location under the General Mining Law and imposing exhaustive restrictions on mineral leasing, the PLUPAs violate the multiple-use mandate of FLPMA and must be significantly revised.

Issue Number: PP-UT-GRSG-15-21-9
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: Whatever mandate, or authority, the Forest Service believes it can derive from the laws it administers generally for activities that affect surface resources within the National Forest Service System,

Summary:

The PRMP/FEIS violates the TGA and the multiple use provisions of FLPMA and NFMA by:

- Recommending withdrawals from mineral entry and restrictions on travel and transportation [FLPMA Section 102(a)(12)];
- Imposing a “no significant impact” standard for oil and gas operations; and
- Prioritizing wildlife over other uses (e.g., livestock grazing, mineral extraction).

Response:

Section 302 of FLPMA provides that the Secretary shall manage the public lands under principles of multiple use and sustained yield. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people and a combination of balanced and diverse resource uses that takes into account the long term needs of

they do not supersede, or override, the more specific mandates and requirements of the mineral laws. Likewise, the disposition of solid minerals subject to the leasing laws cannot be impaired by unilateral action by the Forest Service under the guise of its general authority to manage surface resources within the National Forest System.

Issue Number: PP-UT-GRSG-15-23-2
Organization: Public Lands Council / National Cattlemen's Beef Association / Utah Cattlemen's Association
Protestor: Not Named

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

Issue Number: PP-UT-GRSG-15-40-11
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The COT Report unfairly conflicts with the BLM and Forest Service multiple-use mandate, by calling for GRSG centric management in derogation of all other uses and values.

future generations for renewable and non-renewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

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

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

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

All alternatives considered in the Utah GRSG PLUPA/FEIS, as described in Chapter 2 (Vol. 1, p. 2-1 through 2-301), provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The Utah GRSG PLUPA/FEIS complies with FLPMA's and MUSYA's multiple use mandate.

Consistency with State and Local Plans (BLM)

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

Organization: Sevier County Commission

Protestor: Garth Ogden

Issue Excerpt Text: The Utah Plan clearly identifies GRSG Management Areas

(SGMA), which encompass the important seasonal ranges for GRSG populations that inhabit Utah. Both the BLM/USFS and Utah Plan processes for identifying important seasonal habitats used Utah Division of Wildlife Resources (UDWR) mapped occupied habitat areas that were subsequently reformed using location data from radio-marked GRSG. Because these processes were similar, we are deeply concerned about a statement in the FEIS that the BLM, USFS, USFWS, and the State of Utah did not reach agreement on which lands had the highest conservation value, or which lands were necessary to maintain or increase GRSG populations in the Utah Sub-53 region.

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

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: The proposed plan amendments are not consistent with the Carbon County General Plan in numerous respects. Inconsistencies with Carbon County's plans and positions were provided to the BLM in the Land Use Plan Conformance Review, a 163-page table of comparisons conducted for the GRSG BLM/FS Planning Process for the Utah Sub-Region, dated March 24, 2003, and prepared by Rex Sacco, Carbon County Public Lands Director.

Issue Number: PP-UT-GRSG-15-04-4

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: The BLM and USFS are legally mandated to seek consistency with County plans, both under FLPMA and under the MOU in place between the parties, and all plans that make no such attempt simply cannot be deemed valid under FLPMA. Section 202 (c) (9), Title II of

FLPMA, states in pertinent part that, "In the development and revision of land use plans, the Secretary shall...assure that consideration is given to...local plans...that are germane in the development of land use plans for public lands [and shall] assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plan..." In addition, "Land use plans of the Secretary...shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." Through the entire process Carbon County has seen no effort by the Secretary to assist in resolving the numerous inconsistencies between the Federal plan amendments and Carbon County's own GRSG Management Plan, let alone an acknowledgement that such plan exists. The proposed land use plan amendments are not consistent with local plans to the maximum extent that can be achieved in consistency with Federal law and the purposes of the Act. The federal plan amendments for the Utah sub-region should be consistent with state and local plans, which are being implemented successfully throughout the State.

Issue Number: PP-UT-GRSG-15-04-6

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: The Proposed Amendments Do Not Attempt to Resolve Inconsistencies with the State of Utah's Validly Enacted Land Use Plans, in violation of FLPMA. This planning action and its amendments are also not consistent with the State of Utah's Conservation Plan for GRSG in Utah. FLPMA requires that Federal planning efforts seek consistency with State plans as well as with local plans. BLM and Forest Service and FWS have failed to assist the Utah Division of Wildlife Resources (UDWR) in the management of

GRSG still under state authority by refusing to allow the implementation of many portions of the Governor's Plan for Conservation of GRSG in Utah on federal lands in Utah.

Issue Number: PP-UT-GRSG-15-04-7
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The Proposed Amendments Arbitrarily Dismissed Consideration of Alternatives A and E, in violation of FLPMA and MOU between Carbon County and the BLM. Carbon County stated plainly in its DEIS Comment of January 29, 2014 that the only alternatives consistent with Carbon County's plans and policies are Alternatives A and E, and as such, FLPMA mandated the adoption of these policies. Alternative A is consistent with county plans and policy positions and is viable based on the fact that GRSG populations across much of the range are stable (see Pages 4-335 to 4-345, which include reports of stable populations in the Carbon Management Area as well as many other areas across the state that allowed working group participation under the guidelines set forth in the RMP's revised in 2008).

Issue Number: PP-UT-GRSG-15-04-9
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The BLM states that Alternative E protects 97.1% of the GRSG population in Utah and Utah has only 5% of the birds throughout their range and Utah has been implementing it so we know it works. BLM then implies that Alternative D protects 98.9% according to the DEIS but it had not been used in Utah. Why deviate from Utah's approach to management to protect an additional 8% of the 5% of the

GRSG with an unproven method of operation?

Issue Number: PP-UT-GRSG-15-05-1
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: The proposed plan amendments are not consistent with the State of Utah's Conservation Plan for GRSG in Utah. These inconsistencies with the State's plan are not allowed by Title II, Section 202 (c) (9) of FLMPA, which states that "In the development and revision of land use plans, the Secretary shall...assure that consideration is given to... State plans ...that are germane in the development of land use plans for public lands [and] assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans...". "Land use plans of the Secretary...shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act."

Issue Number: PP-UT-GRSG-15-05-2
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: Plan fails to comply with the Regulatory Flexibility Act of 1980. The proposed plan amendments and EIS have been developed and proposed for implementation without regard to the requirements of the Regulatory Flexibility Act of 1980 as amended. Congress declared in the Act that "when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public." The Act further states that, "...the process by which Federal regulations are developed and adopted should be

reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.” Finally, Congress stated that “It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

Issue Number: PP-UT-GRSG-15-05-4
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: There has not been meaningful consideration or use of Carbon County’s plans, positions or input on this planning action.

Issue Number: PP-UT-GRSG-15-05-5
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: An inadequate assessment of the impacts the proposed plan would make on small businesses, small organizations and small governmental jurisdictions contravening the purpose of the Regulatory Flexibility Act and the purpose of the Endangered Species Act.

Issue Number: PP-UT-GRSG-15-06-1
Organization: Mayor of Price Municipal Corporation

Protestor: Joe Piccolo

Issue Excerpt Text: The City of Price, Utah hereby protests the BLM and the Forest Service proposals to amend federal land use plans in the Price Resource Area as set forth in the GRSG Land Use Plan Amendments and Environmental Impact Statement. The proposed plan amendments are not consistent with the State of Utah’s Conservation Plan for GRSG in Utah.

Issue Number: PP-UT-GRSG-15-06-2
Organization: Mayor of Price Municipal Corporation
Protestor: Joe Piccolo

Issue Excerpt Text: These inconsistencies with the State’s plan are not allowed by Title II, Section 202 (c)(9) of FLMPA...Plan fails to comply with the Regulatory Flexibility Act of 1980. The proposed plan amendments and EIS have been developed and proposed for implementation without regard to the requirements of the Regulatory Flexibility Act of 1980 as amended.

Issue Number: PP-UT-GRSG-15-05-2
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: There has not been meaningful consideration or use of Carbon County’s plans, positions or input on this planning action. An inadequate assessment of the impacts in the proposed plan is made on small businesses, small organizations and small governmental jurisdictions contravening the purpose of the Regulatory Flexibility Act and the purpose of the Endangered Species Act.

Issue Number: PP-UT-GRSG-15-07-1
Organization: Mayor, City of East Carbon
Protestor: Doug Parsons

Issue Excerpt Text: The City of East Carbon, Utah hereby protests the BLM and the Forest Service proposals to amend federal land use plans in the Price Resource Area as set forth in the GRSG Land Use Plan Amendments and Environmental Impact Statement. The proposed plan amendments are not consistent with the State of Utah's Conservation Plan for GRSG in Utah.

Issue Number: PP-UT-GRSG-15-07-2
Organization: Mayor, City of East Carbon
Protestor: Doug Parsons

Issue Excerpt Text: These inconsistencies with the State's plan are not allowed by Title II, Section 202 (c)(9) of FLMPA...Plan fails to comply with the Regulatory Flexibility Act of 1980. The proposed plan amendments and EIS have been developed and proposed for implementation without regard to the requirements of the Regulatory Flexibility Act of 1980 as amended.

Issue Number: PP-UT-GRSG-15-07-4
Organization: Mayor, City of East Carbon
Protestor: Doug Parsons

Issue Excerpt Text: There has not been meaningful consideration or use of Carbon County's plans, positions or input on this planning action. An inadequate assessment of the impacts in the proposed plan is made on small businesses, small organizations and small governmental jurisdictions contravening the purpose of the Regulatory Flexibility Act and the purpose of the Endangered Species Act

Issue Number: PP-UT-GRSG-15-08-1
Organization: Mayor of Scofield Town
Protestor: Mike Erkkila

Issue Excerpt Text: The City of Scofield, Utah hereby protests the BLM and the

Forest Service proposals to amend federal land use plans in the Price Resource Areas set forth in the GRSG Land Use Plan Amendments and Environmental Impact Statement. The proposed plan amendments are not consistent with the State of Utah's Conservation Plan for GRSG.

Number: PP-UT-GRSG-15-08-2
Organization: Mayor of Scofield Town
Protestor: Mike Erkkila

Issue Excerpt Text: These inconsistencies with the State's plan are not allowed by Title II, Section 202 (c)(9) of FLMPA. Plan fails to comply with the Regulatory Flexibility Act of 1980. The proposed plan amendments and EIS have been developed and proposed for implementation without regard to the requirements of the Regulatory Flexibility Act of 1980 as amended.

Issue Number: PP-UT-GRSG-15-08-4
Organization: Mayor of Scofield Town
Protestor: Mike Erkkila

Issue Excerpt Text: There has not been meaningful consideration or use of Carbon County's plans, positions or input on this planning action. An inadequate assessment of the impacts in the proposed plan is made on small businesses, small organizations and small governmental jurisdictions contravening the purpose of the Regulatory Flexibility Act and the purpose of the Endangered Species Act

Issue Number: PP-UT-GRSG-15-09-1
Organization: Mayor of Helper City
Protestor: Edward Chavez

Issue Excerpt Text: The City of Helper, Utah hereby protests BLM and the Forest Service proposals to amend federal land use plans in the Helper Resource Area as set

forth in the GRSG Land Use Plan Amendments and Environmental Impact Statement. The proposed plan amendments are not consistent with the State of Utah's Conservation Plan for GRSG in Utah.

Issue Number: PP-UT-GRSG-15-09-2
Organization: Mayor of Helper City
Protestor: Edward Chavez

Issue Excerpt Text: These inconsistencies with the State's plan are not allowed by Title II, Section 202 (c)(9) of FLMPA. Plan fails to comply with the Regulatory Flexibility Act of 1980. The proposed plan amendments and EIS have been developed and proposed for implementation without regard to the requirements of the Regulatory Flexibility Act of 1980 as amended.

Issue Number: PP-UT-GRSG-15-09-4
Organization: Mayor of Helper City
Protestor: Edward Chavez

Issue Excerpt Text: There has not been meaningful consideration or use of Carbon County's plans, positions or input on this planning action. An inadequate assessment of the impacts in the proposed plan is made on small businesses, small organizations and small governmental jurisdictions contravening the purpose of the Regulatory Flexibility Act and the purpose of the Endangered Species Act

Issue Number: PP-UT-GRSG-15-13-1
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The LUPA/FEIS violates the consistency mandate of FLPMA Section 202(c)(9).

Issue Number: PP-UT-GRSG-15-13-6
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: Moreover, the BLM violates FLPMA's section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

Issue Number: PP-UT-GRSG-15-14-1
Organization: Morgan County Commission
Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for GRSG in Utah ("Utah Plan" or "Utah GRSG Plan"). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9).

Issue Number: PP-UT-GRSG-15-14-6
Organization: Morgan County Commission
Protestor: Logan Wilde

Issue Excerpt Text: Moreover, the BLM violates FLPMA's section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

Issue Number: PP-UT-GRSG-15-15-2
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The various parties to conservation in Utah, over the years, have investigated the scientific factors affecting GRSG, and have engaged in joint conservation measures. These factors include the location of all types of the year-round required habitat, population augmentation experiments, response to prescribed burns in sagebrush, results from radio-collared telemetry studies and the like. During the recent work on the draft plan amendments, the state, local BLM staff,

local Forest Service staff and the County have cooperated to create accurate and realistic habitat boundaries and workable triggers in order to initiate appropriate responses to population and habitat changes, and determined realistic vegetation parameters for each population. This cooperative spirit is also evident in the successful partnerships, such as the Watershed Restoration Initiative, which have done so much for habitat improvement for greater GRSG and other species that thrive in the sagebrush. The state's updated Conservation Plan, finalized in February, 2013, successfully ameliorated numerous threats to the species in Utah, including urbanization and the development of fluid minerals, and clearly identified a fifteen year plan to ameliorate the threat of wildfire, invasive grasses, and conifer encroachment. The County's subsequent refinement incorporated the expertise of local wildlife biologists from the BLM and FS to refine habitat areas to meet species specific life cycle requirements. The Agencies' failure to even consider the cooperative mapping effort- and the significant contributions of their own local biologists is arbitrary and capricious, violates numerous federal laws and policies, and invalidates the entire process.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The BLM/FS state the FEIS has been developed to address the U.S. Fish and Wildlife Service listing Factor A, "The present or threatened destruction, modification, or curtailment of the habitat or range of the GRSG" and Factor D, "The inadequacy of existing regulatory mechanisms" posed "a significant threat to the GRSG now and in the

foreseeable future". The BLM/FS state the FEIS will address these listing factors, by designating GRSG habitats as either priority or general habitat. The level of designation would guide the development and implementation of conservation strategies. The statement incorrectly disregards the State of Utah GRSG Plan and Garfield County's GRSG Plan that identify habitat on a refined scale, implement Garfield County's expertise and knowledge of land use and that provide an objective, science based method for evaluating impacts of future disturbance. The BLM/FS use speculation and broad generalizations in their proposed plan, and fail to meet best science and consistency requirements.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUP A/EIS professes compliance with 40 CFR 1500-1508. Under 40 CFR 1506.2(d), the lead agency must ensure that the NEPA statement will discuss any inconsistencies between the proposed action and any approved State or local plan and laws (whether or not federally sanctioned), and where inconsistencies exist, the NEPA statement must describe the extent to which the lead agency will reconcile its proposed action with the State or local plan or law. This has not happened. The LUPA/EIS falls far short of this standard.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The state acknowledged BLM and the FS included relevant portions of the state's

Conservation Plan as Alternative E in the required Environmental Impact Statement. However, Garfield County, a local government and a cooperating agency, was not afforded the same opportunity. Garfield County has a detailed conservation plan that refines the state effort and significantly improves management as a result of the County's special expertise in the areas of land use and invasive species. As the state expressed in its comments in the Draft EIS, the BLM and the FS failed to support vital elements from the Conservation Plan, failed to support the state's Conservation Plan as a whole, and instead created an agency-generated preferred alternative, largely in response to misinformation provided by the FWS.

Issue Number: PP-UT-GRSG-15-15-37

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for GRSG in Utah ("Utah Plan" or "Utah Sage Grouse Plan") and Garfield County's Conservation Plan. The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9) and coordination requirements of NFMA. A detailed listing of those inconsistencies were laid out in the comments on the Utah GRSG Draft LUPA/EIS by Garfield County, by Garfield County in their June 26, 2015 protest, by Garfield County at various times, and by Utah Association of Counties, submitted on behalf of all counties.

Issue Number: PP-UT-GRSG-15-15-38

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS preferred alternative is illegal because it invalidates state and local government's jurisdiction over GRSG management. UDWR has sole and exclusive responsibility for managing the species until a FWS listing occurs. The LUPA/FEIS and the preferred alternative arbitrarily assume the bird will be listed rather than completing an objective analysis and allowing FWS to make their own decision. One of the purposes of the federal, state, and local conservation efforts is to avoid listing. The LUPA/FEIS fails to even consider future management under state and local jurisdiction, a clear and convincing violation of reasonable range of alternative principles

Issue Number: PP-UT-GRSG-15-15-40

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Consistency rights under FLPMA 202(c)(9) are clearly violated by the grazing management provisions. The Bureau of Land Management and the Forest Service did not comply with NEPA requirements for scoping, identification of issues, analysis, disclosure, and resolution of inconsistencies regarding livestock grazing and its particular application in the Panguitch and southern Parker Mountain population areas of Garfield County, Utah. The Forest Service and the BLM have failed to even mention Garfield County's inclusion of livestock grazing on the County's Register of Cultural Resources and have failed to disclose the impacts to this activity as a resource of cultural and historic significance. The failures clearly violate environmental analysis law and procedures for Garfield County, Utah.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: This objective must focus on priority habitat, as outlined in the State's and Garfield County's Conservation Plans and must be pertinent to site specific conditions rules consistent with local plans to the maximum extent allowed by law. For example, black footed ferrets are not even found in Garfield County and much of the priority and general habitat identified in the LUPA/EIS fails to meet even the most basic GRSG life cycle requirements. Adoption of the LUPA/EIS is not only inconsistent with state and local plans, contrary to law, but it also ignores current conditions, ecological site descriptions, valid land use and invasive species data, and best science principles which are also required of federal agencies. Additionally, no metrics are proposed for this objective

Issue Number: PP-UT-GRSG-15-15-7

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/EIS does not mention Utah's implementation plan for Garfield County's program for addressing wildfire, or plans for invasive conifer removal and predator control. These are items the BLM and FS must adopt, according to federal law regarding consistency, coordination, best available science, and other requirements.

Issue Number: PP-UT-GRSG-15-20-1

Organization: American Petroleum
Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the significant inconsistencies between the

Proposed LUPA and the Conservation Plan for GRSG in Utah (2013) ("Conservation Plan") and its accompanying Executive Order, the Utah Conservation Plan for GRSG (Feb. 10, 2015) ("Executive Order") (collectively, Utah State Plan). These inconsistencies are the result of BLM's choice to impose a national, one-size-fits-all approach to GRSG conservation in violation of FLPMA's requirement for BLM to coordinate land use planning with state and local governments. The Proposed LUPA diverges from the Utah Plan in many ways, but most importantly diverges in its treatment of valid existing rights. Whereas the Proposed LUPA would impose significant restrictions on existing leases, the Utah Plan recognizes and respects existing rights on private, county, city, state, and federal lands (See Executive Order § 5). Furthermore, unlike the Proposed LUPA, which imposes onerous avoidance and minimization measures, the Utah Plan offers land users flexibility to mitigate impacts where avoidance is not feasible to create new GRSG habitat (Conservation Plan § 6.0, 6.4). Moreover, the Conservation Plan designates 11 GRSG Management Areas; however, the BLM has declined to adopt these areas in favor of its Primary Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) (See Conservation Plan, Maps).

Issue Number: PP-UT-GRSG-15-23-3

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

Protestor: Not Named

Issue Excerpt Text: The proposed amendments do not attempt to resolve inconsistencies with Carbon County's locally enacted land use plans, in violation of FLPMA. Carbon County outlined in its Land Use Plan Conformance Review, a 163

page table of comparisons conducted for the GRSG BLM/FS Planning Process for the Utah Sub-Region, dated March 24, 2013, the inconsistencies with the County's plans and positions. To the extent that the proposed plan amendments continue to ignore this conformance review or Carbon County's Comments on the DEIS and the AFEIS, PLC and NCBA protest these amendments. In addition, this planning action and its amendments are inconsistent with the State of Utah's Conservation Plan for GRSG in Utah, and so further violates FLPMA's mandate for the BLM to create plans consistent with State and Local management plans.

Issue Number: PP-UT-GRSG-15-24-1
Organization: CE Brooks & Associates
obo: Vermillion Ranch
Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS fails to incorporate or weigh the Utah and Wyoming GRSG conservation plans, Utah LUPA/FEIS, Chapter 6, and Chapter 2, No Action Alternative; and, instead adopts management provisions that conflict with the State and local plans in several material respects, including management of livestock grazing,

Issue Number: PP-UT-GRSG-15-26-2
Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The Agencies also failed to fully cooperate with members of the Coalition by adopting management prescriptions that conflict with local plans and policies in Sweetwater, Lincoln, Sublette, and Uinta County.

Issue Number: PP-UT-GRSG-15-26-3
Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The BLM has failed to even discuss the inconsistencies between the Utah LUPA/FEIS and local land use plans and the Wyoming Core Area Strategy has therefore made no attempt to resolve the inconsistencies.

Issue Number: PP-UT-GRSG-15-26-4
Organization: CE Brooks & Associates
obo: Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS conflicts materially with local land use plans, programs and policies with respect to range management, mineral development, rights-of-way, and long-term community custom, culture and economy. The Utah LUPA/FEIS compares county plan's with that of the State of Utah but entirely ignores the Wyoming local government interests (Utah LUPA/FEIS 6-12 to 6-14).

Issue Number: PP-UT-GRSG-15-27-1
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for GRSG in Utah ("Utah Plan" or "Utah GRSG Plan"). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9). A detailed listing of those inconsistencies were laid out in the comments by Utah Association of Counties dated January 29, 2014, submitted on behalf of all counties as comment on the UGRSG

Draft LUPA/EIS, but these were virtually all ignored by BLM/USFS. The word “capriciousness” aptly describes the BLM/USFS’s blithely ignoring Utah’s effort to understand and manage the GRSG.

Issue Number: PP-UT-GRSG-15-27-22

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the counties any inconsistencies between the LUPA/FEIS favored action and the State Plan which the counties helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan.

Issue Number: PP-UT-GRSG-15-27-3

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or around September, 2012; the Utah BLM claiming that those UDWR maps were not submitted timely. Not true. Utah BLM used the UDWR maps in time to develop Alternative E, yet the LUPA/FEIS gives no explanation why the UDWR maps were not used for alternatives A-D. Thus the excuse of “lateness” for purposes of Alternatives A-D is arbitrary and capricious at best, and more accurately just plain not true. Especially when one considers that the Utah Plan protects 97.1% of the GRSG population in Utah and Utah has only 5% of GRSG throughout their Western range. There is no reason why BLM should not be mandated to honor the FLPMA 202(c)(9) consistency mandate and give the State's Plan a

reasonable opportunity to be implemented. All references herein to the LUPA/FEIS's being arbitrary and capricious are intended by this reference to implicate the Federal Administrative Procedures Act, Sections 701-706, which prohibit federal agency actions that are arbitrary and capricious or contrary to law.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR’s current primacy of jurisdiction over management of the GRSG.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: Moreover, the BLM violates FLPMA’s section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

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

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah’s Conservation Plan for GRSG in Utah (“Utah Plan or “Utah GRSG Plan”). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9). A detailed listing of those inconsistencies were laid out in the comments by Utah Association of Counties dated January 29, 2014, submitted on behalf of all counties as comment on the Utah

GRSG Draft LUPA/EIS, but these were virtually all ignored by BLM/USFS. The word “capriciousness” aptly describes the BLM/USFS blithely ignoring of Utah’s effort to understand and manage the GRSG.

Issue Number: PP-UT-GRSG-15-28-21

Organization: Box Elder County
Commission

Protestor: Stan Summers

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan.

Issue Number: PP-UT-GRSG-15-28-3

Organization: Box Elder County
Commission

Protestor: Stan Summers

Issue Excerpt Text: Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or around September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives. Thus the excuse of “lateness” for purposes of Alternatives A-D is arbitrary and capricious at best, and more accurately just plain incorrect. Especially when one considers that the Utah Plan protects 97.1% of the GRSG population in Utah and Utah has only 5% of the birds throughout their Western range. There is no reason why the BLM shouldn’t be mandated to honor the FLPMA 202(c)(9) and give the State’s Plan

a reasonable opportunity to be implemented. All references herein to the LUPA/FEIS being arbitrary and capricious are intended by this reference to implicate the Federal Administrative Procedures Act, Sections 701-706, which prohibit federal agency actions that are arbitrary and capricious or contrary to law.

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

Organization: Box Elder County
Commission

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS adopted alternative is unlawful for the additional reason that it invades UDWR’s current primacy of jurisdiction over management of the GRSG.

Issue Number: PP-UT-GRSG-15-28-7

Organization: Box Elder County
Commission

Protestor: Stan Summers

Issue Excerpt Text: Moreover, the BLM violates FLPMA's section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

Issue Number: PP-UT-GRSG-15-33-1

Organization: Daggett County
Commission

Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for Greater GRSG in Utah ("Utah Plan" of "Utah GRSG Plan "). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c) (9).

Issue Number: PP-UT-GRSG-15-33-6

Organization: Daggett County
Commission

Protestor: Karen Perry

Issue Excerpt Text: Moreover, BLM violates FLPMA's section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

Issue Number: PP-UT-GRSG-15-34-2

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Utah LUPA has incorporated a 3% disturbance cap, applicable only within GRSG priority habitat management areas (PHMA) (Appendix E, page E-1). The Utah LUPA also indicates that TransWest, Express and Gateway South (where collocated with Transwest Express) are exempt from caps where collocated (Chapter 2, page 2-31). However, it is unclear how this will be implemented in conjunction with the state plans. The BLM should address how the disturbance cap and exemption process will work in sync with Utah's GRSG Management Plan.

Issue Number: PP-UT-GRSG-15-38-1

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for GRSG in Utah ("Utah Plan" or "Utah GRSG Plan") and Piute County's Conservation Plan. The LUPA-EIS therefore violates the consistency mandate of FLPMA Section 202(c)(9). A detailed listing of those inconsistencies were laid out in the comments by Utah Association of Counties dated January 29, 2014, submitted on behalf of all counties as comment on the UGRSG Draft LUPA/EIS, but these were virtually all ignored by BLM/FS. The word

"capriciousness" aptly describes BLM/FS blithely ignoring of Utah's effort to understand and manage the GRSG in the Parker Mountain population area in Piute County. Consider Utah Division of Wildlife Resources ("UDWR") experience:

Issue Number: PP-UT-GRSG-15-38-26

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: The BLM/FS made no effort to discuss with Piute County any inconsistencies between the LUPA-EIS favored action and the County Plan, particularly for the Parker Mountain population area in Piute County. The LUPA/EIS also failed to describe the extent to which the BLM/FS would reconcile its proposed action with the State Plan and with Piute County's refinement, especially for the Parker Mountain population area in Piute County. There was no effort of which the County is aware, by the BLM/FS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-38-3

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA-EIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives. Thus the

excuse of “lateness” for purposes of Alternatives A-D is arbitrary and capricious at best, and more accurately just plain incorrect. Especially when one considers that the Utah Plan protects 97.1% of the GRSG population in Utah and Utah has only 5% of the birds throughout their Western range. There is no reason why the BLM should be mandated to honor the FLPMA 202(c)(9) and give the State’s Plan a reasonable opportunity to be implemented. All references herein to the LUPA-EIS being arbitrary and capricious are intended by this reference to implicate the Federal Administrative Procedures Act, Sections 701-706, which prohibit federal agency actions that are arbitrary and capricious or contrary to law.

Issue Number: PP-UT-GRSG-15-40-1
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The LUPA-EIS preferred alternative is illegal because it invalidates state and local government’s jurisdiction over GRSG management. UDWR has sole and exclusive responsibility for managing the species until a FWS listing occurs. The LUPA/EIS and the preferred alternative arbitrarily assume the bird will be listed rather than completing an objective analysis and allowing the FWS to make their own decision. One of the purposes of the federal, state, and local government efforts is to avoid listing. The LUPA/EIS fails to even consider future management under state and local jurisdiction, a clear and convincing violation of reasonable range of alternative principles.

Issue Number: PP-UT-GRSG-15-40-1
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah’s Conservation Plan for GRSG in Utah (“Utah Plan” or “Utah GRSG Plan”). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9). A detailed listing of those inconsistencies were laid out in the comments by Utah Association of Counties dated January 29, 2014, submitted on behalf of all counties as comment on the UGRSG Draft LUPA/EIS, but these were virtually all ignored by BLM/USFS. The word “capriciousness” aptly describes the BLM/USFS blithely ignoring of Utah’s effort to understand and manage the GRSG. Consider Utah Division of Wildlife Resources (“UDWR”) experience

Issue Number: PP-UT-GRSG-15-40-20
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality’s Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-40-21
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: As for the obligation of BLM/USFS Council on Environmental Quality’s Answers to the 40 Most Asked

Questions, Number 23(a) (The lead agency must inquire of a county cooperating agency whether there are any potential conflicts between the proposed action and the state and local laws and plans, or if conflicts could arise in the future; and the lead agency must; ensure that the NEPA document will acknowledge, describe and explain the extent of those conflicts; ensure that the NEPA document will evaluate the seriousness of the impact of the proposed action on the state and local land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area), it was admittedly impossible for BLM/USFS to have done all this in the short two-week time frame given between issuance of the PLUPA and the county's deadline to comment upon it.

Issue Number: PP-UT-GRSG-15-40-3
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives. Thus the excuse of "lateness" for purposes of Alternatives A-D is arbitrary and capricious at best, and more accurately just plain incorrect. Especially when one considers that the Utah Plan protects 97.1% of the GRSG population in Utah and Utah has only 5% of the birds throughout their Western range. There is no reason why BLM should not be mandated to honor the FLPMA 202(c)(9) and give the State's Plan

a reasonable opportunity to be implemented. All references herein to the LUPA/FEIS being arbitrary and capricious are intended by this reference to implicate the Federal Administrative Procedures Act, Sections 701-706, which prohibit federal agency actions that are arbitrary and capricious or contrary to law.

Issue Number: PP-UT-GRSG-15-40-6
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The BLM violates FLPMA's section 202(c)(9) consistency requirement by giving the State GRSG Recovery Plan short shrift.

Issue Number: PP-UT-GRSG-15-41-1
Organization: Beaver County Commission
Protestor: Michael Dalton

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's Conservation Plan for GRSG ("Utah GRSG Plan"). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9).

Issue Number: PP-UT-GRSG-15-42-1
Organization: Uintah County Commission
Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS adopted an alternative that is inconsistent with the State of Utah's and the County's Conservation Plan for GRSG in Utah ("Utah Plan" or "Utah GRSG Plan"). The LUPA/FEIS therefore violates the consistency mandate of FLPMA Section 202(c)(9).

Issue Number: PP-UT-GRSG-15-42-6
Organization: Uintah County Commission

Protestor: Michael McKee

consistency requirement by giving the State and County GRSG Recovery Plan short shrift.

Issue Excerpt Text: Moreover, the BLM violates FLPMA's section 202(c)(9)

Summary:

The Utah GRSG PLUPA/FEIS is inconsistent with several state and county plans, including the Utah GRSG Management Plan and the Carbon and Garfield County General Plans, which include site specific conditions. Additionally, the BLM has inadequately considered the state's and counties' land use plans (and thereby not sufficiently accounted for impacts on small jurisdictions) or acknowledged the inconsistencies in the PLUPA/FEIS, in violation of 43 USC Section 1712 (c) (9) of FLPMA and the Regulatory Flexibility Act of 1980. The BLM arbitrarily and capriciously rejected maps tendered by Utah Division of Wildlife Resources (UDWR).

Response:

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

The Regulatory Flexibility Act of 1980 states "the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules."

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Utah GRSG PLUPA/FEIS, including the Utah GRSG Management Plan, and other related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Utah GRSG PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Utah GRSG PLUPA/FEIS. The Regulatory Flexibility Act is not applicable to this planning effort, as it is not rulemaking, and, in any event, this coordination and the public process also sufficiently solicited the input of small businesses and governments as provided in that Act.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.8. The BLM conducted an internal review of its plan and local, state, and Tribal plans to determine if there were any inconsistencies. The agency will discuss why any remaining inconsistencies between the Utah PLUPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

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

Viability (Forest Service)

Issue Number: PP-UT-GRSG-15-15-43

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Bureau of Land Management and the Forest Service set management actions on all habitat arbitrarily without considering ecologic viability. Viable habitat was based on elevation, land use, presence of invading conifers, terrain, presence of human disturbances, and other factors in Garfield County. Habitat boundaries from the LUPA/EIS ignore scientific evidence and local GRSG activity designating habitat where no viable habitat exist

Issue Number: PP-UT-GRSG-15-18-10

Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: The BLM proposes to seek withdrawal of important GRSG habitats from locatable mineral entry in Focal Areas only. FEIS at 2-17. PHMAs and GHMAs would be open to future hard-rock mining claims (FEIS at 2-35). Given that the BLM's position (erroneous, yet driving project approval policy) is that it has have to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is

most extreme. In effect, the BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA as well as BLM and Forest Service Sensitive Species policy and NFMA viability requirements.

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

Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: For the foregoing reasons, protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as BLM's responsibility to prevent undue degradation to GRSG habitats under FLPMA, the Forest Service's responsibility to maintain viable populations under NFMA, and both agencies' duties to uphold the responsibilities outlined in their respective Sensitive Species policies. The agencies' failure to apply adequate lek buffers to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, agencies' own expert opinions, and their own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Issue Number: PP-UT-GRSG-15-22-16

Organization: Western Watersheds Project
Protestor: Michael Connor

Issue Excerpt Text: NFMA and its regulations require the Forest Service to "provide for a diversity of plant and animal

communities based on suitability and capability of the specific land area in order to meet overall multiple-use objectives” (16 USC § 1604(g)(3)(B)). And FSM 2672.1 requires that: “There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers.” To the extent that the aforementioned conservation measures of the plan fail to impose the level of protection necessary to maintain viable GRSG populations in PHMA and GHMA, the PLUPA/FEIS has failed to conform with NFMA.

Issue Number: PP-UT-GRSG-15-38-10

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: The BLM/FS arbitrarily assign management prescriptions across all acres of federally designated habitat, regardless of habitat viability. Piute County has carefully delineated viable habitat base on elevation, land use, presence of invading conifers, terrain, presence of human disturbances, and other factors. LUPA/EIS habitat boundaries ignore scientifically documented evidence that GRSG activity is limited to areas where viable habitat exists.

Summary:

The Utah PLUPA/FEIS did not adequately address viability requirements of the 1982 Planning Rule (implementing NFMA) because it did not:

- use scientific evidence and information on local Sage Grouse activity and therefore designated habitat where no viable habitat exist;
- address the threats of locatable mineral development in areas where that threat is greatest (in PHMAs and GHMAs); and
- impose the level of protection necessary to maintain viable sage grouse populations in PHMA and GHMA.

Response:

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

The Forest Service documents the analysis of viability and sensitive species in a biological evaluation.

According to the Forest Service Manual at 2672.4, “The objectives of the biological evaluation are:

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

The biological evaluation completed for the GRSG amendments is included in Appendix P. It evaluates the effects of implementing the proposed management direction for the proposed plan alternative as described in Chapter 2 pages 2-41 thru 2-67 of the FEIS. The Biological Evaluation concludes that “Impacts on GRSG and their habitats from any of the action alternatives would result in an improvement of habitat conditions for GRSG and their habitats on NFS lands in Utah. This would be due to a reduction of anthropogenic influences on sagebrush habitats.” The determination of impacts for the GRSG is that the action may impact individuals or habitat, but would not likely contribute to a trend toward federal listing or cause a loss of viability to the population or species.

The biological evaluation and associated FEIS together provide the ecological rationale for these determinations based on a careful consideration of the direct, indirect, and cumulative effects of the proposed plan in light of existing understanding of the species’ biology and ecology, threats to each species, and their current population trends. The FEIS demonstrates that the proposed plan represents a substantial shift in management direction and consequently, in habitat conditions that represent improvements in conditions for GRSG in the plan area.

Specifically in regard to effects of minerals development, the Biological Evaluation identified that, under the Proposed Plan amendment, lands in PHMA would be closed to new nonenergy leasable mineral leasing and mineral material sales. New leases next to existing operations would be allowed, but they would be subject to the 3% disturbance cap, lek buffers, and best management practices. All federal minerals in PHMA would be open to oil and gas leasing, subject to NSO stipulations. Conservation measures, including NSO stipulations, would be applied to existing lease areas. Proposed policies set aside only a minor amount of acreage as unsuitable for coal leasing. The Proposed Plan proposes withdrawal of more acres for locatable mineral leasing than under current management. These measures related to minerals development, together with the plan direction on habitat and other uses, supported the determination in the Biological Evaluation.

In reference to the process employed to select specific geographic areas for management direction, Appendix N - Greater GRSG Habitat Baseline and Habitat Update Protocol --identifies the process used to identify GRSG habitat. It describes the use of the UDWR’s broadly depicted occupied GRSG habitat maps, the mapping of core Utah GRSG breeding habitats, and the

refinement of maps as additional population and habitat area information was provided by other field specialists, other agencies, local and special interest groups, private landowners, and academia. It describes the use of UDWR supported research and the establishment of Local Area Working Groups along with the use of telemetry and GPS data.

This mapping process resulted in broad based maps that identify the GRSG range to include a variety of important seasonal habitats and movement corridors that are spread across Utah's geographically diverse and naturally patchy landscape. Broad maps are more likely to include all seasonal habitat areas important for each population and can be refined as management agencies gain more information. Occupied habitat maps used as a baseline for this LUPA currently include known use areas, areas of potential habitat, as well as areas of non-habitat.

For BLM's and the Forest Service's purposes of maintaining and enhancing GRSG persistence, all GRSG occupied range identified and mapped by UDWR is included as the baseline for planning to ensure that all habitats that are, or may be necessary for long-term GRSG persistence, are including for assessment and evaluation in the planning and implementation process. Through this planning process the BLM and Forest Service aim to not only stop the decline of GRSG populations, but to increase populations, which may require protection and restoration of historic use areas, or stated another way, protection of potential habitat near existing GRSG populations that does not currently support GRSG populations but is ecologically capable of doing so with proper management.

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

Coordination with State, Local, and Tribal Governments (Forest Service)

Issue Number: PP-UT-GRSG-15-20-2

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the portions of the Proposed LUPA applicable to the National Forest System lands in Utah call for management similar to the BLM's management and are inconsistent with the Utah Plan. For example, the Forest Service seeks to impose numerous timing and noise limitations not found in the Utah Plan (See Proposed LUPA/Final EIS at 2-51 – 2-52).

The disregard for the provisions of the Utah Plan evidenced in the Proposed LUPA is inconsistent with NFMA and Forest Service regulations. Although the Forest Service is not required to ensure absolute consistency with state and local plans, 36 CFR § 219.4(b)(3), the Forest Service is required to coordinate its planning efforts with equivalent efforts of state and local governments. 16 USC § 1604(a); 36 CFR § 219.4(b)(1).

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

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-13-3

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality ("CEQ") regulatory requirements:

- a. The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 U.S.C. 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

Issue Number: PP-UT-GRSG-15-20-3

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest several inconsistencies between the Proposed LUPA and the Wyoming GRSG

Core Area Strategy on National Forest System lands in Wyoming. The Proposed LUPA diverges from the Wyoming GRSG Core Area Strategy in many important respects: Noise limitations that are not consistent with those contained in the Wyoming Executive Order 2011-5 (Proposed LUPA/Final EIS at 2-58), Mitigation hierarchy (Id. at 2-58), Phased development in GHMA (Id. at 2-66), and Requirement to Impose Compensatory Mitigation (Id., App. D).

Issue Number: PP-UT-GRSG-15-33-10

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-14-3

Organization: Morgan County Commission

Protestor: Logan Wilde

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements: The

coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 USC 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

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

Organization: Morgan County Commission

Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA (“PPLUPA”). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-14-9

Organization: Morgan County Commission

Protestor: Logan Wilde

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as

obligated by Council on Environmental Quality’s Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-16-1

Organization: Iron County Commission

Protestor: Dale Brinkerhoff

Issue Excerpt Text: The Proposed Land Use Plan Amendments and Final EIS (PLUPA-FEIS) in Chapter 1 professes participation and coordination with cooperating agencies. Iron County takes issues with these statements because, in both the Draft EIS and the Administrative draft documents, cooperating agencies were given very little time to study them and provide meaningful responses. In our opinion, two weeks is not reasonable to review such a large document, and is contrary with the Memorandum of Agreement signed as a cooperating agency. The PLUPA-FEIS in Chapter 1 professes compliance with 43 CFR Part 1600. 43 CFR 1610.3-1 obligates the Department to meaningfully coordinate with the County in the promulgation of the PLUPA-FEIS. Section 1610.3-1(c) in particular obligates the BLM State Directors and Field Managers to provide opportunity for review, advice, and suggestion. In addition, the PLUPA/FEIS is left without good discussion with cooperating agencies as afforded in the MOU, leaving protests and court actions as the only recourses available for counties to remedy disagreements, which is contrary to the purpose of NEPA, the coordination requirements of FLPMA and is arbitrary and capricious, giving statements that are contrary to the actual acts cited above.

Issue Number: PP-UT-GRSG-15-33-3

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements: The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 USC 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

Issue Number: PP-UT-GRSG-15-33-9

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA (“PPLUPA”). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-41-3

Organization: Beaver County Commission

Protestor: Michael Dalton

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with

the County in developing the LUPA/FEIS, in violation of FLPMA 202(c)(9). Resource Management Plan revisions must be coordinated with the land and resource management planning processes of State and local governments including counties. Very little attention was given to the Utah GRSG Plan.

Issue Number: PP-UT-GRSG-15-42-10

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality’s Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-42-3

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements:
a. The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 U.S.C. 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of

State and local governments including counties.

Issue Number: PP-UT-GRSG-15-42-9

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG

Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Summary:

The Utah GRSG PLUPA/FEIS violates NFMA and Forest Service regulations because it did not coordinate its planning efforts with the equivalent efforts of state and local governments. In particular, the Forest Service seeks to impose numerous timing and noise limitations not found in the Utah GRSG PLUPA/FEIS.

Response:

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

The Forest Service has worked directly with the BLM to meet coordination and cooperating agency obligations for both agencies. All cooperating agencies have been given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft Utah LUPA/EIS, and identification of issues and data during scoping and during the draft Utah LUPA/EIS public comment period. The Utah PLUPA/FEIS further describes the participation of cooperating agencies in Chapter 6 (Consultation and Coordination). The BLM provided as much notice of anticipated upcoming review times as possible to state and local governments as well as other interested parties.

In accordance with these requirements, the BLM and Forest Service have given consideration to state, local and Tribal plans that are germane to the development of the Utah GRSG PLUPA/FEIS. The BLM and Forest Service have worked closely with state, local, and Tribal governments during preparation of the Utah GRSG PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Utah GRSG PLUPA/FEIS. A

list of the local, state, and Tribal plans that the BLM and Forest Service considered can be found in Chapter 1, Section 1.8. Therefore, the Forest Service has satisfied the coordination requirements under NFMA and Forest Service regulations in preparation of the Utah GRSG PLUPA/FEIS.

Refer to the Impacts—Air Quality section of this report for more information regarding noise limitations.

[Range of Alternatives](#)

Issue Number: PP-UT-GRSG-15-13-4

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: Utah BLM’s failure to use the September 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario. Why? Because if no action is taken to undergo a LUPA, then the default fallback position is that GRSG goes on being managed by UDWR according to the September 2012 tendered GRSG maps.

Issue Number: PP-UT-GRSG-15-14-4

Organization: Morgan County

Commission

Protestor: Logan Wilde

Issue Excerpt Text: Utah BLM’s failure to use the September, 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario. Why? Because if no action is taken to undergo a LUPA, then the default fallback position is that GRSG goes on being managed by UDWR according to the September 2012 tendered GRSG maps.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Garfield County cannot find any alternative where the Garfield County’s plan for conserving sage grouse was considered. Inasmuch as BLM/FS are required to be considered a full range of alternatives, they have failed to comply with federal requirements. Even picking and choosing from the various alternatives fails to include elements that are vital to the county plan.

Issue Number: PP-UT-GRSG-15-15-39

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS does not evaluate an alternative that focuses on GRSG seasonal habitats in Garfield County with the highest conservation priority. The LUPA/FEIS does not evaluate an alternative with encompassing leks, without being lek-centric. The LUPA/FEIS does not evaluate an alternative that optimizes harmony between man and his environment while improving GRSG habitat. All of these issues apply to the Panguitch and southern Parker Mountain population areas in Garfield County, and fail to comply with

coordination requirements under NFMA and consistency rights under FLPMA.

Issue Number: PP-UT-GRSG-15-18-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Guardians also submitted our GRSG Recovery Alternative earlier in this NEPA process; the issues raised in this alternative are also part of our expectations for the final plan amendments and revisions. We requested that agencies should designate as Priority Habitat and General Habitat all lands identified as PPMAs and PGMAs, and in addition should expand Priority Habitat to include all Priority Areas for Conservation identified by USFWS, but this alternative does not appear to have been considered in detail in violation of NEPA.

Issue Number: PP-UT-GRSG-15-20-13

Organization: American Petroleum Institute / Western Energy Alliance

Commenter1:Richard Ranger

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed LUPA. First, the Final EIS does not analyze an alternative to the Proposed LUPA's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed LUPA's monitoring framework, including alternatives that BLM has the resources to implement. Third, the Final EIS does not analyze alternatives to the adaptive management triggers and responses. Fourth, the Final EIS did not analyze alternatives to the lek buffer distances. Finally, the Final EIS did not analyze the alternative of applying the Utah plan on BLM lands.

Issue Number: PP-UT-GRSG-15-20-23

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the BLM cannot implement the "responses" to the triggers because it did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS accompanying the Proposed LUPA (See Proposed LUPA/Final EIS, Chapter 2). FLPMA, NFMA and NEPA require the BLM and Forest Service to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 36 CFR § 219.14(b)(2); 40 CFR § 1502.14, 1502.16; 43 CFR § 1610.4-5, 1610.4-6. Therefore, the BLM must consider alternatives to the trigger responses and analyze their potential environmental impacts before it may implement them. Because the BLM has neither analyzed alternatives to the trigger responses nor analyzed their potential impacts, the BLM may not implement the trigger responses without amending the Proposed LUPA.

Issue Number: PP-UT-GRSG-15-20-61

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The only rationale and justification given for this broad-scale exemption for the TransWest and similar transmission projects is that the projects have been identified by the President as being high priority renewable projects for jobs and for electric transmission infrastructure. Yet, other than this single conclusory statement, the LUPA and FEIS do not provide any supporting documentation, data, or analysis to justify this disparate treatment or the allowance of

these large-scale significant impacts within GRSG habitat. The LUPA/FEIS does not identify, let alone analyze, the number of jobs that would be created for construction of these projects, or the number of long-term jobs that would result after construction of the transmission line. The LUPA/FEIS fails to identify, let alone analyze, whether there are alternatives to providing this exemption in the LUPA. The LUPA/FEIS fails entirely to analyze an alternative that explains or otherwise justifies counting the significant landscape level surface disturbance of these projects against the cap calculation applicable to the oil and gas industry and all other industries operating on public lands where the cap is applicable against their operations and activities. The LUPA/FEIS fails to explain why such disparate treatment between industries and public land developers is warranted.

Issue Number: PP-UT-GRSG-15-27-4
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: Utah BLM's failure to use the September, 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario.

Issue Number: PP-UT-GRSG-15-27-5
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: Barring the LUPA/FEIS ever taking effect (which is code for the no-action alternative), GRSG habitat management in Utah would just continue on an undisturbed path according

to UDWR's own GRSG maps, i.e., the maps UDWR tendered to the BLM September, 2012. Failure to use those maps in Alternative A renders the entire LUPA/FIES a legally failed NEPA document.

Issue Number: PP-UT-GRSG-15-28-4
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: Utah BLM's failure to use the September 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario.

Issue Number: PP-UT-GRSG-15-28-5
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: Barring the LUPA/FEIS ever taking effect (which is code for the no-action alternative), GRSG habitat management in Utah would just continue on an undisturbed path according to UDWR's own GRSG maps, i.e. the maps UDWR tendered to the BLM September, 2012. Failure to use those maps in Alternative A makes the entire LUPA/FIES a legally failed NEPA document.

Issue Number: PP-UT-GRSG-15-32-4
Organization: State of Utah
Protestor: Kathleen Clarke

Issue Excerpt Text: Because BLM refused to use the maps provided by the state of Utah in August, 2012, the BLM created a faulty baseline for the creation of the various Alternatives. Without the detailed state-generated habitat-mapping data, the no-

action alternative (Alternative A) was not based upon the most accurate data. As a consequence, all comparisons to Alternative A and within the various alternatives are faulty.

Issue Number: PP-UT-GRSG-15-33-4
Organization: Daggett County Commission
Protestor: Karen Perry

Issue Excerpt Text: Utah BLM's failure to use the September, 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario. Why? Because if no action is taken to undergo a LUPA, then the default fall-back position is that GRSG goes on being managed by UDWR according to the September 2012 tendered GRSG maps.

Issue Number: PP-UT-GRSG-15-38-6
Organization: Piute County
Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS fails to consider an alternative that focuses on GRSG seasonal habitats in Piute County with the highest conservation priority. The LUPA-EIS fails to consider an alternative that encompasses leks, but are not lek-centric. The LUPA/EIS fails to consider an alternative that optimizes GRSG habitat while harmonizing impact to man and his environment. All of these issues apply to the Parker Mountain population area in Piute County and fail to comply with the State's and County's rights to under FLPMA and coordination requirements under NFMA.

Issue Number: PP-UT-GRSG-15-40-4
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: Utah BLM's failure to use the September, 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario.

Issue Number: PP-UT-GRSG-15-40-5
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: Barring the LUPA/FEIS ever taking effect (which is code for the no-action alternative), GRSG habitat management in Utah would just continue on an undisturbed path according to UDWR's own GRSG maps, i.e., the maps UDWR tendered to the BLM September, 2012. Failure to use those maps in Alternative A makes the entire LUPA/FIES a legally failed NEPA document.

Issue Number: PP-UT-GRSG-15-42-4
Organization: Uintah County Commission
Protestor: Michael McKee

Issue Excerpt Text: Utah BLM's failure to use the September 2012 UDWR tendered maps for Alternative A, the no-action alternative, is arbitrary and capricious for the additional reason that the UDWR GRSG maps, and only the UDWR GRSG maps, correctly describe the management situation under the no-action scenario. Why? Because if no action is taken to undergo a LUPA, then the default fallback position is that GRSG goes on being managed by UDWR according to the September 2012 tendered GRSG maps.

Summary:

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

- recommended alternatives or management actions:
 - Garfield County's plan,
 - GRSG Recovery Alternative;
- alternatives to the BLM's goal of achieving a "net conservation gain" for GRST habitat;
- alternatives to the monitoring framework;
- alternatives to adaptive management triggers and responses; and
- the PLUPA/FEIS failed to adequately explain exemptions for certain transmission projects, including TransWest.

In addition, Alternative A incorrectly describes the management situation under the no-action scenario by failing to mention the default position if GRSG continues to be managed by UDWR.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Utah GRSG PLUPA/FEIS, 2.11 Alternatives Eliminated from Detailed Analysis (p. 2-165)). When there are potentially a very large number of alternatives, the BLM and Forest Service may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM and Forest Service developed a range of reasonable alternatives that meet the purpose and need (1.2 Purpose and Need, p. 1-4) and addresses resource issues identified during the scoping period. The Utah GRSG PLUPA/FEIS analyzed five distinct alternatives in detail, which are described in section 2.8 Draft LUPA/EIS Alternatives, p. 2-73. The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Recommended Alternatives/Management Actions

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, the Utah GRSG PLUPA/FEIS Section 2.11 (p. 2-237) provides a succinct and detailed discussion for a number of alternatives received during scoping from the public, organizations, and state agencies for consideration and inclusion in the planning process for the Utah GRSG PLUPA/FEIS. These include proposals such as: Citizen Proposed Alternatives (Section 2.11.3, p. 2-238), Other Habitat Maps (Section 2.11.5, p. 2-239), and County GRSG Management Plans (Section 2.11.6, p. 2-240). Each particular section describes the alternative and provides a rational or discussion as to how the information was or was not utilized in the development of the range of alternatives.

Furthermore, agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14), although the agency must also briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14). Section 1.6.2, Issues Identified for Consideration in the Utah Sub-region GRSG Land Use Plan Amendments, explains that “during the scoping process, the BLM and Forest Service received comments from members of the public and various public, governmental and non-governmental groups. This feedback along with internal assessment and concerns described in the 2010 Finding have been compiled to describe issues and analysis concerns that are discussed in this document” (p. 1-15). Section 1.6.3, Issues Considered but Not Further Analyzed (p. 1-17 to 1-19), discusses a number of issues determined to be outside the scope of the range-wide planning effort, including the Utah GRSG PLUPA/FEIS.

Net Conservation Gain/Monitoring Framework

Net conservation gain is described in the Utah GRSG PLUPA/FEIS Glossary (Glossary-19) as “The actual benefit or gain above baseline conditions” and is addressed again in section 2.1 Changes between the Draft LUPA/EIS and Proposed LUPA/Final EIS (p. 2-1). The Net Conservation Gain strategy responds to the landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The action alternatives provide management direction to meet this landscape-scale goal (Table 2.5 Summary of Environmental Consequences, p. 2-290). Reference to a Monitoring Framework is made throughout the Utah GRSG PLUPA/FEIS and is addressed in Appendix C - Greater GRSG Monitoring Framework and describes both a process and a standard to be achieved by implementing management direction. Being a standard to attain does not require it to be varied between the action alternatives.

Lek Buffer Distances

A variety of approaches to managing disturbances near leks, including varying buffer distances, were evaluated in the Utah GRSG PLUPA/FEIS, as documented in FEIS Table 2.4 - Description of Draft Alternatives A, B, C1, C2, D, E1, and E2.

Adaptive Management and Triggers

The identification of hard and soft triggers is a strategy to address localized GRSG population and habitat changes by providing the framework in which management would change if monitoring identifies negative population and habitat anomalies. These triggers are essential for identifying when potential management changes are needed in order to continue meeting GRSG conservation objectives (Utah GRSG PLUPA/FEIS, Adaptive Management Triggers p. 2-68). These adaptive management strategies would be developed in partnership with a multi-agency group incorporating the best available science. Being a strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require triggers to be varied between the action alternatives.

Transmission Line Exemptions

The exemption identified in the Utah GRSG PLUPA/FEIS (Section 2.6 Proposed Plan Amendments, p. 2-31) is for two individual projects (i.e., Trans West and collocated portions of Gateway South). As BLM explains in the Utah GRSG PLUPA/FEIS, the processing of applications for the individual projects is well under way and through the respective NEPA

project review process; GRSG mitigation measures are being considered and analyzed in a range of alternatives specific to the individual projects.

No Action Alternative Incorrectly Described

Section 2.8.1 Alternative A (No Action) describes the current management for resources and resource uses from existing LUPs. GRSG habitat would continue to be managed under this current management direction if not amended. In addition, Appendix I - Detailed No Action Alternative provides a list of land use planning decisions (BLM and Forest Service LUPs) that could be amended as a result of decisions being considered within the range of alternatives included in the Utah GRSG PLUPA/FEIS. Alternative A provides a baseline for comparing the other alternatives as per CEQ guidance and provides the current management direction and prevailing conditions derived from the existing RMPs. The No Action Alternative for the Utah GRSG PLUPA/FEIS therefore represents the current existing management direction that lacks the regulatory mechanisms being analyzed in the action alternatives. This plan direction results in the management of GRSG habitat on BLM and Forest Service administered lands and does not affect the management of GRSG (e.g., populations, numbers, and hunting seasons) which is solely the responsibility of the UDWR. The data provided by the State of Utah in September 2012 was an identification of which areas of GRSG habitat they were selecting to prioritize as a result of their process. Areas of occupied habitat outside the state's priorities, identified as GRSG Management Areas, were never purported as no longer providing any habitat for GRSG, just that the state was not selecting to manage them in those locations. The BLM and Forest Service are required to consider and analyze the entirety of a species range and habitats when considering impacts and developing management. The state's prioritization was taken into consideration in the draft and final EIS as Alternative E.

The BLM and Forest Service considered a reasonable range of alternatives in full compliance with NEPA.

Purpose and Need

Issue Number: PP-UT-GRSG-15-15-33

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Indulging the Department's notion that the USFWS determination is the substantial equivalent of an ESA Sec. 4 listing for purposes justifying the LUPA/EIS, it would appear the Department's resulting LUPA/EIS contradicts the Congressional GRSG spending Moratorium. The Department's treating the LUPA/EIS as a response to an ESA Sec. 4 finding makes the LUPA/EIS an effective written rule to

address the Sec. 4 finding, thus contradicting the spending moratorium of Sec. 122 of Title I, Division F, 2015 spending law, PUBLIC LAW 113-235- DEC. 16, 2014 128 STAT. 2131, prohibiting the Department's use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the ESA for GRSG. The LUPA/EIS is in every material respect such a proposed set of rules for the GRSG, admittedly done as a result of and to redress the USFWS' ESA Sec. 4 "threatened but precluded" determination, which the Department is currently fictionalizing as an outright "threatened" determination. Fictionalizing has its consequences; here it is the running afoul of

the Congressional GRSG spending Moratorium.

Issue Number: PP-UT-GRSG-15-15-68

Organization: Garfield County Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS at Chapter 1 arbitrarily and capriciously presumes that FWS effectively “found” and “determined” a significant enough threat to the GRSG exists to materially amend the LUP As, even though the FWS found a threat for only two of five of the Section 4(a)(1) listing factors and thus issued a “precluded” conclusion.

Issue Number: PP-UT-GRSG-15-15-69

Organization: Garfield County Commission

Protestor: Brian Bremner

Issue Excerpt Text: Garfield County indulged the Bureau of Land Management and the Forest Service’s false notion that the FWS determination is the substantial equivalent of an ESA Sec. 4 listing for purposes justifying the PPLUPA, it would appear the resulting LUPA/FEIS contradicts the Congressional GRSG spending Moratorium currently in place. Bureau of Land Management and the Forest Service cannot have it both ways. Treating the LUPA/FEIS as a response to an imagined ESA Sec. 4 finding makes the LUPA/FEIS out to be a glaring violation of the Congressional spending moratorium Sec. 122 of Title I, Division F, 2015 spending law, Public Law 113-235, December 16 2014, 128 Stat. 2131, prohibiting the Department's use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the ESA for greater GRSG. The LUPA/FEIS is in every material respect such a proposed set of rules for the GRSG,

admittedly done as a result of and to redress the FWS’ ESA Sec. 4 “threatened but precluded” determination, which the Department is currently fictionalizing as an outright “threatened” determination. Fictionalizing has its consequences; here it's the running afoul of the Congressional GRSG spending Moratorium.

Issue Number: PP-UT-GRSG-15-18-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of BLM’s own experts regarding necessary measures to protect GRSG habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and/or restore GRSG Habitat.”

Issue Number: PP-UT-GRSG-15-18-5

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In order to remedy the inadequacy of regulatory mechanisms identified by USFWS, the BLM must address the two-pronged test under the Policy on the Effectiveness of Conservation Efforts (“PECE Policy”), which requires that conservation measures be effective according to the best available science and have certainty of implementation (68 Fed. Reg. 15115). The BLM observes, “Regulatory certainty will be an important factor in the USFWS’s decision on whether to list the GRSG under the ESA; however, regulatory certainty alone would not be enough for USFWS to not list the species.”

Issue Number: PP-UT-GRSG-15-18-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: One of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are likely to undermine the intent of the protective measure in question.

Issue Number: UT-GRSG-15-22-8

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: The triggers described in Appendix B of the PLUPA/FEIS allow for extreme population and habitat losses before any meaningful changes to management occur. Soft triggers allow for a 40% decrease in population or a 10% loss of habitat while hard triggers allow for an 80% decrease in population or a 20% loss of habitat before changes are implemented. Because these triggers are only tripped if significant declines occur during a certain timeframe, declines outside of these timeframes would not be calculated into a trigger. In addition, because there is no population baseline set, the GRSG population in a BSU could still decline 80% from current levels if they happen slowly over a period without tripping any triggers. Combine this with the already documented 50% decline in GRSG numbers in Utah only populations between 2007 and 2013 (see Garton et al 2015), and it is apparent that the PLUPA/FEIS fails to conserve, protect, and enhance GRSG populations.

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

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

Protestor: Not Named

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

Issue Number: PP-UT-GRSG-15-27-26

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS at Chapter 1 arbitrarily and capriciously presumes that USFWS effectively “found” and “determined” a significant enough threat to the GRSG to materially amend the LUPAs, even though the USFWS found a threat for only two of five of the Section 4(a)(1) listing factors and thus issued a “precluded” conclusion.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: Alternatively if we indulge the BLM/USFS’s false notion that the USFWS determination is the substantial equivalent of an ESA Sec. 4 listing for purposes justifying the PPLUPA, it would appear the resulting LUPA/FEIS contradicts

the Congressional GRSG spending Moratorium currently in place. The BLM/USFS cannot have it both ways: Treating the LUPA/FEIS as a response to an imagined ESA Sec. 4 finding makes the LUPA/FEIS out to be a glaring violation of the Congressional spending moratorium Sec. 122 of Title I, Division F, 2015 spending law, Public Law 113–235, December 16, 2014 128 Stat. 2131, prohibiting the Department’s use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the ESA for GRSG. The LUPA/FEIS is in every material respect such a proposed set of rules for the GRSG, admittedly done as a result of and to redress the USFWS' ESA Sec. 4 “threatened but precluded” determination which the Department is currently fictionalizing as an outright “threatened” determination. Fictionalizing has its consequences; here it’s the running afoul of the Congressional GRSG spending Moratorium.

Issue Number: PP-UT-GRSG-15-27-28

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS if finalized despite a “not warranted” decision by the USFWS, is likely to wreak greater harm to the State and counties than a “warranted” decision would. At least a USFWS “warranted” decision that could be legally challenged. That alone is grounds for legal challenge to the LUPA/FEIS because it end runs around the Congressional Moratorium and subverts the role of USFWS itself.

Issue Number: PP-UT-GRSG-15-27-29

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS violates NEPA's requirement that and EIS must be justified by a purpose and need. In the face of the USFWS “not warranted” context and a Congressional moratorium in place against any further USFWS listing decision for the GRSG, there is purpose or need LUPA/FEIS. It is just an arbitrary agenda-driven end run game for who knows what reason.

Issue Number: PP-UT-GRSG-15-28-25

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS at Chapter 1 arbitrarily and capriciously presumes that USFWS effectively “found” and “determined” a significant enough threat to the GRSG exists to materially amend the LUPAs, even though the USFWS found a threat for only two of five of the Section 4(a)(1) listing factors and thus issued a “precluded” conclusion.

Issue Number: PP-UT-GRSG-15-28-26

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: Alternatively, if we indulge the BLM/USFS's false notion that the USFWS determination is the substantial equivalent of an ESA Sec. 4 listing for purposes justifying the PPLUPA, it would appear the resulting LUPA/FEIS contradicts the Congressional GRSG spending moratorium currently in place. The BLM/USFS cannot have it both ways. Treating the LUPA/FEIS as a response to an imagined ESA Sec. 4 finding makes the LUPA/FEIS out to be a glaring violation of the Congressional spending moratorium Sec. 122 of Title I, Division F, 2015 spending law, Public Law 113–235—DEC. 16, 2014

128 Stat. 2131, prohibiting the Department's use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the ESA for GRSG. The LUPA/FEIS is in every material respect such a proposed set of rules for the GRSG, admittedly done as a result of and to redress the USFWS' ESA Sec. 4 “threatened but precluded” determination, which the Department is currently fictionalizing as an outright “threatened” determination. Fictionalizing has its consequences; here it’s the running afoul of the Congressional GRSG spending Moratorium.

Issue Number: PP-UT-GRSG-15-28-27
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS if finalized in the context of a “not warranted” decision by USFWS is likely to wreak greater harm to the State and the County than a “warranted” decision that could be legally challenged would. That alone is grounds for legal challenge. Moreover, the LUPA/FEIS is an arbitrary measure in any event given the “not warranted” context with a Congressional moratorium in place against any further USFWS listing decision for the GRSG. There is no purpose or need. Just an arbitrary agenda-driven end run game for who knows what reason.

Issue Number: PP-UT-GRSG-15-38-30
Organization: Piute County
Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA-BIS at Chapter 1 arbitrarily and capriciously presumes that FWS effectively found and determined a significant enough threat to the GRSG exists to materially amend the LUPAs, even though the FWS found a threat for only two of five of the Section

4(a)(1) listing factors and thus issued a “precluded” conclusion. Those threats are not applicable to the Parker Mountain population area in Piute County. Piute County demands that the inconsistencies between the perceived threats and the actual threats to the Parker Mountain population area in Piute County be resolved.

Issue Number: PP-UT-GRSG-15-38-31
Organization: Piute County
Protestor: Rick Blackwell

Issue Excerpt Text: If Piute County indulged the BLM/FS's false notion that the FWS determination is the substantial equivalent of a BSA Sec. 4 listing for purposes justifying the PPLUPA, it would appear the resulting LUPA-BIS contradicts the Congressional GRSG spending Moratorium currently in place. BLM/FS cannot have it both ways. Treating the LUPA-BIS as a response to an imagined BSA Sec. 4 finding makes the LUPA/FIBS out to be a glaring violation of the Congressional spending moratorium Sec. 122 of Title I, Division F, 2015 spending law, Public Law 113-235-DBC. 16, 2014 128 Stat. 2131, prohibiting the Department's use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the BSA for GRSG. The LUPA-EIS is in every material respect such a proposed set of rules for the GRSG, admittedly done as a result of and to redress the FWS' BSA Sec. 4 “threatened but precluded” determination, which the Department is currently fictionalizing as an outright “threatened” determination. Fictionalizing has its consequences; here it's the running afoul of the Congressional GRSG spending Moratorium.

Issue Number: PP-UT-GRSG-15-40-24
Organization: Juab County Commission

Protestor: Clinton Painter

Issue Excerpt Text: The LUPA/FEIS at Chapter 1 arbitrarily and capriciously presumes that USFWS effectively found and determined a significant enough threat to the GRSG exists to materially amend the LUPAs, even though the USFWS found a threat for only two of five of the Section 4(a)(1) listing factors and thus issued a “precluded” conclusion.

Issue Number: PP-UT-GRSG-15-40-25

Organization: Juab County Commission

Protestor: Clinton Painter

Issue Excerpt Text: Alternatively, if we indulge the BLM/USFS's false notion that the USFWS determination is the substantial equivalent of an ESA Sec. 4 listing for purposes justifying the PPLUPA, it would appear the resulting LUPA/FEIS contradicts the Congressional GRSG spending Moratorium currently in place. BLM/USFS

Summary:

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

- the best available science has not been used; and
- protecting Greater GRSG habitat from the effects of livestock grazing is without factual basis.

In addition, the Utah GRSG PLUPA/FEIS, including its purpose and need statement, is inconsistent with the Congressional moratorium against the USFWS to not make a listing determination.

Response:

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

cannot have it both ways. Treating the LUPA/FEIS as a response to an imagined ESA Sec. 4 finding makes the LUPA/FIES out to be a glaring violation of the Congressional spending moratorium Sec. 122 of Title I, Division F, 2015 spending law, Public Law 113-235, December 16, 2014 128 Stat. 2131, prohibiting the Department’s use of Congressional funds to write or issue a proposed rule pursuant to section 4 of the ESA for greater sage grouse. The LUPA/FEIS is in every material respect such a proposed set of rules for the GRSG, admittedly done as a result of and to redress the USFWS’ ESA Sec. 4 “threatened but precluded” determination, which the Department is currently fictionalizing as an outright “threatened” determination. Fictionalizing has its consequences; here it’s the running afoul of the Congressional GRSG spending Moratorium.

10 – Environmental Analysis). Public Law 113-235 Section 122 states “None of the funds made available by this or any other Act may be used by the Secretary of the Interior to write or issue pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533): (1) a proposed rule for GRSG (*Centrocercus urophasianus*)”. This spending law prohibits the use of allocated funds on proposed rules and a listing decision on GRSG. As the LUPA/EIS does not attempt to propose rules or listing provisions pursuant to section 4 of the ESA, this moratorium does not apply to this planning effort.

For detailed discussion related to the need to use the Best Available Science and use of the COT and NTT reports, please refer to the response to those specific protests in this report.

The management actions developed and analyzed in the alternatives for this Proposed RMP Amendment included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8): “GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

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

Cumulative Effects

Issue Number: PP-UT-GRSG-15-20-11

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The release of the Executive Order constitutes significant new information that the Agencies must consider in a Draft LUPA because it affects the analysis of the cumulative impacts of the Agencies’ management strategy on GRSG habitat and populations.

Issue Number: PP-UT-GRSG-15-20-17

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Proposed LUPA/FEIS does not adequately analyze the

cumulative impacts of the Proposed LUPA because it does not consider the impacts of the Proposed LUPA together with the impacts of the at least 13 other GRSG LUPAs. See 80 Fed. Reg. 30,676 (May 29, 2015). The CEQ regulations require agencies to analyze the “incremental impact of the action” together with “other past, present, and reasonably foreseeable future actions” (40 CFR § 1508.7). In this case, the Agencies should have analyzed the cumulative impacts of the Proposed LUPA with the other 13 LUPAs. Clearly, development of the EISs was a coordinated national effort by the Agencies. The Agencies announced the LUPAs and made them available on the same day (See 80 Fed. Reg. 30,718 (May 29, 2015); 80 Fed. Reg. 30,716 (May 29, 2015); 80 Fed. Reg. 30,714 (May 29, 2015); 80 Fed. Reg. 30,711 (May

29, 2015); 80 Fed. Reg. 30,709 (May 29, 2015); 80 Fed. Reg. 30,707 (May 29, 2015); 80 Fed. Reg. 30,705 (May 29, 2015); 80 Fed. Reg. 30,703 (May 29, 2015); see also Dep't of the Interior Press Release, BLM, USFS Plans for Western Public Lands Provide for GRSG Protection, Balanced Development (May 28, 2015)). Moreover, many of the Proposed LUPA contain consistent, if not standardized, provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of the LUPAs propose to impose NSO stipulations with limited waiver and modification on new leases in PHMA. All of them require that compensatory mitigation yield a "net conservation gain."

Issue Number: PP-UT-GRSG-15-20-18

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Agencies must analyze the cumulative impacts of these nation-wide management actions on the greater GRSG and, in particular, the cumulative impacts on mineral leasing and development. In the planning area for the Proposed LUPA alone, more than 3.2 million acres are designated for leasing subject to NSO and 138,500 acres are closed to mineral leasing entirely (See Proposed LUPA/Final EIS at 2-78). Throughout GRSG range, the BLM and the Forest Service propose to designate an additional 31 million mineral acres as subject to NSO stipulations and close an addition 2.8 million acres to future leasing. The Agencies have

Summary:

The PLUPA/FEIS has not adequately analyzed cumulative impacts related to:

- new information from the [State of Utah] Executive Order;
- Utah's state 15-year plan for conifer removal (fire reduction);
- additive impacts of all RMPs; and

not, however, examined the cumulative impacts of their management actions on federal oil and natural gas leasing and development. See Proposed LUPA/Final EIS at Chapter 5. The Agencies must analyze these cumulative impacts in an EIS before they issue a ROD and Final LUPA.

Issue Number: PP-UT-GRSG-15-32-13

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The state objects to the implication that federal regulatory action provides the "greatest" net conservation gains to habitat for the species. For example, the state has developed a 15-year conifer removal plan, which will significantly reduce the fuel load in critical areas. This plan will assist with the reduction in the potential for fire, and allows more useable landscape for the individual birds. This is conservation far beyond simple restrictions as proposed by BLM and Forest Service, and is completely ignored in the cumulative effects section of the FEIS.

Issue Number: PP-UT-GRSG-15-38-11

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: The BLM and FS arbitrarily place restrictions on all landforms within the unjustifiable population area boundaries. This creates undue and unnecessary impacts on socio-economic conditions in Piute County and ignores best science requirements. None of these factors were disclosed in the LUPA/EIS

- impacts to mineral leasing and development

Response:

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

The BLM and Forest Service have complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Chapter 5 of the Utah GRSG PLUPA/FEIS provides analysis of impact from implementation of GRSG conservation measures on mineral leasing, conifer removal and various types of development. The cumulative impacts section (Chapter 5) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource. As indicated on page 5-5, the Utah GRSG PLUPA/FEIS acknowledges other planning actions including the Executive Order 2015/002.

As described on page 5-2 of the Utah GRSG PLUPA/FEIS, because the analysis tends to be broad and generalized, the cumulative effects assessment is primarily qualitative for most resources because of lack of detailed information that would result from project-level decisions and other activities or projects. Quantitative information is used whenever available and as appropriate to portray the magnitude of an impact. The analysis assesses the magnitude of cumulative impacts by comparing the environment in its baseline condition with the expected impacts of the alternatives and other actions in the same geographic area.

Page 5-2 to 5-3 of the Utah GRSG PLUPA/FEIS describes the geographic scope for the cumulative impacts analysis. Spatial boundaries vary and are larger for resources that are mobile or migrate (e.g., migratory birds) compared with stationary resources. Occasionally, spatial boundaries could be contained within the planning area boundaries or an area within the planning area. Spatial boundaries were developed to facilitate the analysis and are included under the appropriate resource section heading. The cumulative effects analysis for all topics included an analysis of cumulative effects at the planning area level. For Special-Status Species GRSG, cumulative effects analysis included an analysis at the WAFWA Management Zones II, III, IV, and VII levels, in addition to the planning-level analysis. The cumulative impact analysis area for fluid minerals is the planning area as described on page 5-183 of the Utah GRSG PLUPA/FEIS. This delineation of the impact area is the reason why the other GRSG plan amendments were not included in this analysis.

The beneficial impacts of the state's program for conifer removal are described in the Utah GRSG PLUPA/FEIS on pages 5-46 and 5-86.

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

The BLM and Forest Service adequately analyzed cumulative effects in Utah GRSG PLUPA/FEIS.

Public Comments

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

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: Jeff Richards

Issue Excerpt Text: Rocky Mountain Power submits the following protest on the Utah LUPA FEIS as it adversely affects our ability to serve our customers and did not adequately address comments that were submitted previously on the DEIS/LUPA on January 29, 2014.

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

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: It is clear from reading the proposed plan amendments that Carbon County's positions were never not even considered, and that its comments on the DEIS and the AFEIS were similarly ignored.

Issue Number: PP-UT-GRSG-15-04-3

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: The Memorandum of Understanding (MOU) in place between Carbon County and the BLM states in Section 6 that the "BLM and Carbon County also acknowledge that the State of Utah is

currently in the process of developing a state-wide GRSG management plan. To the extent that Carbon County also adopts an amendment to the General Plan and applicable ordinances to address GRSG management within the County, such input will be considered and used to the maximum extent possible, consistent with the responsibilities of the lead agency."

Issue Number: PP-UT-GRSG-15-20-19

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: With respect to the Proposed LUPA, the Trades submitted extensive and detailed comments on the RDFs listed in Appendix H of the Draft LUPA/Draft EIS (See Trade Comments at 30-35). The Agencies, however, made few substantive changes to the RDFs between draft and final, though they added some RDFs. Compare Proposed LUPA/Final EIS, App. G with Draft LUPA, App. H. Additionally, the Agencies only generally acknowledged that comments made about the RDFs, but did not explain why they declined to adjust certain RDFs in response to the Trades' comments and did not "[e]xplain why the comments do not warrant further response" (See 40 CFR § 1503.4(a); see Proposed LUPA/Proposed FEIS at X-32,

X-33, X-36, X-38, X-55). Therefore, the Agencies have not provided the response to comments as required by the CEQ regulation.

Issue Number: PP-UT-GRSG-15-20-42

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-25-5

Organization: Snell & Wilmer LLP obo: Alton Coal Development, LLC

Protestor: Denise Dragoo

Issue Excerpt Text: The BLM has not assessed the impacts of designating the South Panguitch Population Area as Priority Habitat. Moreover, the BLM has not disclosed the basis for the designation necessary to allow for public comment. In January 2014, Alton Coal submitted comments to the DEIS that included monitoring data for the years 2006 through 2013 showing how their mitigation activities increased GRSG population and improved GRSG habitat in the area. The BLM failed to respond to or even acknowledge Alton Coal's comments in its FEIS proposal to increase restrictions within the Alton Coal

tract from the current General Habitat designation. The BLM's designation of the South Panguitch Area as Priority Habitat is, therefore, inconsistent with NEPA.

Therefore, the BLM unlawfully failed to meet its procedural obligations under NEPA, and its designation of the South Panguitch Area as Priority Habitat must be reversed.

Issue Number: PP-UT-GRSG-15-25-7

Organization: Snell & Wilmer LLP obo: Alton Coal Development, LLC

Protestor: Denise Dragoo

Issue Excerpt Text: On January 29, 2014, Alton Coal submitted comments and a report by Dr. Steve Petersen in response to the LUPA DEIS. Dr. Petersen's report provided data demonstrating that only 151.4 acres of the 3,500 federal lease tract located in the Panguitch Population Area included GRSG brooding habitat. Alton Coal requested that the BLM consider Dr. Petersen's report in calculating occupied habitat for the South Panguitch Population Area. BLM failed to respond to, or acknowledge, additional information submitted by Alton Coal. The BLM did not modify or develop an alternative analysis reflecting significantly reduced brooding and rearing habitat data presented by Dr. Petersen. Further, the BLM did not evaluate or explain why no further response was warranted regarding Dr. Petersen's findings. Rather, without providing any reasoned basis, the BLM disregarded this information and expanded Priority Habitat designation to include the entire federal lease tract to include unoccupied habitat areas dominated by invasive pinyon-juniper species.

Summary:

The BLM did not adequately address comments that were received on the Utah GRSG PLUPA/FEIS. The BLM received comments on the Required Design Features (RDF, called BMPs in the Draft) but did not make any substantive changes to the RDFs between draft and

final and did not explain why the comments do not warrant further response. The BLM failed to respond to or even acknowledge comments pertaining to the EIS proposal to increase restrictions from the current general habitat designation. Comments pertaining to Memoranda of Understanding in place were similarly ignored.

Response:

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

40 CFR 1503.4: Response to Comments

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

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (40 CFR 1502.19). The entire document with a new cover sheet shall be filed as the final statement (40 CFR 1506.9).

The BLM and USFS received 1,138 substantive comments on the draft Utah LUPA/EIS. See Section 6.7.4, Public Comments on the Draft LUPA/EIS, for a detailed description of the comments received during the public comment period, as well as the comment analysis methodology used. Appendix X, Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement, includes summaries of substantive comments received and responses to those summaries.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft LUPA/EIS, the BLM and Forest Service have developed the Proposed LUPA/Final EIS for managing BLM-administered and National Forest System lands within the Utah Sub-region. The Proposed LUPA/Final EIS focuses on addressing public comments, while continuing to meet the BLM's and Forest Service's legal and regulatory mandates. Chapter 1 (section 1.12) is an outline of all the changes between the draft LUPA/EIS and Proposed LUPA/FINAL EIS that resulted from these public comments, best science, coordination with cooperators and internal review (1-28).

Allocations were changed from being lek centric, using 1- and 4-mile buffers, to applying to the entire areas that GRSG populations use at some point during their yearly life-cycle (e.g., breeding, nesting, brood-rearing, late brood-rearing, transitional, and winter habitats), as well as adjacent areas where actions could affect GRSG. This change is consistent with the approaches considered in Alternatives B, C, and E. Further, the allocations applied in the Proposed Plans (e.g., NSO for fluid minerals, avoidance for ROWs, closure for mineral materials and nonenergy leasable minerals, and limited for travel) were all analyzed within the range of alternatives considered. While allocations were adjusted to apply to populations, the importance of habitat near leks, as reflected in numerous scientific studies, was maintained through consideration and application of lek buffers at the implementation level (see Appendix F) (Utah GRSG PLUPA/FEIS at 2-2)

Several commenters provided additional citations, references, and information to be considered as part of the Draft LUPA/EIS. The BLM and Forest Service reviewed the suggested studies and references to determine if they presented new information that would need to be incorporated into the Proposed LUPA/Final EIS, were references already included in the Draft LUPA/EIS, or if the references provided the same information as already used or described in the Draft LUPA/EIS. Any study or reference that provided new relevant information was incorporated into the Proposed LUPA/Final EIS (Appendix X at 24).

The BLM is aware that there are specific state laws and local plans relevant to aspects of public land management that are discrete from, and independent of, federal law. However, the BLM is bound by federal law. Consequently, there may be inconsistencies that cannot be reconciled. The FLPMA and its implementing regulations require that BLM LUPs be consistent with officially approved state and local plans only if those plans are consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. Where officially approved state and local plans or policies or programs conflict with the purposes, policies, and programs of federal law applicable to public lands, there will be an inconsistency that cannot be resolved. With respect to officially approved state and local policies and programs (as opposed to plans), this consistency provision only applies to the maximum extent practical. While county and federal planning processes, under the FLPMA, are required to be as integrated and consistent as practical, the federal agency planning process is not bound by or subject to state or county plans, planning processes, policies, or planning stipulations.

Please see Chapter 6 of the FEIS (Consultation, Coordination, and Consistency) for a complete report of the process used by the agencies to address and respond to comments from State, Tribal, and local government management plans throughout the Draft DEIS process, starting on page 6-9. Section 6.7.4 on page 6-17 addresses the agency's response to public comments.

The BLM has provided adequate opportunity for comments, has considered all comments and responded adequately to comments received for the Utah GRSG PLUPA/FEIS.

Cooperating, Joint, and Lead Agencies

Issue Number: PP-UT-GRSG-15-04-5
Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: Carbon County's entire Ordinance #452 has been ignored and disregarded by the BLM and USFS in their proposed plan amendments. Such action runs contrary to the provisions of Section 6 of the Cooperating Agency MOU, as well as the MOU.

Issue Number: PP-UT-GRSG-15-13-11
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-13-11
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch.

The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-13-12
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-13-3
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements: The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 U.S.C. 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

Issue Number: PP-UT-GRSG-15-14-3

Organization: Morgan County
Commission

Protestor: Logan Wilde

Issue Excerpt Text: BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements: The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 USC 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

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

Organization: Morgan County
Commission

Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA (“PPLUPA”). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-14-9

Organization: Morgan County
Commission

Protestor: Logan Wilde

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: However, despite the execution of various Cooperating Agency Memoranda of Understanding with Garfield County, the Departments of the Interior and Agriculture withheld the entire proposed EIS and proposed plan from local governmental cooperators until the last minute rule forced Garfield County into a compromised position. The BLM/FS could have released the document in sections, could have provided meaningful involvement, and could have reduced duplication and delay. However, they chose to make it as difficult as possible on Garfield County and other cooperators. The request for additional time was rejected. This decision of the Interior Department does not meet the intent of the coordination provisions of the Federal Land Policy and Management Act and NFMA.

Issue Number: PP-UT-GRSG-15-15-19

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Garfield County was not given sufficient time to review and comment on the proposed LUP A and Final EIS. All of these- and other- flaws were in the control of BLM/FS, but for reasons known only to them were instituted in violation of law. Garfield County was provided insufficient time to coordinate with its partners in conservation, the other cooperating agencies, particularly the State of Utah and neighboring counties that share population areas. Garfield County incorporates the State of Utah's and neighboring counties' comments by reference as points to be resolved as the protest process unfolds. Garfield County specifically requests that Cooperating Agency comments be given full consideration before the final documentation is released publically. As a cooperating agency Garfield County requests the opportunity to be involved in the protest analysis process for comments that impact the Panguitch GRSG population area and/or the Parker Mountain GRSG population area.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: 40 CFR 1501.6 (a) (3) requires federal agencies meet with cooperating agencies at the latter's request. Garfield County requested opportunity to meet with the BLM/FS personnel in order to discuss areas of the County's special expertise. The BLM/FS rebuffed the County's request, in violation of the regulation, and issued a no communication, cooperation and/or coordination mandate in formal correspondence issued October 30,

2014. The correspondence confirmed BLM/FS association throughout the process.

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

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The BLM/FS failed to consider Garfield County's land use knowledge when defining habitat. No consideration is given the County's knowledge and no alternative considers the County's refined site specific mapping of GRSG habitat. Failure to consider the County's mapping in reasonable alternatives violates consistency and coordination requirements and is contrary to the Cooperating Agency MOU which recognizes the County's knowledge in this area.

Issue Number: PP-UT-GRSG-15-15-63

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: Garfield County had no involvement in preparation of alternatives, review and analysis of public comments, substantive discussions regarding habitat, threats and other issues. For example, Garfield County was given only two weeks to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. Bureau of Land Management and the Forest Service treatment of Garfield County goes beyond its illegal self-imposed deadline. It constitutes a concerted effort to violate federal law. The BLM, in particular, is in violation of FLPMA and policies expressed in its Desk Guide for Cooperating Agencies and Coordination. Bureau of Land

Management and the Forest Service have not provided reasonable and meaningful participation and coordination with cooperating agencies. Garfield County has not had any meaningful opportunity to review and comment on the PPLUP A, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-15-64

Organization: Brian Bremmer

Protestor: Brian Bremmer

Issue Excerpt Text: The Bureau of Land Management and the Forest Service made no effort to discuss with Garfield County any inconsistencies between the LUPA/FEIS favored action and the County Plan, particularly for the Panguitch and southern Parker Mountain population areas in Garfield County. The LUPA/FEIS also failed to describe the extent to which Bureau of Land Management and the Forest Service would reconcile its proposed action with the State Plan and with Garfield County's refinement, especially for the Panguitch and southern Parker Mountain population areas in Garfield County. There was no effort of which the County is aware, by the Bureau of Land Management and the Forest Service to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-15-65

Organization: Garfield County Commission

Protestor: Brian Bremmer

Issue Excerpt Text: As for the obligation of Bureau of Land Management and the Forest Service Council on Environmental

Quality's Answers to the 40 Most Asked Questions, Number 23(a) (The lead agency must inquire of a county cooperating agency whether there are any potential conflicts between the proposed action and the state and local laws and plans, or if conflicts could arise in the future, and the lead agency must ensure that the NEPA document will acknowledge, describe and explain the extent of those conflicts, ensure that the NEPA document will evaluate the seriousness of the impact of the proposed action on the state and local land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area), it was admittedly impossible for Bureau of Land Management and the Forest Service to have done all this in the short two-week time frame given between issuance of the PPLUPA and the county's deadline to comment upon!

Issue Number: PP-UT-GRSG-15-16-1

Organization: Iron County Commission

Protestor: Dale Brinkerhoff

Issue Excerpt Text: The Proposed Land Use Plan Amendments and Final EIS (PLUPA-FEIS) in Chapter 1 professes participation and coordination with cooperating agencies. Iron County takes issues with these statements because, in both the Draft EIS and the Administrative draft documents, cooperating agencies were given very little time to study them and provide meaningful responses. In our opinion two weeks is not reasonable to review such a large document, and is contrary with the Memorandum of Agreement signed as a cooperating agency. The PLUPA-FEIS in Chapter 1 professes compliance with 43 CFR Part 1600. 43 CFR 1610.3-1 obligates the Department to meaningfully coordinate with the County in the promulgation of the PLUPA-FEIS. Section 1610.3-1(c) in

particular obligates the BLM State Directors and Field Managers to provide opportunity for review, advice, and suggestion. In addition, the PLUPA-FEIS is left without good discussion with cooperating agencies as afforded in the MOU, leaving protests and court actions as the only recourses available for counties to remedy disagreements, which is contrary to the purpose of NEPA, the coordination requirements of FLPMA, and is arbitrary and capricious, giving statements that are contrary to the actual acts cited above.

Issue Number: PP-UT-GRSG-15-23-4
Organization: Iron County Commission
Protestor: Dale Brinkerhoff

Issue Excerpt Text: The BLM has failed to “provide for meaningful public involvement of State and local government officials, both elected and appointed” as required by 43 USC 1712(c)(9). The BLM failed to act in accordance with the Memorandum of Understanding (MOU) entered into with Carbon County to establish a Cooperating Agency relationship during the development of the Resource Management Plan Amendments and EIS for the proposed GRSG National Planning Strategy, Utah Sub-Region. This MOU states, in Section 1, that the “BLM shall use the analysis and proposals of the County...to the maximum extent possible, in the preparation of the EIS.” The BLM’s FEIS conflicts with the MOU as it does not reflect the County’s analysis and proposals.

Issue Number: PP-UT-GRSG-15-23-5
Organization: Public Lands Council / National Cattlemen's Beef Association / Utah Cattlemen's Association
Protestor: Not Named

Issue Excerpt Text: The BLM has failed to provide for “meaningful public

involvement of State and local government officials, both elected and appointed,” in the development of the proposed land use plan amendments. The BLM provided an unreasonably short time frame for state and local government officials to review and comment on the DEIS and the FEIS. The State of Utah expressed its frustration and that of the Counties regarding the lack of time to review the DEIS by letter dated June 26, 2013. The request for an additional 60 days to review the DEIS was denied. Although Utah BLM State Director Juan Palma did extend the comment period from June 10 – June 24, 2013 to June 10 – July 1, 2013, this was still insufficient time for meaningful public involvement of State and local government officials.

Issue Number: PP-UT-GRSG-15-27-21
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given to the State of Utah and the counties to review and comment on the GRSG Preliminary Proposed LUPA (“PPLUPA”). The counties should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The counties have not had meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination. The Department should start over and give 60-90 days to the cooperating agencies to review and comment on the PPLUPA.

Issue Number: PP-UT-GRSG-15-27-23

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: As for the obligation of BLM/USFS under Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 23(a) (The lead agency must inquire of county cooperating agencies whether there are any potential conflicts between the proposed action and the state and local laws and plans, or if conflicts could arise in the future, and the lead agency must ensure that the NEPA document will acknowledge, describe and explain the extent of those conflicts, ensure that the NEPA document will evaluate the seriousness of the impact of the proposed action on the state and local land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area), it was admittedly impossible for the BLM/USFS to have done all this in the short two-week time frame given between issuance of the PPLUPA and the counties' deadline to comment upon it.

Issue Number: PP-UT-GRSG-15-28-20

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful

opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination. The Department should start over and give 60-90 days to the cooperating agencies to review and comment on the PPLUPA.

Issue Number: PP-UT-GRSG-15-28-22

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: As for the obligation of BLM/USFS Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 23(a) (The lead agency must inquire of a county cooperating agency whether there are any potential conflicts between the proposed action and the state and local laws and plans, or if conflicts could arise in the future, and the lead agency must; ensure that the NEPA document will acknowledge, describe and explain the extent of those conflicts, ensure that the NEPA document will evaluate the seriousness of the impact of the proposed action on the state and local land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area), it was admittedly impossible for the BLM/USFS to have done all this in the short two-week time frame given between issuance of the PPLUPA and the county's deadline to comment upon it.

Issue Number: PP-UT-GRSG-15-33-10

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the

county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-33-3

Organization: Daggett County
Commission

Protestor: Karen Perry

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements:

a. The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 USC 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

Issue Number: PP-UT-GRSG-15-33-9

Organization: Daggett County
Commission

Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90

days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

Issue Number: PP-UT-GRSG-15-38-25

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: Piute County's information regarding site specific habitat the Parker Mountain population area in Piute County were totally ignored. The BLM/FS omitted any salient features from Piute County's GRSG Conservation Plan. Piute County had no involvement in preparation of alternatives, review and analysis of public comments, substantive discussions regarding habitat, threats and other issues. For example, Piute County was given only two weeks to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90 days as cooperating agencies to review and comment. BLM/FS treatment of Piute County goes beyond its illegal self-imposed deadline. It constitutes a concerted effort to violate federal law. The BLM, in particular, is in violation of FLPMA and policies expressed in its Desk Guide for Cooperating Agencies and Coordination. The BLM/FS have not provided reasonable and meaningful participation and coordination with cooperating agencies. Piute County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination. The Department should start over and give 60-90 days to the cooperating agencies to review and comment on the

PPLUPA. Alternatively, the BLM/FS can engage Piute County in substantive discussions which will resolve inconsistencies between the federal plan and Piute County's plan.

Issue Number: PP-UT-GRSG-15-38-27

Organization: Piute County

Protestor: Rick Blackwell

Issue Excerpt Text: As for the obligation of BLM/FS Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 23(a) (The lead agency must inquire of a county cooperating agency whether there are any potential conflicts between the proposed action and the state and local laws and plans, or if conflicts could arise in the future, and the lead agency must; ensure that the NEPA document will acknowledge, describe and explain the extent of those conflicts, ensure that the NEPA document will evaluate the seriousness of the impact of the proposed action on the state and local land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area), it was admittedly impossible for the BLM/FS to have done all this in the short two-week time frame given between issuance of the PPLUPA and the county's deadline to comment upon it.

Issue Number: PP-UT-GRSG-15-40-19

Organization: Juab County Commission

Protestor: Clinton Painter

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the GRSG Preliminary Proposed LUPA ("PPLUPA"). The County should have been given 60-90

days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination. The Department should start over and give 60-90 days to the cooperating agencies to review and comment on the PPLUPA.

Issue Number: PP-UT-GRSG-15-41-3

Organization: Beaver County Commission

Protestor: Michael Dalton

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation of FLPMA 202(c)(9). Resource Management Plan revisions must be coordinated with the land and resource management planning processes of State and local governments including counties. Very little attention was given to the Utah GRSG Plan.

Issue Number: PP-UT-GRSG-15-42-10

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The BLM/USFS made no effort to discuss with the county any inconsistencies between the LUPA/FEIS favored action and the State Plan which the county helped develop, much less the LUPA/FEIS failed to describe the extent to which BLM/USFS would reconcile its proposed action with the State Plan. There was no effort of which the County is aware, by the BLM/USFS to engage the County, as obligated by Council on Environmental Quality's Answers to the 40 Most Asked Questions, Number 14(b), to see if there are

any county environmental analyses and recommendations to be consulted.

Issue Number: PP-UT-GRSG-15-42-3

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The BLM and USFS have failed to meaningfully coordinate with the County in developing the LUPA/FEIS, in violation at one time or another, or multiple times, of the following statutory and Council on Environmental Quality (CEQ) regulatory requirements. The coordination and consistency requirements of FLPMA 202(c)(9), and the requirement of NFMA 16 USC 1604 that USFS land use resource management plan revisions be coordinated with the land and resource management planning processes of State and local governments including counties.

Issue Number: PP-UT-GRSG-15-42-9

Summary:

BLM and the USFS violate CEQ regulations, NEPA, and FLPMA because they did not properly coordinate with local governments and failed to achieve consistency with state and local plans. Local governments were not provided sufficient review time and cooperative opportunities were not meaningful.

Response:

Coordination and Cooperating Agency Status

The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. As Lead Agency, the BLM worked with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)). Federal agencies are directed by the CEQ regulations (40 CFR 1501.2) to consult early “with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.” Under NEPA, the BLM as Lead Agency is encouraged to consider granting cooperating agency status to local governments, resulting in the local government having a more hands on working relationship by contributing their expertise and local knowledge to either the NEPA and/or planning process. As a Cooperating Agency, the Forest Service has worked directly with the BLM to meet coordination and cooperating agency obligations for both agencies.

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS professes participation and coordination with cooperating agencies. This is belied by the fact that only about two weeks were given the State of Utah and the Counties to review and comment on the Greater Sage Grouse Preliminary Proposed LUPA (“PPLUPA”). The County should have been given 60-90 days as cooperating agencies to review and comment. This is not reasonable and meaningful participation and coordination with cooperating agencies under any stretch. The County has not had any meaningful opportunity to review and comment on the PPLUPA, and that equates to little or no cooperating agency opportunity for participation and coordination.

All cooperating agencies have been given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft Utah GRSG LUPA/EIS, and identification of issues and data during scoping and during the draft Utah GRSG LUPA/EIS public comment period. The Utah GRSG PLUPA/FEIS further describes the participation of cooperating agencies in Chapter 6 (Consultation and Coordination). The BLM provided as much notice of anticipated upcoming review times as possible to state and local governments as well as other interested parties. It is important to note that BLM and the Forest Service's comment response process for participating organizations and individuals do not treat comments received as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Utah GRSG LUPA/EIS, including those comments and issues identified from state and local governments.

Public participation efforts will be ongoing throughout the remainder of the LUPA process. A Governor's Consistency Review will take place concurrent with this protest period. Such protests will be addressed in the Records of Decision (RODs) and necessary adjustments may be made to the LUPA. RODs will then be issued by the BLM and the USFS after the release of the Proposed LUPA/Final EIS, the Governor's Consistency Review, and any resolution of protests received on the Utah GRSG PLUPA/FEIS.

The BLM and USFS properly involved all cooperating agencies in the development of the Utah GRSG LUPA/EIS. The BLM appreciates the state's and counties' involvement in the planning effort and will continue to coordinate as appropriate.

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

[Supplemental EIS](#)

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

Organization: American Petroleum Institute /
Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The net conservation gain requirement, revised mitigation and monitoring plans, adaptive management triggers, and lek buffer distances were not presented in the Draft LUPA. Although the

Draft LUPA acknowledged that the Proposed LUPA/Final EIS would include more details about the monitoring, see Draft LUPA/Draft EIS at E-8, this "placeholder" did not allow the public a meaningful opportunity to comment on the substance of the monitoring plan. The inclusion of the net conservation gain requirement, revised mitigation and monitoring plans, lek buffer distances, and adaptive management triggers and responses, coupled with the re-formulated alternative adopting components of the alternatives analyzed in the Draft EIS,

hence constitutes “substantial changes from the previously proposed actions that are relevant to environmental concerns” and should have been presented in a Supplemental Draft EIS for public comment.

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

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The management proposed under the Executive Order presents another management alternative that the Agencies should consider adopting. Because the Executive Order constitutes “significant new circumstances,” the Agencies must prepare a Supplemental Draft EIS.

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

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-21

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-8

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: None of the alternatives presented in the Draft LUPA included the requirements that mitigation produce a net conservation gain or the lek buffer distances or contained the adaptive management triggers and responses. BLM first presented the public with these components when it released the Proposed LUPA. See Proposed LUPA/Final EIS at 2-1 – 2-4.

Issue Number: PP-UT-GRSG-15-20-9

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, lek buffer distances, revised

monitoring plan, revised mitigation strategy, and the adaptive management triggers and responses were not incorporated into the Proposed LUPA and Final EIS in response to public comment on the Draft LUPA/Draft EIS or in response to environmental impacts disclosed in the Draft EIS (See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments)). Rather, the Agencies appear to have incorporated these components in response to national policies by BLM and FWS that were released after the Draft LUPA/Draft EIS was published and that were never formally offered for public comment (See Fact Sheet: BLM/USFS GRSG Conservation Effort (noting that land use plans to conserve the GRSG are based on three objectives for conserving and protecting habitat); USGS Report; BLM, The GRSG Monitoring Framework (2014); FWS, GRSG Range-Wide Mitigation Framework (2014)). The public never had the opportunity to review and comment on these new components.

Issue Number: PP-UT-GRSG-15-21-1

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: An SEIS is required under NEPA: 1) if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, 40 CFR § 1502.9(c)(1)(i); or 2) 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)(1)(ii). The new SFA habitat category dramatically reshaped the Proposed Federal Action (“Proposed Action”) due to its management as: 1) recommended for withdrawal from the Mining Law of 1872, “subject to valid

existing rights”; 2) no surface occupancy (NSO), without waiver, exception, or modification, for fluid mineral leasing; and 3) prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases. The debut of “SFAs” in the PLUPA/FEIS constitutes a substantial change in the proposed action (40 CFR § 1502.9(c)(1)(i)), and a SEIS is required. Additionally, the Lek Buffer Study, coupled with the Ashe Memo, collectively constitute “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 CFR § 1502.9(c)(1)(ii). When two new, key and significant pieces of information come late and are not subject to fair comment, this is fatal to the mandatory “meaningfulness” of this NEPA process (See 40 CFR § 1506.6(b)) (Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected” by proposed actions of the United States”). See also, Council on Environmental Quality, A Citizen’s Guide to the NEPA at 26 (“Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes”). Courts have required an SEIS when the proposed action differs “dramatically” from the alternatives described in the DEIS because, de facto, meaningful public comment on the proposed action was precluded, see *California v. Block*, 690 F.2d 753, 758 (9th Cir. 1982). Here, none of the DEIS alternatives utilized all or most of the key elements found in the Proposed Action, particularly the SFAs and lek-buffer distances. The Proposed Action in the PLUPA/FEIS could not have been fairly anticipated from reviewing the DEIS alternatives. Because the Agencies have “seriously dilute[ed] the relevance of public

comment” on the DEIS, *California v. Block*, 690 F.2d at 758, an SEIS is warranted. See also *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (new alternative proposing new locations of activities required a SEIS because it affected “environmental concerns in a different manner than previous analyses”).

Issue Number: PP-UT-GRSG-15-24-3

Organization: CE Brooks & Associates for Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS introduces SFAs in the FEIS which increase the number of restrictions to preclude virtually all surface uses without ever analyzing the cumulative effort or allowing cooperators or the public to comment (Utah LUPA/FEIS 1-30; 2-2). This violates the National Environmental Policy Act (NEPA) mandate to disclose and provide for comment on significant actions and a supplement should have been prepared.

Issue Number: PP-UT-GRSG-15-24-9

Organization: CE Brooks & Associates for Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The significant changes in the preferred alternative from the DEIS fall outside the scope of the alternatives considered in the DEIS and require a supplemental EIS with public comment. Vermillion protests the decision of the BLM not to issue a supplement given the major changes and inclusion of information, recommendations, and decisions that were never in the DEIS.

Issue Number: PP-UT-GRSG-15-25-8

Organization: Snell & Wilmer LLP for Alton Coal Development, LLC

Protestor: Denise Dragoo

Issue Excerpt Text: The BLM should prepare a Supplemental EIS to the LUPA to address Alton Coal's Comments, and to assess impacts of Priority Habitat Designation in the South Panguitch Population Area. The BLM claims that a separate assessment for the Priority Habitat designation change in South Panguitch Population Area is not needed because “actions presented in the Proposed Plans within the Proposed LUPA Final EIS are within the range of alternatives analyzed in the Draft EIS.” To that end, the BLM describes the Priority Habitat designation in the South Panguitch area as modified Alternative D. This assertion is incorrect and does not reflect the facts in the record. The DEIS alternatives considered varying buffer distances between .6 miles and, in one case up to 3.1 miles. However, there is no analysis in the EIS that considered application of Priority Habitat and uniform 3.1 mile lek buffer in all areas, irrespective of proposed development plans and site specific characteristics. The DEIS alternatives analysis did not consider a disturbance cap of 3% or a 3.1 mile lek buffer in the South Panguitch Population Area. Further, none of the alternatives analysis considered density restrictions within the state of Utah. Although the DEIS proposed Density restrictions in Alternative E-2, density restrictions were limited to areas in Wyoming consistent with the state of Wyoming's conservation plan.

Issue Number: PP-UT-GRSG-15-26-10

Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: Moreover, the USFWS memorandum and the related analysis for the Utah LUPA/FEIS is new information that must be subject to review in a Supplemental EIS or is otherwise arbitrary and capricious under the APA.

Issue Number: PP-UT-GRSG-15-26-8
Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The BLM introduced 228,500 acres of SFAs in the Administrative FEIS. Utah LUPA/FEIS 1-30; Ex. 4, Coalition Administrative Final Environmental Impact Statement Comments at 4-5 (May 13, 2015). The SFAs are based on USFWS supplement to COT provided Oct. 2014, or more than 10 months after public comment closed on the DEIS (FEIS at 2-2). There is no explanation as to why BLM did not confer with the cooperating agencies on the impacts and implications for these new recommendations, since the BLM received them in October of 2014, more than six months before issuing the administrative FEIS.

Issue Number: PP-UT-GRSG-15-26-9
Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: SFAs are not within the qualitative spectrum of previously analyzed alternatives. In all previous EIS stages, all habitat was analyzed as either PHMA, GHMA, connectivity, or seasonal habitat (winter concentration areas, breeding, brood rearing, etc.). The BLM states, however, that the management actions related to the SFAs, such as livestock grazing prioritization, in SFAs were evaluated to be consistent with GRSG

conservation objectives as part of the proposed plan. See Utah LUPA/FEIS at 2-2.
Issue Number: PP-UT-GRSG-15-29-4
Organization: Simplot Livestock
Protestor: Darcy Helmick

Issue Excerpt Text: Sage Grouse Focal Areas are a completely new concept and BSUs are a completely new concept included within the PLUPA. A supplemental EIS is required to adequately address these significant changes within the document.

Issue Number: PP-UT-GRSG-15-32-11
Organization: State of Utah
Protestor: Kathleen Clarke

Issue Excerpt Text: Under the law, an agency must perform supplemental EISs whenever there are substantial changes in the resource management plan. As it is written, the “soft” triggers under the plan may raise to the level which requires EIS analysis and public involvement under NEPA. The “hard” triggers proposed under the plan would certainly meet the threshold required under NEPA.

Issue Number: PP-UT-GRSG-15-32-21
Organization: State of Utah
Protestor: Kathleen Clarke

Issue Excerpt Text: The State of Utah protests the inclusion of two brand-new legal constructs in the FEIS. Each of these two constructs must be made available to the public for review in a Supplemental EIS before the BLM may make use of them in a final decision. These two concepts – sagebrush focal areas and biologically significant units – were not offered for review in the Draft EIS. These constitute wholly new planning features, and are not themselves simply items within the

spectrum of alternatives analyzed in the Draft EIS.

Issue Number: PP-UT-GRSG-15-32-22

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: Similarly, the new treatise on lek buffers, published by the

USGS between the Draft and Final EISs, must be subjected to public review through the mechanism of an SEIS.⁹⁹ This Report does not constitute original source material, and is therefore not a proper choice of information to employ in the FEIS. These limitations, along with the relevant source studies, must be made available for public comment in a SEIS.

Summary:

The BLM and Forest Service violated NEPA because:

- None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the lek buffer distances, the revised mitigation and monitoring plans, and the adaptive management triggers and responses;
- The Utah LUPA/FEIS introduces SFAs and BSUs in the FEIS without analyzing the cumulative effects of this or allowing cooperators or the public to comment;
- The significant changes in the preferred alternative fall outside the scope of the alternatives considered and analyzed in the DEIS; and
- The DEIS alternatives analyzed varying lek buffer distances, but no alternative analyzed a disturbance cap of 3% or a 3.1 mile lek buffer.

Response:

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

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

“New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate (BLM NEPA Handbook, p. 30)

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment

period would require supplements to either the draft or final EIS (40 CFR1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

The Proposed LUPA/Final EIS is a variation of the preferred alternative (Alternative D), though it does include several actions that, while new, are qualitatively within the range of alternatives analyzed in the Draft LUPA/EIS. While there are many changes between the Preferred Alternative identified in the Draft LUPA/EIS (Alternative D) and the Proposed Plans in the Final EIS, most result from internal and external comments. The Proposed LUPA/Final EIS includes components of the alternatives analyzed in the Draft LUPA/EIS. Taken together, these components present a suite of management decisions that present a variation of the alternatives already identified in the Draft LUPA/EIS that are qualitatively within the spectrum of alternatives analyzed. The BLM and Forest Service have determined that the changes in the Proposed LUPA/Final EIS would not affect the human environment in a substantial manner or to a significant extent not already considered in the Draft LUPA/EIS. The impacts disclosed in the Proposed LUPA/Final EIS are similar or identical to those described Draft LUPA/EIS. As such, there is no need for the BLM and Forest Service to complete a supplement. There is also a discussion in the Proposed Plan of where the given changes were addressed, whether specifically or qualitatively within the range of alternatives considered in the Draft LUPA/EIS.

PHMA and GHMA delineations for the Proposed Plans were adjusted for a variety of reasons identified during public comments, in coordination with cooperating agencies, and based on internal review. This included review and evaluation of population distribution and trends, GPS and radio telemetry data, the presence of existing developments and valid existing rights, and the potential to improve, connect or expand habitat. The adjustments were considered within the range of alternatives analyzed in the Draft EIS, so no supplement is required. Adjustments include:

- removal of PHMA and GHMA from municipality boundaries;
- removal of PHMA and GHMA from the Parker Mountain Population Area in the valley surrounding the towns of Loa, Fremont, Lyman, and Bicknell;
- changing the area southwest of the town of Minersville from GHMA to PHMA;
- changing the portions of the Panguitch Population Area south of the town of Hatch from GHMA to PHMA;
- changing portions of the Halfway Hollow area in the Uintah Population Area from PHMA to GHMA, and changing other portions from GHMA to PHMA;
- changing portions of the Carbon Population Area from PHMA to GHMA;
- adding areas as PHMA in the Box Elder Population Area; and
- adding areas as PHMA and SFA in the Rich Population Area.

Allocations that were changed between the preferred alternative and the Proposed Plans include the following:

- Allocations were changed from being lek centric, using 1- and 4-mile buffers, to applying to the entire areas that GRSG populations use at some point during their yearly life-cycle (e.g., breeding, nesting, brood-rearing, late brood-rearing, transitional, and winter habitats), as well as adjacent areas where actions could affect GRSG. This change is consistent with the approaches considered in Alternatives B, C, and E. Further, the

allocations applied in the Proposed Plans (e.g., NSO for fluid minerals, avoidance for ROWs, closure for mineral materials and nonenergy leasable minerals, and limited for travel) were all analyzed within the range of alternatives considered. While allocations were adjusted to apply to populations, the importance of habitat near leks, as reflected in numerous scientific studies, was maintained through consideration and application of lek buffers at the implementation level (see Appendix F).

- ROWs in PHMA were changed from being managed with different allocation by type (i.e., linear, site-type, and underground) to applying one ROW avoidance allocation to the all ROW types, with avoidance criteria specific to types (which was considered in Alternatives D and E).
- Allocations in GHMA were changed from lek buffers for NSO, ROW avoidance, and closures to other minerals, to applying allocations from Alternative A (no action) with the addition of mitigation requirements (e.g., net conservation gain). This was considered in Alternatives A and D.
- PHMA would not include exclusion areas for transmission lines with designated ROW corridors to concentrate disturbance where it would have the least impact on GRSG. Instead, all PHMA would be an avoidance area (similar to Alternative D outside the exclusion areas and corridors), but if avoidance was not possible, any development would have to align with existing infrastructure to minimize impacts on GRSG. This approach was considered in Alternative E.

On October 27, 2014, the USFWS provided the BLM and Forest Service a memorandum titled “Greater GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes”. The memorandum and associated maps provided by the USFWS identify areas that represent recognized “strongholds” for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. Within these areas, the BLM and Forest Service identified SFAs, which are PHMAs with the following additional management (Map 2.6):

- Recommended for withdrawal from the Mining Law of 1872, subject to valid existing rights;
- Managed as NSO, without waiver, exception, or modification, for fluid mineral leasing; and
- Prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases (see the Livestock Grazing/Range Management sections of the BLM and Forest Service Proposed Plans in Section 2.6, Proposed Plan Amendments, for additional actions).

Alternatives B and C recommended PHMA for withdrawal. Alternative D considered managing fluid minerals with an NSO stipulation. Alternatives B and D considered prioritization for grazing land health assessments and processing grazing permits. The actions proposed for SFAs were analyzed in the Draft LUPA/EIS range of alternatives. As such, the management of these areas as SFA and the impacts of the associated management decisions were addressed in the Draft LUPA/EIS and are qualitatively within the spectrum of alternatives analyzed.

As noted in the Draft LUPA/EIS, one of the goals of this planning effort is to protect both the habitat and the species (see the Draft LUPA/EIS Goal GRSG-1 across the range of alternatives).

The Draft LUPA/EIS also notes the importance of managing GRSG at a landscape scale (see Draft LUPA/EIS Objective GRSG-5) to implement habitat conservation. Further, the Draft LUPA/EIS also stated that mapped habitat would be changed through the appropriate BLM and Forest Service planning processes (see the Draft LUPA/EIS Section 2.5, Draft LUPA/EIS MA-GRSG-2 and Draft LUPA/EIS MA-GRSG-8). The habitat in the SFA exhibits areas of high-quality sagebrush habitat, areas with highest breeding densities, and areas identified as essential to conservation and persistence of the species.

Net conservation gain mitigation strategy: The net conservation gain mitigation strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal. The overarching goal in the Draft LUPA/EIS was to “Maintain and/or increase abundance and distribution of GRSG by conserving, enhancing, or restoring the sagebrush ecosystem upon which populations depend, in cooperation with other conservation partners” (see Draft LUPA/EIS Goal GRSG-1). Further, the Draft LUPA/EIS included the concepts of net conservation for GRSG habitat by requiring impacts to GHMA be offset by the successful completion of compensatory mitigation in PHMA (see Draft LUPA/EIS MA-GRSG-7), as well as the employment of off-site mitigation as a form of mitigation (see Draft LUPA/EIS MA-GRSG-9). The GRSG mitigation strategy has been further defined in Section 2.7.3, Regional Mitigation, and Appendix D, Mitigation Strategy Utah GRSG LUPA, of the Utah GRSG PLUPA/FEIS.

The Proposed Plans include a management action to incorporate the lek buffer distances identified in the USGS report “Conservation Buffer Distance Estimates for Greater Sage Grouse—A Review: USGS Open File Report 2014-1239” (Manier et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft LUPA/EIS release, applying these buffers was addressed in the Draft LUPA/EIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, Alternatives B and C identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, and elimination of grazing. For example, Alternative C proposed closure to fluid, saleable and non-energy leasable minerals in all GRSG habitat. In Alternative C, all GRSG habitat was also excluded from ROW development. Also considered in the range of alternatives were Alternatives D and E, which identified and analyzed fewer restrictions on development in GRSG habitat than Alternatives B and C. Alternative D proposed avoidance and exclusion of ROWs within various buffers (1 and 4 miles) within both PHMA and GHMA, as well as considering closures for saleable and nonenergy leasable minerals within buffers. Alternative E considered no actions within 1 mile of a lek, if visible, and seasonal restrictions out to 3.1 miles from the lek. Accordingly, the management decision to apply lek buffers for development within certain habitat types during NEPA analysis at the implementation stage is within the range of alternatives analyzed.

Chapter 2 of the Draft LUPA/EIS identified that the BLM and Forest Service would further develop the adaptive management approach by identifying hard and soft triggers and responses. The Proposed Plans include the identification of hard and soft adaptive management triggers for population and habitat and specifies the appropriate management responses. Chapter 2 of the Draft LUPA/EIS identified that the BLM and Forest Service would further develop the adaptive

management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses identified in Appendix B, Adaptive Management, of the Proposed LUPA/Final EIS were analyzed within the range of alternatives.

The methodology to be used in determining whether the Proposed Plan's three percent anthropogenic disturbance cap is exceeded is detailed in Appendix E of the Utah GRSG PLUPA/FEIS. In response to public comments, a more detailed, quantitative analysis of the impacts from implementing the disturbance cap for the various alternatives is included. The Draft also outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A Disturbance and Monitoring Sub-team further enhanced the two appendices (Appendix C, Greater GRSG Monitoring Framework, and Appendix E, Greater GRSG Disturbance Cap Guidance) in the Proposed LUPA/Final EIS

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

Best Available Science

Issue Number: PP-UT-GRSG-15-04-10
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The proposed amendments rely on unreliable and incorrect data, and on faulty scientific analysis. Carbon County also formally protests the use of non-peer reviewed faulty science to base the plan amendment on, as alluded to in its May 6, 2015 letter requesting an extension to the comment deadline on the AFEIS.

Issue Number: PP-UT-GRSG-15-04-11
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The reports contain substantial technical errors and fail to address a long list of studies, including recent studies in Utah by Utah State University and Brigham Young University, which "do not support a federal, one-size-fits-all narrative".

Issue Number: PP-UT-GRSG-15-04-13
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The reports ignore the fact of "natural population fluctuations" due to natural conditions such as drought, heavy snow, predation, disease and fire, and place the blame almost solely on human activities for the alleged declines in population.

Issue Number: PP-UT-GRSG-15-13-10
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The LUPA/FEIS pegs its planning criteria in part to the objectives and measures included in the USFWS 2013 final Conservation Objective Team (COT) report. The COT report was issued with no opportunity for public review and comment. It lacks the scientific quality, integrity, objectivity and utility required by the Data Quality Act (DQA). Its description of "science" makes no mention of hypothesis testing or potential falsification, so it runs counter to the DOI Manual on Scientific

Integrity as well as the DQA and its Guidelines.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The LUPA/EIS also lacks the scientific quality, integrity, objectivity and utility required by the DQA, the Guidelines and the additional authority. The DQA, Section 515 requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies on or after October 1, 2002. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and failed to undergo adequate peer review. Consequently, the LUPA/EIS over-generalizes habitat and environmental conditions to the point they lack integrity, accuracy and objectivity. This is evidenced in the maps depicting habitat and management priorities. Moreover peer review was not transparent and did not under go public comment. The COT report was not based on best available science; it had no original data or qualitative analyses. It omits many scientific papers and reports on other mitigation measures, raven predation, and how GRSG frequent the

various types roads, agricultural areas and oil and gas development, all points considered in Garfield County's plan. The COT Report fails to acknowledge the significant effort of the State of Utah to conserve GRSG. The COT Report unfairly conflicts with the BLM and Forest Service multiple-use mandate, by calling for GRSG centric management in derogation of all other uses and values.

Issue Number: PP-UT-GRSG-15-15-29

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The NTT Report is not transparent; it is the result of many closed door sessions and private correspondence. Peer review was not out in the open but behind closed doors. The specific data used, assumptions applied, analytic methods used and statistical procedures used in the NTT Report are unknown, to where the Report is not capable of being substantially reproduced subject to an acceptable degree of imprecision. The NTT Report fails the substantially reproducibility standard so basic to DQA standards of quality.

Issue Number: PP-UT-GRSG-15-15-30

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The NTT Report is plagued by conflicts of interest. Peer reviewers were contributors to work product leading to the listing of a species. Peer reviewers were influenced by funding considerations. A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on which these reports relied. Practically everybody

involved in these three reports cross-insulated each other. This is a clear violation of the DQA and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member, cited his own work. Knick cited his own work repeatedly in the NTT report. The NTT report relies on the same limited set of studies, showing a lack of diversity of viewpoints. Contributing authors reviewed and edited their own work.

Issue Number: PP-UT-GRSG-15-15-31

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The disturbance caps in the NTT report are unsupported. They are inconsistent with actual conditions in the Panguitch and southern Parker Mountain management areas in Garfield County and conflict with existing condition assertions made in the LUP NEIS. Similar flaws exist with the buffer zone concepts around leks. The concept is arbitrary in that it does not consider conditions that do not meet standards for species life cycles. Steep cliffs, incompatible vegetation, presence of trees and absence of life cycle requirements are included in the buffer zones. However, the BLM/FS have failed to disclose these inconsistencies and have refused to include Garfield County's land use information in violation of the cooperating agency memorandum of understanding. Similarly they have been arbitrary and capricious in refusing to communicate or coordinate with Garfield County while asserting they have performed those very actions with other entities. This is just policy dogma, usurping

the role of policy makers. On the one hand, the NTT Report and the LUPNEIS for Panguitch and southern Parker Mountain management areas in Garfield County are fraught with sagebrush canopy threshold discrepancies to the point of being in violation with the DQA and failing to provide a rational basis for a decision. In addition, the flaws were brought to the BLM's and FS's attention but fell on deaf ears, a predictable result when BLM/FS employ a no communication/no coordination position regarding Garfield County. On the other hand, the NTT Report demands one-size-fits all recommendations regarding habitat that will only lead to contrary results across the diverse range and has been found to be inaccurate in the Panguitch and southern Parker Mountain management areas. Similar complaints apply to neighboring areas as well. Somehow the National Technical Team did not get the memo: that sagebrush cover requirements vary between seasons, elevations, soil type, climates, and across GRSG populations. It is even more unfortunate that the BLM/FS have refused to use local land use expertise, especially when existing conditions were derived from a cooperative effort between local federal land managers and Garfield County. The BLM/FS effort lacks scientific objective and is nothing more than an arbitrary 5-mile buffer around leks.

Issue Number: PP-UT-GRSG-15-15-41

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: COT report conservation principles are also contradicted by the newly proposed GRSG focal area concept. The proposed Focal Areas ignore, site specific habitat and more scientific information contained in the County's plan. The focal areas do not protect limited highest density lekking populations in the

Panguitch and southern Parker Mountain population areas, particularly in Sage Hen Hollow and the higher elevation areas east of Antimony, Utah.

Issue Number: PP-UT-GRSG-15-15-58

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The NTT Report is inaccurate, unreliable, biased in violation of the Data Quality Act, highly partial in presenting scientific information, and overly restrictive in the range of possible conservation measures. The NTT Report ignores basic tools already at the BLM's disposal, like BLM Manual 6840, project-specific wildlife protection and habitat enhancement measures, and private conservation activities. The NTT Report is anything but best available science; it is transparently a tool to support a pre-determined outcome. It fails the basic hallmarks of utility, integrity and objectivity required under OMB guidelines imposed on land management agencies.

Issue Number: PP-UT-GRSG-15-15-61

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The BLM did not disclose all the sources of the NTT report and the supporting data and models for the public to assess the report's objectivity. Independent peer review and regulation are therefore impossible. Likewise, the BLM did not disclose all inconsistencies between the NTT report and state and local plans. These inconsistencies must be resolved and properly disclosed. Federal environmental analysis standards require the documentation of inconsistencies with local plans as well as the disclosure of reasons why consistency could not be achieved. Garfield County demands full detailed disclosure of

inconsistencies between the NTT report and Garfield County's GRSG Conservation Plan. Data gathering has varied from state to state, with standards changing over time. No central repository properly curates and maintains the data. Metadata are missing to document how the core data were collected, recorded and summarized. For example, GRSG lek count information comes from across several states, and no controls exist on the uniform means for counting such populations to predict potential trends and migration. DOI biologists have cherry picked lek count data from the several states to form the basis of reports used by the BLM.

Issue Number: PP-UT-GRSG-15-18-16

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The record establishes that met towers can result in GRSG population declines (see Cotterel Mountain data reviewed in 'Wind Power in Wyoming,' attached to Guardians' DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. Existing guy wires would need to be removed or marked with diverters (FEIS at 2-31); however, utility companies fund the extra expense of guy wires only in cases where they are necessary as part of the overall support of the structure, so it is unlikely that many guy wires will ever be removed pursuant to this Action. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied.

Issue Number: PP-UT-GRSG-15-19-8

Organization: Beatty & Wozniak

Protestor: Bret Sumner

Issue Excerpt Text: XTO also protests the Agencies' failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Utah LUPA. The Utah LUPA does not meet BLM's science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA (BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 CFR § 1500.1(b); 40 CFR § 1502.8). In developing a land use plan amendment, the BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

Issue Number: PP-UT-GRSG-15-20-45

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed LUPA are largely based on the U.S. Fish and Wildlife Service's (FWS) GRSG (Centrocercus urophasianus) Conservation Objections: Final Report (Feb. 2013) ("COT Report") and the BLM's Report on National GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (Dec. 2011) ("NTT Report"). Reliance on these reports is arbitrary and capricious under the Administrative Procedure Act (APA) (5 USC § 706(2)(A)). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act ("DQA"), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515,

114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-UT-GRSG-15-20-46

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the "Literature Cited" section. Megan Maxwell, BLM's NTT Report: "Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?", p. 13-14 (May 20, 2013) ("NWMA Review"), Attachment 6. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34 percent of the citations had no corresponding source available to review (Id. at 14). Additionally, there are articles listed in the "Literature Cited" section that are not directly referenced and do not appear to have been used within the NTT Report itself (Id). These technical errors limit the ability of outside reviewers or the public to verify claims in the NTT Report and reduce the report's scientific credibility.

Issue Number: PP-UT-GRSG-15-20-47

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases (NWMA Review at 14). For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15 percent (NTT Report at 26). However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations &

their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion (NWMA Review at 14). Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas (Connelly et al. 2000 at 977). Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. NWMA Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15 percent canopy cover standard. Misleading citations, failure to properly reference and list sources in the Literature Cited section, and similar technical errors render the NTT Report difficult to read, difficult to verify, and far less than the “best available science.”

Issue Number: PP-UT-GRSG-15-20-48

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the 3% disturbance cap, which has been proposed in the Proposed LUPA. Rather, the disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion, not fact. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team

Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”). Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a “viable” population of any species, much less GRSG. Curtis H. Flather, et. al, Minimum Viable Populations: “Is There a ‘Magic Number’ for Conservation Practitioners?”, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 8. Moreover, the Proposed LUPA’s noise restrictions, also recommended by the NTT report, are based upon flawed studies that relied on unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions. NTT DQA Challenge at 42–46. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed LUPA.

Issue Number: PP-UT-GRSG-15-20-49

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created (See NTT DQA Challenge, Exhibit C). For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts (E.g., Ramey, Brown, & Blackgoat). As explained by Ramey, Brown, and Blackgoat, studies prior

to the NTT Report's publication were based upon older, more invasive forms of development:

“Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people's perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to GRSG” (Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions)).

The NTT authors' refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report's recommendations for oil and gas development inapplicable to current practices.

Issue Number: PP-UT-GRSG-15-20-50

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed (Applegate & Owens at 287 – 89). In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone (Id. at 289). All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. The Agencies should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed LUPA, because the NTT Report does not represent the best available science.

Issue Number: PP-UT-GRSG-15-20-51

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to utilize the best available science, and the Agencies inappropriately relied upon it in the Proposed LUPA. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites. See Western Energy Alliance, et al., Data

Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 9. The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions (COT DQA Challenge, Exhibit A at 1). For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and therefore underestimates the significance of predation as a threat (COT DQA Challenge at 56 - 63). The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence. COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., GRSG Population Dynamics & Probability of Persistence, in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 293 (Steven T. Knick & John W. Connelly eds., 2011) (“Garton et al. 2011”). This paper contains serious methodological biases and mathematical errors (COT DQA Challenge, Exhibit A at 2). Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible (Id). Finally, the COT Report provides a table assigning various rankings to GRSG threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks (See COT Report at 16 – 29, tbl. 2). Absent a quantifiable methodology, these rankings are subjective and the Agencies should not rely upon any conservation measures derived from them.

Issue Number: PP-UT-GRSG-15-20-52

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality (See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for GRSG: A Changing Paradigm for Game Bird Mgmt., in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on the GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20% of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases since that time. The Agencies and the Department of the Interior have failed to discuss or reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30 percent in 1981 to 20 to 25 percent in 1987 to five to 10 percent in 2000 (Reese & Connelly at 110 – 11). High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone.

Issue Number: PP-UT-GRSG-15-20-53

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-UT-GRSG-15-20-54

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Both the NTT and

COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate (OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459). Because the NTT and COT Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective.

Issue Number: PP-UT-GRSG-15-24-5

Organization: CE Brooks and Associates

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS direction is largely based on the National Technical Team Report (Dec. 2011) (NTT), whose conclusions have since been roundly criticized due to bias, limited or no data, and lack of support found in the cited research versus BLM's recommendations made while citing the NTT. Reliance on the NTT notwithstanding contrary research and data from Utah agencies is arbitrary and capricious;

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

Organization: CE Brooks and Associates

Protestor: Constance Brooks

Issue Excerpt Text: The data quality, methodology, and credibility issues of the NTT Report have been well documented and discussed by this point. The Utah LUPA/FEIS, as being based on data with serious methodological flaws, is not the best available science, does not support the BLM's decisions and is arbitrary and capricious.

Issue Number: PP-UT-GRSG-15-26-14

Organization: CE Brooks and Associates

Protestor: Constance Brooks

Issue Excerpt Text: Studies by Naugle, and Doherty also do not advocate for a 5 percent disturbance cap. Thus, it appears that the BLM has used the 3 percent disturbance cap proposed by the NTT Report and added an additional 2 percent. Standing alone, the decision to add 2 percent for cumulative total of 5 percent appears to have been plucked from thin air. Furthermore, conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed Utah LUPA/FEIS. See NTT Report at 7, n. iii.

Issue Number: PP-UT-GRSG-15-26-15
Organization: CE Brooks and Associates
Protestor: Constance Brooks

Issue Excerpt Text: The recommended noise levels are not based upon any standardized, repeatable data collection, or accepted methods of sound measurement. Blickley did not employ professionally recognized standards such as International Organization for Standardization, or sound propagation models. The BLM also appears to have ignored other studies developed near the same time as Blickley. Thus, the BLM has ignored other available science, used reports with basic methodological flaws, and therefore violates NEPA and the DQA in prescribing MA No. 136 (and the USFS equivalent).

Issue Number: PP-UT-GRSG-15-27-15
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: The NTT Report is inaccurate, unreliable, biased in violation of the DQA, highly partial in presenting

scientific information, and overly restrictive in the range of possible conservation measures. The NTT Report ignores basic tools already at BLM's disposal, like BLM Manual 6840, project-specific wildlife protection and habitat enhancement measures, and private conservation activities. The NTT Report is anything but best available science. It is transparently a tool to support a pre-determined outcome. It fails the basic hallmarks of utility, integrity and objectivity required under OMB guidelines imposed on land management agencies.

Issue Number: PP-UT-GRSG-15-27-16
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: The NTT Report is not transparent. It is the result of many closed-door sessions and private correspondence. Peer review was not out in the open but behind closed doors. What specific data was used, assumptions were applied, and analytic methods and statistical procedures were followed in the NTT Report are unknown, to where the outcomes of the Report are not capable of being substantially reproduced subject to an acceptable degree of imprecision.

Issue Number: PP-UT-GRSG-15-28-15
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: The NTT Report is not transparent; it is the result of many closed-door sessions and private correspondence. Peer review was not out in the open but behind closed doors. The specific data used, assumptions applied, analytic methods used and statistical procedures used in the NTT Report area unknown, to where the Report is

not capable of being substantially reproduced subject to an acceptable degree of imprecision.

Issue Number: PP-UT-GRSG-15-32-1

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The FEIS represents an entire framework of analysis built without a foundation of the best available scientific and observational data, and therefore represents an arbitrary and capricious decision by the BLM and the Forest Service. The decision by the Utah State Office of the BLM to ignore the state's fundamental seasonal habitat data, contrary to law, is also arbitrary and capricious

Issue Number: PP-UT-GRSG-15-13-9

Organization: Newell Harward

Protestor: Wayne County Commission

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act:

Issue Number: PP-UT-GRSG-15-15-47

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The Bureau of Land Management and the Forest Service incorrectly assume a decrease in lek counts constitutes a population decline. Although there may be some thin correlation, the tie is not sufficient to meet Data Quality Act standards.

Issue Number: PP-UT-GRSG-15-15-54

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The LUPA/FEIS lacks the scientific quality, integrity,

objectivity and utility required by the Data Quality Act. The Data Quality Act requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and did not undergo adequate peer review. Peer review was not transparent and did not under go public comment. Additionally, the COT report made no effort to use the most current, site specific information that was available to Bureau of Land Management and the Forest Service during preparation of the LUPA/FEIS. Bureau of Land Management and the Forest Service are obligated to use such information if available. Their failure do so invalidates the entire process

Issue Number: PP-UT-GRSG-15-15-59

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The NTT Report is not transparent; it is the result of many closed-door sessions and private correspondence. Peer review was not out in the open. The specific data used, assumptions applied, analytic methods used and statistical procedures used in the NTT Report are unknown, to where the Report is not capable of being substantially reproduced and is

subject to an unacceptable degree of imprecision. The NTT Report fails the substantially reproducibility standard basic to Data Quality Act standards

Issue Number: PP-UT-GRSG-15-15-60

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents, plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on which these reports relied. Practically everybody involved in these three reports cross-insulated each other. This is a clear violation of the Data Quality Act and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member, cited his own work. Knick cited his own work repeatedly in the NTT report

Issue Number: PP-UT-GRSG-15-20-55

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding GRSG leks. A recent review of this data showed that regional climatic variations, rather than anthropogenic threats such as oil and

gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014), Attachment 12. Because current data demonstrates that the impacts of anthropogenic disturbances on GRSG populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-UT-GRSG-15-20-56

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by GRSG to industrial development contains serious flaws. D.E. Naugle, et al., “Energy Development & Greater GRSG, in Greater GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38” (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, “A Comprehensive Review of Greater GRSG: Ecology & Conservation of a Landscape Species & Its Habitat” at 115 (Feb. 2012), Attachment 13. Naugle et al. 2011 also misrepresented the results of another study to support their claim that GRSG abandon leks due to noise and human

activity (Id. at 116). Further, of the seven studies reviewed, four focused on impacts to GRSG in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin (Id). Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies' results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-UT-GRSG-15-20-57

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

Groups: 1997 – 2012”, at 2 – 3 (Dec. 2014)). Mean average lek counts provide a more accurate picture of population trends.

Issue Number: PP-UT-GRSG-15-20-58

Organization: American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study's conclusions are based on well density data and lek counts from 1991 through 2011 (Gregory & Beck at 4). The period in which GRSG reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011 (Id). However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004 (Id. at 7). Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in the coming years (Id). This prediction assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country (See, e.g., Applegate & Owens at 287). As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time period (Applegate & Owens at 287). As Applegate & Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances,

and disturbances due to human activity (Id. at 288). Gregory and Beck's study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across GRSG range.

Issue Number: PP-UT-GRSG-15-20-59

Organization: American Petroleum Institute

Protestor: Richard Ranger

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

current and future oil and gas development. See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS lacks the scientific quality, integrity, objectivity and utility required by the DQA, the Guidelines and the additional authority. The COT Report's description of "science" makes no mention of hypothesis testing or potential falsification, so it violates the DOI Manual on Scientific Integrity and the DQA and its Guidelines. The DQA Section 515 requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies on or after October 1, 2002. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and failed to undergo adequate peer review. Moreover peer review was not transparent and did not undergo public comment.

Issue Number: PP-UT-GRSG-15-27-13

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The COT Report fails to acknowledge the significant effort of the State of Utah to conserve GRSG. The COT Report unfairly conflicts with the BLM and Forest Service multiple-use mandate, by calling for GRSG centric management in derogation of all other uses and values.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on which these reports relied. Practically everybody involved in these three reports cross-insulated each other. This is a clear violation of the DQA and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member, cited his own work. Knick cited his own work repeatedly in the NTT report.

Issue Number: PP-UT-GRSG-15-27-18

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: BLM has failed to disclose all the sources of the NTT report and the supporting data and models for the public to assess the report's objectivity.

Independent peer review and regulation are therefore impossible. Data gathering has varied from state to state with standards changing over time. No central repository properly curates and maintains the data. Metadata are missing to document how the core data were collected, recorded and summarized. For example, GRSG lek count information comes from across several states, and no controls exist on the uniform means for counting such populations to predict potential trends and migration. DOI biologists have cherry picked lek count data from the several states to form the basis of reports used by the BLM.

Issue Number: PP-UT-GRSG-15-27-19

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: the NTT report goes beyond the job of providing science to imposing policy driven harsh restrictions. This is contrary to the DQA. The disturbance caps in the NTT report are unsupported; same with the arbitrarily chosen buffer zone around the lek.

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

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS lacks the scientific quality, integrity, objectivity and utility required by the DQA, the Guidelines and the additional authority. The COT Report's description of "science" makes no mention of hypothesis testing or potential falsification, so it violates the DOI Manual on Scientific Integrity and the DQA and its Guidelines. The DQA, Section 515 requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information, including

statistical information, disseminated by Federal agencies on or after October 1, 2002. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and failed to undergo adequate peer review. Moreover peer review was not transparent and did not under go public comment.

Issue Number: PP-UT-GRSG-15-28-16
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on which these reports relied. Practically everybody involved in these three reports cross-insulated each other. This is a clear violation of the DQA and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member,

cited his own work. Knick cited his own work repeatedly in the NTT report.

Issue Number: PP-UT-GRSG-15-28-17
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: The BLM has failed to disclose all the sources of the NTT report and the supporting data and models for the public to assess the report's objectivity. Independent peer review and regulation are therefore impossible. Data gathering has varied from state to state, with standards changing over time. No central repository properly curates and maintains the data. Metadata are missing to document how the core data were collected, recorded and summarized. For example, GRSG lek count information comes from across several states, and no controls exist on the uniform means for counting such populations to predict potential trends and migration. DOI biologists have cherry picked lek count data from the several states to form the basis of reports used by the BLM.

Issue Number: PP-UT-GRSG-15-28-18
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: the NTT report goes beyond the job of providing science to imposing harsh restrictions. This is contrary to the DQA. The disturbance caps in the NTT report are unsupported; same with the buffer zone around the lek.

Issue Number: PP-UT-GRSG-15-14-7
Organization: Morgan County
Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS pegs its planning criteria in part to the objectives

and measures included in the USFWS 2013 final Conservation Objective Team (COT) report. The COT report was issued with no opportunity for public review and comment. It lacks the scientific quality, integrity, objectivity and utility required by the Data Quality Act (DQA). Its description of “science” makes no mention of hypothesis testing or potential falsification, so it runs counter to the DOI Manual on Scientific Integrity as well as the DQA and its Guidelines.

Issue Number: PP-UT-GRSG-15-16-3
Organization: Iron County Commission
Protestor: Dale Brinkerhoff

Issue Excerpt Text: Iron County also strongly disagrees that the NTT report does not represent the “latest and best science and biological judgment for GRSG decision making”. The NTT Report is fraught with Data Quality Act (DQA) deficiencies and violations, and the BLM has failed to properly reconcile the NTT Report and its flaws with other credible science.

Issue Number: PP-UT-GRSG-15-33-8
Organization: Daggett County Commission
Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS pegs its planning criteria in part to the objectives and measures included in the USFWS 2013 final Conservation Objective Team (COT) report. The COT report was issued with no opportunity for public review and comment. It lacks the scientific quality, integrity, objectivity and utility required by the Data Quality Act (DQA). Its description of “science” makes no mention of hypothesis testing or potential falsification, so it runs counter to the DOI Manual on Scientific Integrity as well as the DQA and its Guidelines.

Issue Number: PP-UT-GRSG-15-38-19
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The NTT Report is inaccurate, unreliable, biased in violation of the DQA, highly partial in presenting scientific information, and overly restrictive in the range of possible conservation measures. The NTT Report ignores basic tools already at BLM’s disposal, like BLM Manual 6840, project-specific wildlife protection and habitat enhancement measures, and private conservation activities. The NTT Report is anything but best available science; it is transparently a tool to support a pre-determined outcome. It fails the basic hallmarks of utility, integrity and objectivity required under OMB guidelines imposed on land management agencies.

Issue Number: PP-UT-GRSG-15-38-22
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The BLM has failed to disclose all the sources of the NTT report and the supporting data and models for the public to assess the report’s objectivity. Independent peer review and regulation are therefore impossible. Likewise, the BLM has failed to disclose all inconsistencies between the NTT report and state and local plans. These inconsistencies must be resolved and properly disclosed. Federal environmental analysis standards require the documentation of inconsistencies with local plans as well as the disclosure of reasons why consistency could not be achieved. Piute County demands full detailed disclosure of inconsistencies between the NTT report and Piute County’s GRSG Conservation Plan. Data gathering has varied from state to state, with standards changing over time. No central repository

properly curates and maintains the data. Metadata are missing to document how the core data were collected, recorded and summarized. For example, GRSG lek count information comes from across several states, and no controls exist on the uniform means for counting such populations to predict potential trends and migration. DOI biologists have cherry picked lek count data from the several states to form the basis of reports used by the BLM.

Issue Number: PP-UT-GRSG-15-39-13

Organization: Tooele County

Protestor: Wade Bitner

Issue Excerpt Text: The NTT Report is inaccurate, unreliable, biased in violation of the DQA, highly partial in presenting scientific information, and overly restrictive in the range of possible conservation measures. The NTT Report ignores basic tools already at BLM's disposal, like BLM Manual 6840, project-specific wildlife protection and habitat enhancement measures, and private conservation activities. The NTT Report is anything but best available science; it is transparently a tool to support a pre-determined outcome. It fails the basic hallmarks of utility, integrity and objectivity required under OMB guidelines imposed on land management agencies.

Issue Number: PP-UT-GRSG-15-39-14

Organization: Tooele County

Protestor: Wade Bitner

Issue Excerpt Text: The NTT Report is not transparent; it is the result of many closed-door sessions and private correspondence. Peer review was not out in the open but behind closed doors. The specific data used, assumptions applied, analytic methods used and statistical procedures used in the NTT

Report area unknown, to where the Report is not capable of being substantially reproduced subject to an acceptable degree of imprecision. The NTT Report fails the substantially reproducibility standard so basic to DQA standards of quality.

Issue Number: PP-UT-GRSG-15-39-16

Organization: Tooele County

Protestor: Wade Bitner

Issue Excerpt Text: The BLM has failed to disclose all the sources of the NTT report and the supporting data and models for the public to assess the report's objectivity. Independent peer review and regulation are therefore impossible. Data gathering has varied from state to state, with standards changing overtime. No central repository properly curates and maintains the data. Metadata are missing to document how the core data were collected, recorded and summarized. For example, GRSG lek count information comes from across several states, and no controls exist on the uniform means for counting such populations to predict potential trends and migration. DOI biologists have cherry picked lek count data from the several states to form the basis of reports used by the BLM.

Issue Number: PP-UT-GRSG-15-39-17

Organization: Tooele County

Protestor: Wade Bitner

Issue Excerpt Text: The NTT report goes beyond the job of providing science to imposing harsh restrictions. This is contrary to the DQA. The disturbance caps in the NTT report are unsupported. (Same with the buffer zone around the lek.) This is just policy dogma, usurping the role of policy makers.

Issue Number: PP-UT-GRSG-15-42-8

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS pegs its planning criteria in part to the objectives and measures included in the USFWS 2013 final Conservation Objective Team (COT) report. The COT report was issued with no opportunity for public review and comment. It lacks the scientific quality, integrity, objectivity and utility required by the Data Quality Act (DQA). Its description of science makes no mention of hypothesis testing or potential falsification, so it runs counter to the DOI Manual on Scientific Integrity as well as the DQA and its Guidelines.

Issue Number: PP-UT-GRSG-15-42-7
Organization: Uintah County Commission
Protestor: Michael McKee

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act:

Issue Number: PP-UT-GRSG-15-41-4
Organization: Beaver County Commission
Protestor: Michael Dalton

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act.

Issue Number: PP-UT-GRSG-15-39-15
Organization: Tooele County Commission
Protestor: Wade Bitner

Issue Excerpt Text: A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on

which these reports relied. Practically everybody involved in these three reports cross-insulated each other. This is a clear violation of the DQA and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT.. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member, cited his own work. Knick cited his own work repeatedly in the NTT report.

Issue Number: PP-UT-GRSG-15-38-20
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The NTT Report is not transparent; it is the result of many closed-door sessions and private correspondence. Peer review was not out in the open. The specific data used, assumptions applied, analytic methods used and statistical procedures used in the NTT Report are unknown, to where the Report is not capable of being substantially reproduced and is subject to an unacceptable degree of imprecision. The NTT Report fails the substantially reproducibility standard basic to DQA standards.

Issue Number: PP-UT-GRSG-15-38-21
Protestor: Rick Blackwell

Issue Excerpt Text: A relative handful of GRSG advocates had disproportionate influence in preparation of the NTT and COT Reports. These two documents plus the influential USGS GRSG monograph had authors and peer reviewers that overlapped with authors of the few other studies on which these reports relied. Practically everybody involved in these three reports cross-insulated each other. This is a clear

violation of the DQA and its guidelines. Dr. Jack Connelly was both a COT member and co-editor of the USGS monograph. Dr. Steven Knick was an NTT author and another co-editor of the Monograph. Shawn Espinosa helped prepare both the NTT and COT. Dr. David Naugle was both an NTT member and source of support for the FWS listing document. Naugle, an NTT member, cited his own work. Knick cited his own work repeatedly in the NTT report.

Issue Number: PP-UT-GRSG-15-39-10
Organization: Tooele County Commission
Protestor: Wade Bitner

Issue Excerpt Text: The LUPA/FEIS lacks the scientific quality, integrity, objectivity and utility required by the DQA, the Guidelines and the additional authority. The COT Report's description of "science" makes no mention of hypothesis testing or potential falsification, so it violates the DOI Manual on Scientific Integrity and the DQA and its Guidelines. The DQA, Section 515 requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies on or after October 1, 2002. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and failed to undergo adequate

peer review. Moreover peer review was not transparent and did not under go public comment.

Issue Number: PP-UT-GRSG-15-33-7
Organization: Daggett County Commission
Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act:

Issue Number: PP-UT-GRSG-15-33-1
Organization: Daggett County Commission
Protestor: Karen Perry

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

Issue Number: PP-UT-GRSG-15-38-14
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS is

based on incorrect science and faulty data, all in violation of the Federal Data Quality Act. The BLM/FS incorrectly assume a decrease in lek counts constitutes a population decline. Although there may be some thin correlation, the tie is not sufficient to meet Data Quality Act standards. Those reports ignore species population data, predator impacts, and site specific data from Piute County. Land treatments to control invasive conifers on federal lands have reversed any GRSG population declines that may have existed in Piute County. This had not been properly analyzed. Reports relied upon by the BLM/FS ignore over 560,000 acres of habitat improvements undertaken in Utah, recently documented by the Western Governor's Association publication Sage Grouse Inventory, 2014 Conservation Initiatives. Reports relied upon by the BLM/FS ignore natural population fluctuation data.g. Reports relied upon by BLM/FS inexplicably ignore the single greatest threats to GRSG in Piute County: invasive conifers and predation. The LUPA/EIS has failed to consider, analyze, address and disclose conifer encroachment on federal lands and predation in Piute County's GRSG populations. Instead, the BLM/FS cut and paste information from other areas and apply it to Piute County in direct conflict with the State Plan and Piute County's refinement which tries to address these two issues. Thus BLM/FS, violate the Data Quality Act, NEPA, NFMA, and the State's and county's FLPMA 202(c)(9) consistency rights. Reports relied upon by the BLM/FS also ignore the documented positive impacts of agriculture and grazing as well as the benefits of mitigation and reclamation efforts in connection with energy development. The LUPA/EIS fails to reflect current up-to-date socio economic data pertaining to Piute County. Specifically, it fails to consider economic impacts to small communities and small

businesses as required by the Regulatory Flexibility Act. Proposed grazing restrictions are not evaluated in light of their impact on grazers and ranchers in Piute County; and BLM/FS propose to apply these prescriptions on lands that do not qualify as GRSG habitat. These issues must be resolved with Piute County prior to completing a decision on the LUPA-EIS.

Issue Number: PP-UT-GRSG-15-38-15

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS lacks the scientific quality, integrity, objectivity and utility required by the DQA, the Guidelines and the additional authority. The COT Report's description of "science" makes no mention of hypothesis testing or potential falsification. The DQA, Section 515 requires Federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies on or after October 1, 2002. Yet the COT Report acknowledges uncertainty nearly 100 times. It admits a shortage of established research, credible conservation results and a lack of clear patterns with regard to GRSG. Population numbers, habitat, range, threats and viability are all acknowledged uncertainties. The COT report ignores studies that do not support its theses and jumps to scientifically unsupported conclusions. The COT report is not transparent, because it does not disclose data and methods of analysis. The COT report was guided by a relative handful of scientists with pre-established relationships with advocacy groups with single viewpoints, and failed to undergo adequate peer review. Peer review was not transparent and did not under go public comment. Additionally, the COT report made no effort to use the most current, site specific

information that was available to the BLM/FS during preparation of the LUPA/EIS. BLM/FS are obligated to use such information if available. Their failure to do so invalidates the entire process.

Issue Number: PP-UT-GRSG-15-16-2

Organization: Iron County

Protestor: Dale Brinkerhoff

Issue Excerpt Text: The LUPA/FEIS basis its planning criteria in part to the objectives and measures included in the USFWS 2013 final Conservation Objective Team (COT) report. The COT report was issued with no opportunity for public review and comment. It lacks the scientific quality, integrity, objectivity and utility required by the Data Quality Act (DQA), also known as the Information Quality Act. The LUPA/FEIS lacks the scientific quality, integrity,

objectivity and utility required by the DQA, its guidelines and the additional authority. The COT Report's description of "science" makes no mention of hypothesis testing or potential falsification, so it violates the DOI Manual on Scientific Integrity and the DQA and its Guidelines.

Issue Number: PP-UT-GRSG-15-16-3

Organization: Iron County

Protestor: Dale Brinkerhoff

Issue Excerpt Text: Iron County also strongly disagrees that the NTT report does not represent the "latest and best science and biological judgment for GRSG decision making". The NTT Report is fraught with Data Quality Act (DQA) deficiencies and violations, and the BLM has failed to properly reconcile the NTT Report and its flaws with other credible science.

Summary:

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

In addition, the Utah PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM's Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances in the Proposed Alternative.

Response:

Before beginning the Utah PLUPA/FEIS, data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

In March 2012, the FWS initiated a collaborative approach to develop range-wide conservation objectives for the GRSG to inform the 2015 decision about the need to list the species and to inform the collective conservation efforts of the many partners working to conserve the species. In March 2013, this team of State and FWS representatives, released the Conservation Objectives Team (COT) report based upon the best scientific and commercial data available at the time that identifies key areas for GRSG conservation, key threats in those areas, and the extent to which they need to be reduced for the species to be conserved. The report serves as

guidance to Federal land management agencies, state GRSG teams, and others in focusing efforts to achieve effective conservation for this species. The COT Report qualitatively identifies threats/issues that are important for individual populations across the range of GRSG, regardless of land ownership.

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

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

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

Additionally, the BLM and Forest Service consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service, the State of Utah Governor's Public Lands Policy Coordination Office, and the State of Wyoming, and relied on numerous data sources and scientific literature to support its description of baseline conditions (PLUPA/FEIS, Chapter 3) and impact analysis (PLUPA/FEIS, Chapters 4 and 5). A list of information and literature used is contained in Chapter 7.

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

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

Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized “that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the GRSG range”. The USGS report also states that “various protection measures have been developed and implemented... [which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands”. All variations in lek buffer-distances will require appropriate analysis and disclosure as part of activity authorization. (p. F-1).

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

Public Participation

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

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: The Utah LUPA states, “Sagebrush focal areas (SFA's) have been identified in the proposed plan based on recommendations in the USFWS memorandum, and are proposed to be managed as PHMA” (Chapter 2, page 2-2). The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

Issue Number: PP-UT-GRSG-15-04-18

Organization: Carbon County Commission

Protestor: Casey Hopes

Issue Excerpt Text: The BLM refused to provide Carbon County and the public with sufficient time to review and respond to the proposed amendments. Another way in which the BLM and USFS have failed to provide for “meaningful public involvement of State and local government officials, both elected and appointed,” in the development of the proposed land use plan amendments was the unreasonably short time frames allocated for state and local government officials to review and comment on the DEIS and the FEIS.

Issue Number: PP-UT-GRSG-15-04-19

Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The State of Utah expressed its frustration and that of the Counties regarding the lack of reasonable time to review the DEIS by letter dated June 26, 2013. The request for an additional 60 days to review the DEIS was denied. Although Utah BLM State Director Juan Palma did extend the comment period from June 10 - June 24, 2013 to June 10 - July 1, 2013, that additional week did not provide sufficient time for meaningful public involvement of State and local government officials.

Issue Number: PP-UT-GRSG-15-04-20
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: Carbon County similarly expressed its frustration regarding the lack of reasonable time to review the AFEIS by letter dated May 6, 2015. Our request for an additional 60 days to review the AFEIS was denied by Utah BLM Acting State Director Jenna Whitlock. The two-week review period did not provide sufficient time for meaningful public involvement of local government officials at Carbon County given our daily workloads.

Issue Number: PP-UT-GRSG-15-19-4
Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The LUPA reflects a significant new alternative and proposed management structure that was not previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised LUPA developed with the benefit of supplemental

NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration's policy on transparent and open government. Under NEPA, the BLM is required to supplement existing NEPA documents when, as it has done for the LUPA, it makes substantial changes to the proposed action (40 CFR § 1502.9(c)(1)(i); Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147, 1151 (10th Cir. 2004)). Here, the LUPA reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team Report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the LUPA, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by the BLM is a plain violation of NEPA. Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including the BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation, competitiveness and job creation." The BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different LUPA which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Issue Number: PP-UT-GRSG-15-20-7
Organization: American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest substantial changes made between the Draft LUPA and Proposed LUPA without notice

and an opportunity for public comment. In particular, the Trades protest the unexpected adoption of the wholly new Proposed LUPA rather than one of the alternatives analyzed in the Draft EIS. Although the Agencies maintain that components of the Proposed LUPA were analyzed in other alternatives, the combination of these components in the Proposed LUPA creates a dramatically different alternative that requires notice and public comment. Furthermore, the Proposed LUPA contains a number of significant elements that either were not included in the alternatives analyzed in the Draft EIS or have been significantly modified since the Draft LUPA, including the requirement that mitigation produce a net conservation gain, the revised mitigation plan, the revised monitoring plan, the lek buffer distances, and the adaptive management triggers and responses. Proposed LUPA/Final EIS at 2-1 – 2-4. These proposed changes violate NEPA because they were not included in the Draft LUPA and because the Agencies did not allow the public an opportunity to meaningfully comment on these provisions.

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

Organization: CE Brooks and Associates for Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS doubles the number of acres subject to restrictive management while introducing new restrictions not previously seen by the public or analyzed in the EIS (Utah LUPA/FEIS at Table 2.2). The timing, density, disturbance, and distance restrictions are based on the NTT Report and suffer such serious methodological flaws that violate NEPA and the DQA.

Issue Number: PP-UT-GRSG-15-26-5

Organization: CE Brooks and Associates for Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS also replaces the 1 and 4 mile buffers for disturbing and disruptive activities with the 2014 recommendations by the U.S. Fish and Wildlife Service. Utah LUPA/FEIS 1-30 to 1-31 citing Conservation Buffer Distance Estimates for Greater Sage Grouse—A Review: USGS Open File Report 2014-1239 (Manier et al. 2014); see also Appendix F. The 2014 report is entirely outside the public comment period and was not part of the DEIS. The application of these buffers is not mapped so it is impossible to determine the extent of the impacts, let alone the indirect and cumulative impacts.

Issue Number: PP-UT-GRSG-15-32-23

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The BLM and the Forest Service may not simply adopt the Stronghold concept generated by the Fish and Wildlife Service. BLM and Forest Service must provide all the relevant information about the need for the construct, and the basis for its placement in various locales. Failure to do so allows BLM and Forest Service to impose restrictive management provisions without full compliance with NEPA, and contrary to the best scientific information available.

Issue Number: PP-UT-GRSG-15-32-24

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The proposed plan amendments and FEIS will impose unnecessary burdens on the public and have been developed by the BLM and Forest

Service without the necessary involvement and comments from small businesses, small organizations, or cities. Although some small governmental jurisdictions and towns have been allowed to participate in the process as a cooperator, their comments have not been considered or used in a thoughtful or meaningful way to guide the outcome of the impacts that will arise from the federal agencies' decisions. There has not been an adequate assessment of the impact that the proposed rules may have on small businesses, small organizations, and small governmental jurisdictions as required by the Act.

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

Organization: Avian Power Line Interaction Committee

Summary:

The BLM and Forest Service violated NEPA because:

- The establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment;
- The BLM refused to provide Carbon County and the public with sufficient time to review and respond to the proposed amendments;
- The LUPA reflects a significant new alternative and proposed management structure that was not previously provided to the public;
- The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment;
- The BLM has not complied with Executive Order of 1/18/2011 directing agencies toward an open exchange of information with the public;
- The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed RMP or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses; and
- The Utah LUPA/FEIS doubles the number of acres subject to restrictive management while introducing new restrictions not previously seen by the public or analyzed in the EIS.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide

Protestor: Mike Best

Issue Excerpt Text: The Utah LUPA states, "sagebrush focal areas (SFA's) have been identified in the proposed plan based on recommendations in the USFWS memorandum, and are proposed to be managed as Priority Habitat Management Areas (PHMA) (Chapter2, page 2-2)." The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SAFs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings...or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

The Proposed LUPA/Final EIS is a variation of the preferred alternative (Alternative D), though it does include several actions that, while new, are qualitatively within the range of alternatives analyzed in the Draft LUPA/EIS. While there are many changes between the Preferred Alternative identified in the Draft LUPA/EIS (Alternative D) and the Proposed Plans in the Final EIS, most result from internal and external comments. The Proposed LUPA/Final EIS includes components of the alternatives analyzed in the Draft LUPA/EIS. Taken together, these components present a suite of management decisions that present a variation of the alternatives already identified in the Draft LUPA/EIS that are qualitatively within the spectrum of alternatives analyzed. The BLM and Forest Service have determined that the changes in the Proposed LUPA/Final EIS would not affect the human environment in a substantial manner or to a significant extent not already considered in the Draft LUPA/EIS. The impacts disclosed in the Proposed LUPA/Final EIS are similar or identical to those described Draft LUPA/EIS. As such, there is no need for the BLM and Forest Service to complete a supplement. There is also a discussion in the Proposed Plan of where the given changes were addressed, whether specifically or qualitatively within the range of alternatives considered in the Draft LUPA/EIS.

Adjustments to PHMA/GHMA: PHMA and GHMA delineations for the Proposed Plans were adjusted for a variety of reasons identified during public comments, in coordination with cooperating agencies, and based on internal review. The adjustments were considered within the range of alternatives analyzed in the Draft EIS, so no supplement is required.

On October 27, 2014, the USFWS provided the BLM and Forest Service a memorandum titled Greater GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes. The memorandum and associated maps provided by the USFWS identify areas that represent recognized “strongholds” for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. Within these areas, the BLM and Forest Service identified SFA, which are PHMA with the following additional management (Map 2.6):

- Recommended for withdrawal from the Mining Law of 1872, subject to valid existing rights.
- Managed as NSO, without waiver, exception, or modification, for fluid mineral leasing.

- Prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases (see the Livestock Grazing/Range Management sections of the BLM and Forest Service Proposed Plans in Section 2.6, Proposed Plan Amendments, for additional actions).

Alternatives B and C recommended PHMA for withdrawal. Alternative D considered managing fluid minerals with an NSO stipulation. Alternatives B and D considered prioritization for grazing land health assessments and processing grazing permits. The actions proposed for SFAs were analyzed in the Draft LUPA/EIS range of alternatives. As such, the management of these areas as SFA and the impacts of the associated management decisions were addressed in the Draft LUPA/EIS and are qualitatively within the spectrum of alternatives analyzed.

The Proposed Plans include a management action to incorporate the lek buffer distances identified in the USGS report Conservation Buffer Distance Estimates for Greater Sage Grouse—A Review: USGS Open File Report 2014-1239 (Manier et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft LUPA/EIS release, applying these buffers was addressed in the Draft LUPA/EIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, Alternatives B and C identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, and elimination of grazing. Accordingly, the management decision to apply lek buffers for development within certain habitat types during NEPA analysis at the implementation stage is within the range of alternatives analyzed.

Chapter 2 of the Draft LUPA/EIS identified that the BLM and Forest Service would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses identified in Appendix B of the Proposed LUPA/Final EIS were analyzed within the range of alternatives.

The methodology to be used in determining whether the Proposed Plan's three percent anthropogenic disturbance cap is exceeded is detailed in Appendix E of the Proposed LUPA/Final EIS. In response to public comments, a more detailed, quantitative analysis of the impacts from implementing the disturbance cap for the various alternatives is included.

As guided by the NEPA Handbook, page 101, changes to the draft EIS directed the need for a full text final EIS to communicate the changes made between Draft and Final. The content of a full text document is substantially the same as the corresponding draft EIS except that it includes copies of substantive comments on the draft EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4). A full text final EIS may incorporate by reference some of the text or appendices of the draft EIS.

Section 1.11, page 1-27 provides a description of the public participation process and the development of the Proposed LUPA/Final EIS. See Section 6.7.4, Public Comments on the Draft LUPA/EIS, for a detailed description of the comments received during the public comment period, as well as the comment analysis methodology used. Appendix X, Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement, includes summaries of substantive comments received and responses to those summaries.

The agencies have fulfilled the requirements of providing opportunity for public involvement during the planning and NEPA process.

Impacts – Greater GRSG

Issue Number: PP-UT-GRSG-15-04-14
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The reports ignore the number one threat to the GRSG in the West, which is predation. Our local experience and observation is that ravens, red fox, raccoons, raptors and other species cause more direct mortalities of GRSG than any other factor. Raven populations have increased from 300 to 1500 percent in many areas of the West. Without a coordinated effort to control predation, working with state wildlife management agencies, the proposed plan amendments will likely not produce the desired results.

Issue Number: PP-UT-GRSG-15-04-15
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The reports fail to recognize the positive impacts of agriculture and grazing, such as preservation of open space, noxious weed management, production of forb growth preferred by GRSG in grazed areas, wildfire control, watering facilities and predator management.

Issue Number: PP-UT-GRSG-15-04-16
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: The reports fail to recognize the mitigation and reclamation efforts associated with energy development. For example, horizontal drilling technology now allows multiple wells to be drilled from

one well pad; greatly reducing surface disturbance.

Issue Number: PP-UT-GRSG-15-15-32
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable. The NTT Report is full of misrepresentations regarding: population trends and persistence, natural GRSG population fluctuations, mortality due to predation and predator control, effects of hunting, effects of oil and gas operations, livestock grazing. The BLM/FS use this information to inaccurately designate habitat and management areas in the Panguitch and southern Parker Mountain portions of Garfield County. And it is believed similar flaws exist in the same management areas in adjacent counties.

Issue Number: PP-UT-GRSG-15-15-62
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable for terrain and vegetative cover in the Panguitch and southern Parker Mountain population areas in Garfield County. Much of the area is adjacent to a state highway and does not currently meet proposed standards. Steep slopes, canyons, pinyon/juniper woodlands and other existing features have not been considered in the NTT report. The only logical solution is to redraw habitat boundaries consistent with Garfield County's local plan.

Issue Number: PP-UT-GRSG-15-18-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage grouse populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

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

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the Final EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a “net conservation gain.” Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework. The Agencies must examine whether adequate mitigation opportunities exist in the planning area, such as through conservation easements or restoration activities. This analysis is particularly important because the Service has not endorsed any mitigation banks or exchanges in Colorado, Utah, Montana, and California; accordingly, land users may have a difficult time securing mitigation opportunities. The Agencies cannot condition permits on a requirement that land users cannot fulfill due to lack of mitigation. Accordingly, the Agencies must analyze the availability of compensatory mitigation in the Final EIS.

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

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: For example, there is no analysis of whether the proposed disturbance cap is appropriate to the grouse populations within the planning area, or whether the Utah GRSG can actually withstand the 3 percent disturbance cap and exemptions proposed in the plan (PLUPA/FEIS at 2-17).

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

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-UT-GRSG-15-22-9

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: GRSG-LG-GL-038 encourages the establishment of forage reserves but the plan amendment neither provides management direction for these nor does the FEIS analyze the impacts of designating and using forage reserves on GRSG and their habitats. If forage reserves are established within GRSG habitat, the recovery from the absence of perennial livestock grazing can quickly be undone by a single-season of active grazing use. The PLUPA/FEIS should rather have specified that forage reserves will be created for GRSG forage (e.g. allotments closed to

domestic livestock), thus actually helping to conserve, protect, and recover the species.

Issue Number: PP-UT-GRSG-15-27-20
Organization: Utah Association of Counties
Protestor: Mark Ward

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable. The NTT Report is full of misrepresentations regarding population trends and persistence, natural GRSG population fluctuations, mortality due to predation and predator control, effects of hunting, effects of oil and gas operations and livestock grazing to name a few areas.

Issue Number: PP-UT-GRSG-15-28-19
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable. The NTT Report is full of misrepresentations regarding: population trends and persistence, natural GRSG population fluctuations, mortality due to predation and predator control, effects of hunting, effects of oil and gas operations, livestock grazing.

Issue Number: PP-UT-GRSG-15-38-23
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable for terrain and vegetative cover in the Parker Mountain population area in Piute County. Much of the area is

adjacent to a state highway and does not currently meet proposed standards. Steep slopes, canyons, pinyon/juniper woodlands and other existing features have not been considered in the NTT report. The only logical solution is to redraw habitat boundaries consistent with Piute County's local plan.

Issue Number: PP-UT-GRSG-15-38-24
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The NTT Report is full of misrepresentations regarding: population trends and persistence, natural GRSG population fluctuations, mortality due to predation and predator control, effects of hunting, effects of oil and gas operations, livestock grazing. These need to be revised along with their inclusion in the LUPA/EIS and provisions of Piute County's conservation plan need to be adopted for the Parker Mountain population area in Piute County. Failure to do so propagates DQA challenges and questions best science.

Issue Number: PP-UT-GRSG-15-40-18
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: Noise restrictions in the NTT Report are not supported and are unreasonable. The NTT Report is full of misrepresentations regarding: population trends and persistence, natural GRSG population fluctuations, mortality due to predation and predator control, effects of hunting, effects of oil and gas operations, livestock grazing.

Summary:

The PLUPA/FEIS does not adequately analyze impacts to GRSG because:

- the analysis of the alternatives does not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;

- it fails to recognize the mitigation and reclamation efforts associated with energy development; there is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions;
- it did not address predators as a threat factor;
- it fails to recognize the positive impacts of agriculture and grazing;
- the BLM/FS used information misrepresented in the NTT Report to inaccurately designate habitat and management areas;
- noise restrictions in the NTT Report are not supported and are unreasonable for the terrain and vegetation cover;
- it does not analyze the effects of compensatory mitigations to meet the net conservation gain, or whether sufficient compensatory mitigation is available to meet the requirement of the mitigation framework; and
- it does not provide direction for forage reserves nor analyze the impact of designing forage reserves on GRSG and their habitats.

Response:

A land use planning-level decision is broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The effectiveness of these decisions on changes to GRSG populations will be evaluated based on criteria in the monitoring plan see Appendix C of the Utah GRSG PLUPA/FEIS. The No Action Alternative represents the current environment, existing management. Under this alternative existing mitigation and reclamations and impacts that guided implementation are considered.

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on-the-ground project decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling) This analysis focuses on the direct, indirect, and cumulative impacts that could potentially result if the programmatic direction of the PLUPA were applied to on-the ground projects.

In Chapter 4 of the Utah GRSG PLUPA/FEIS the GRSG Key Habitat Areas and GRSG Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations.

Conservation measures included in the NTT based alternative focus primarily on GRSG PPH and includes percent disturbance caps as a conservation measure to maintain or increase GRSG populations. The data for this report were gathered from the BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

The BLM and Forest Service address the impacts predators can have on GRSG in Chapter 4 of the Final EIS. The BLM and Forest Service have provided analysis to describe how the numerous management actions across the range of alternatives could affect the habitat and

indirectly the effects of predation. Altering the sagebrush habitat of the GRSG can create an influx of predators into an area and lead to a population decline. Roads, fences, power lines, trails and other disturbances may make access easier for potential predators and increase risks to the species. The Final EIS calls for measures that will substantially reduce disturbances in the bird's habitat, thus reducing predation risk. The Final EIS also calls for careful monitoring of grazing allotments within GRSG nesting habitat to ensure suitable grass and forb cover is reserved so we can minimize the associated predation risks.

The Grazing Section on page 4-44 the Utah GRSG PLUPA/FEIS recognizes some of the positive impacts of grazing for example “In some situations, livestock grazing can be a management tool to aid in the management or maintenance of certain vegetation communities within GRSG habitat. When properly applied, livestock grazing may change plant community composition, increase productivity of selected species, increase forage quality, and alter structure to increase habitat diversity (Vavra 2005)”.

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

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM and the Forest Service in the planning process. A baseline environmental report, titled Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of Greater GRSG (*Centrocercus urophasianus*) (referred to as the BER), was released on June 3, 2013, by the U.S. Geological Survey. The peer-reviewed report summarizes the current scientific understanding about the various impacts to GRSG populations and habitats and addresses the location, magnitude, and extent of each threat. The data for this report were gathered from BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

Concerns regarding noise restrictions in the NTT report were raised during the draft review, see comments for analysis of noise in Public Comments Appendix, p. PUB-44, 63, 71 76 and others. The land use planning-level decisions are broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The level of detail to address site specific terrain and vegetation is best developed during implementation of the LUP where advances in technologies can be best incorporated on a site-specific level and applied as part of managing to the goals, objectives, desired conditions, and management actions identified in the LUPs. In the Utah GRSG PLUPA/FEIS Chapter 4, Section 4.3, “Special Status Species – Greater GRSG”, the document discloses the expected environmental consequences and impacts to GRSG and its habitat from activities carried out in conformance with this plan, including its mitigation

provisions and goal of achieving a net conservation gain. The Utah GRSG PLUPA/FEIS used the best available research information for setting the noise limits and buffer distance from leks. The PLUPA/FEIS discusses impacts from noise throughout Chapter 4 for each resource.

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Utah GRSG PLUPA/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Utah GRSG PLUPA/FEIS planning effort.

The Utah GRSG PLUPA/FEIS includes a Bibliography and Reference section beginning on page References-1 in the FEIS, which lists information considered by the BLM and Forest Service in preparation of the Utah GRSG PLUPA/FEIS planning effort.

The BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences/impacts of noise limits and buffers to leks in the Utah GRSG PLUPA/FEIS. Appendix D Mitigation Strategy: Utah GRSG PLUPA/FEIS provides the criteria for how compensatory mitigations will be applied. The analysis of potential compensatory mitigations will be conducted at the implementation planning level.

The PLUPA/FEIS includes analysis of livestock grazing (which includes reserve allotments) on GRSG and their habitats. The designation and management criteria for future Reserve allotments are implementation planning level decisions to be made based on needs and resource objectives.

The PLUPA/FEIS in conjunction with the Biological Evaluation disclose the outcome for GRSG of the various alternatives on Forest Service lands through the determination statement, as indicated on page 87 of Appendix P. Under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. The evaluation supporting this determination considered the scientific understanding of threats and conservation measures (e.g. the COT report and NTT), long- and short-term population trends (Garton 2011 and Garton 2015) along with local information for each National Forest, and an understanding of the suite of plan components in the proposed action.

Please see the following sections of this report for further discussion on these topics: NEPA, Impacts - Grazing, Greater GRSG, Density and Disturbance Cap, Greater GRSG, Livestock Grazing, Greater GRSG, Mitigation and Air Quality/Climate Change/Noise.

Impacts – Air Quality

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan revision

by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles]

from a GRSG lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations” (WBEA at 131). The BLM and Forest Service propose a limit of 10 dBA above ambient as measured at the lek, with no ambient noise level defined in the plan (FEIS at 2-18, 2-43, 2-58). The ambient level needs to be set at

15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, the BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Summary:

The PLUPA/EIS violated FLPMA by failing to consider current available science regarding allowable noise levels at a lek to adequately protect nesting, wintering, and brood-rearing habitats from significant noise impacts.

Response:

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

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

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

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

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

As the decisions under consideration by the agencies are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an

Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In the Utah GRSG PLUPA/FEIS Chapter 4, Section 4.3, Special Status Species – Greater GRSG, the document discloses the environmental consequences associated with the impacts on GRSG and its habitat from activities carried out in conformance with this plan, in addition to BLM and Forest Service management actions coupled with the mitigation of those activities and the goal of a net conservation gain.. The Utah GRSG PLUPA/FEIS used the best available research information for setting the noise limits and buffer distance from leks. The PLUPA/FEIS discusses impacts from noise throughout Chapter 4 for each resource. Many studies assessing impacts of energy development on GRSG have found negative effects on populations and habitats (Naugle et al. 2011; Taylor et al. 2012). Walker et al. (2007) found that up to one mile buffers result in an estimated lek persistence of approximately 30 percent, while lek persistence in areas without oil and gas development averaged 85 percent. Holloran (2005) found impacts on abundance at between 3 and 4 miles. Coates et al. (2013) recommended a minimum buffer of 3 miles to protect GRSG from energy development impacts. The USGS recently published a scientific review of conservation buffer distances for GRSG protection from different types of human disturbance (USGS 2014a).

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Utah GRSG PLUPA/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Utah GRSG PLUPA/FEIS planning effort.

The Utah GRSG PLUPA/FEIS includes a Bibliography and Reference section beginning on page References-1 in the FEIS, which lists information considered by the BLM and the Forest Service in preparation of the Utah GRSG PLUPA/FEIS planning effort.

The BLM and Forest Service complied with NEPA’s requirement to analyze the environmental consequences/impacts of noise limits and buffers to leks in the Utah GRSG PLUPA/FEIS.

Impacts – Oil and Gas

Issue Number: PP-UT-GRSG-15-20-14

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed LUPA’s leasing and

development restrictions on oil and gas development. The Proposed LUPA discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 2.7 million acres of lands, limits density and disturbance, and prohibits new leasing if density limits are reached. See Proposed

LUPA/Final EIS at 2-35 – 2-38, 2-78, H-35. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA and NSO stipulations in GRSG Focal Areas (SFAs) that are not subject to exceptions, will cumulatively stymie oil and gas development on federal lands within the planning area.

Issue Number: PP-UT-GRSG-15-20-16

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Agencies have not adequately analyzed the impacts right-of-way avoidance and exclusion areas

will have upon existing oil and gas leases. The Proposed LUPA would designate more than 2.7 million acres as right-of-way avoidance areas and more than 594,000 acres as right-of-way exclusion areas (Proposed LUPA/Final EIS at 2-78). At the same time, the Proposed LUPA states in the 651,000 acres of public lands in the planning area are currently under lease for oil and gas (Proposed LUPA/Final EIS at 3-201). To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. The Agencies must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area.

Summary:

The PLUPA/FEIS does not adequately analyze the impacts of the Proposed LUPA on oil and gas development, particularly due to proposed ROW restrictions.

Response:

The CEQ regulations require an environmental impact statement to “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues” (40 CFR 1502.15). The BLM and FS complied with these regulations in writing its environmental consequences section. The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The analysis of impacts provided in Chapter 4 of the Utah GRSG PLUPA/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the Utah GRSG PLUPA/FEIS.

For example, section 4.21.1 of the PLUPA/FEIS states that “because ROWs are not required for construction of roads and facilities within a lease or between leases within a unit, these areas would not be impacted by ROW exclusion or avoidance areas proposed under any alternative. Road and facility construction to access existing leases from outside the lease may be impact by restrictions described under individual alternatives,” (p. 4-289). Further discussion of potential impacts to fluid mineral development is included on page 4-313 of the Utah GRSG PLUPA/FEIS.

“Application of the 3 percent disturbance cap (5 percent on National Forest System lands in Wyoming) in PHMA could impact both new and existing fluid mineral activities by preventing or restricting new surface development. New fluid mineral activities could be precluded if the cap were exceeded in a BSU or a proposed project analysis area. New surface development on existing leases could be restricted if the cap were exceeded. However, the BLM would not apply the disturbance cap in a manner that would eliminate reasonable opportunities to develop an existing lease,” (p. 4-313). Impacts of proposed lek buffers are included in this section as well.

The “aggregated impacts” of the Utah GRSG PLUPA/FEIS are also discussed on page 4-313 of the Utah GRSG PLUPA/FEIS; “RDFs would be applied as under the action alternatives in PHMA and GHMA, and impacts would be similar in nature and magnitude to Alternative D. In addition to the RDFs, disturbance cap, lek buffers, and density restrictions, additional conservation measures in PHMA would include net conservation gain requirements (also a requirement in GHMA), restrictions on noise and tall structures, and seasonal restrictions. All of these combined would further restrict oil and gas development compared with Alternative A. In the Carbon and Uintah Population Areas, where oil and gas potential is relatively high and some areas are at or exceeding the disturbance cap, the cumulative effect of all of the restrictions would likely reduce opportunities for oil and gas development on public lands.”

As specific actions come under consideration for future implementation, the BLM and FS will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as the issuance of ROWs. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts - Socioeconomics

Issue Number: PP-UT-GRSG-15-04-17
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: In the socio-economic analysis in Chapter 3 and Appendix T of the AFEIS, it is noted that 2010 data is being used. The economy has substantially changed in the study area since 2009-2010 and newer data is readily available from sources such as the Utah Department of Workforce Services. Although the BLM has claimed that using newer data will not significantly alter the results, failure to use the best available data adds to the case that the foundation of the plan amendments fails to meet the standards of the Federal Data

Quality Act.

Issue Number: PP-UT-GRSG-15-04-22
Organization: Carbon County Commission
Protestor: Casey Hopes

Issue Excerpt Text: Carbon County finds that the proposed plan amendments will impose unnecessary burdens on the public, and that they have been moved forward by the BLM/USFS without comments from small businesses and small organizations or Cities. Small local governmental jurisdictions, such as Carbon County, representing the cities of Price, Helper, East Carbon, and the towns of Wellington and Scofield, and many outlying county areas, have been allowed to participate in the

process as a cooperator; however, their comments have not been taken seriously and have not been used in a meaningful manner to guide the outcome of the impacts that federal agencies' decisions always create. There has not been an adequate assessment of the proposed rules on small businesses, small organizations and small governmental jurisdictions as required by this Act and applicable court decisions. There has been no attempt to fit the proposed regulatory requirements to the scale of the businesses, organizations and jurisdictions that it will impact.

Issue Number: PP-UT-GRSG-15-05-3
Organization: Mayor of Wellington City
Protestor: Joan Powell

Issue Excerpt Text: The City of Wellington, Utah informs the BLM in writing by this protest that the proposed plan amendments in the FEIS for GRSG conservation measures will impose unnecessary burdens on the residents, business owners and the public who contribute significantly to city economy. This plan has been derived without the consideration of impacts on small businesses or small organizations in Wellington. Carbon County as a cooperating agency in the creation of the GRSG Land Use Plan Amendments and Environmental Impact Statement has rendered comments that we support and concur with but seems to have been widely ignored by the BLM and the Forest Service.

Issue Number: PP-UT-GRSG-15-06-3
Organization: Mayor of Price Municipal Corporation
Protestor: Joe Piccolo

Issue Excerpt Text: The City of Price, Utah informs the BLM in writing by this

protest that the proposed plan amendments in the FEIS for GRSG conservation measures will impose unnecessary burdens on the residents, business owners and the public who contribute significantly to city economy. This plan has been derived without the consideration of impacts on small businesses or small organizations in Price. Carbon County as a cooperating agency in the creation of the GRSG Land Use Plan Amendments and Environmental Impact Statement has rendered comments that we support and concur with but seems to have been widely ignored by the BLM and the Forest Service.

Issue Number: PP-UT-GRSG-15-07-3
Organization: Mayor of East Carbon
Protestor: Doug Parsons

Issue Excerpt Text: The City of East Carbon, Utah informs the BLM in writing by this protest that the proposed plan amendments in the FEIS for GRSG conservation measures will impose unnecessary burdens on the residents, business owners and the public who contribute significantly to city economy. This plan has been derived without the consideration of impacts on small businesses or small organizations in East Carbon. Carbon County as a cooperating agency in the creation of the GRSG Land Use Plan Amendments and Environmental Impact Statement has rendered comments that we support and concur with but seems to have been widely ignored by the BLM and the Forest Service.

Issue Number: PP-UT-GRSG-15-08-3
Organization: Mayor of Scofield Town
Protestor: Mike Erkkila

Issue Excerpt Text: The City of Scofield, Utah informs the BLM in writing by this protest that the proposed plan amendments

in the FEIS for GRSG conservation measures will impose unnecessary burdens on the residents, business owners and the public who contribute significantly to city economy. This plan has been derived without the consideration of impacts on small businesses or small organizations in Scofield. Carbon County as a cooperating agency in the creation of the GRSG Land Use Plan Amendments and Environmental Impact Statement has rendered comments that we support and concur with but seems to have been widely ignored by the BLM and the Forest Service.

Issue Number: PP-UT-GRSG-15-09-3
Organization: Mayor of Helper City
Protestor: Edward Chavez

Issue Excerpt Text: The City of Helper, Utah informs the BLM in writing by this protest that the proposed plan amendments in the FEIS for GRSG conservation measures will impose unnecessary burdens on the residents, business owners and the public who contribute significantly to city economy. This plan has been derived without the consideration of impacts on small businesses or small organizations in Helper. Carbon County as a cooperating agency in the creation of the GRSG Land Use Plan Amendments and Environmental Impact Statement has rendered comments that we support and concur with but seems to have been widely ignored by the BLM and the Forest Service.

Issue Number: PP-UT-GRSG-15-13-14
Organization: Wayne County Commission
Protestor: Newell Harward

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socio-economic impacts that will result from the 3.1 mile radius buffer.

Issue Number: PP-UT-GRSG-15-14-11
Organization: Morgan County Commission
Protestor: Logan Wilde

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socio-economic impacts that will result from the 3.1 mile radius buffer.

Issue Number: PP-UT-GRSG-15-15-11
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: Furthermore, the late consideration of the SPA concept prohibited proper socio-economic analysis and compliance with the Regulatory Flexibility Act, which requires federal agencies to analyze and disclose impacts on small businesses, small communities and small organizations.

Issue Number: PP-UT-GRSG-15-15-12
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: In Garfield County alone four small communities are impacted by the SPA concept, but no mention of impacts is made in the socio-economic analysis nor have Regulatory Flexibility Act requirements been met. A similar flaw exists for the discussion of livestock grazing in Garfield County as a cultural resource and impacts on ranchers as small businesses.

Issue Number: PP-UT-GRSG-15-15-44
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The Bureau of Land Management and the Forest Service arbitrarily place restrictions on all landforms including conifer forests outside justifiable habitat boundaries. This negatively impacts custom, culture, heritage and socio-economic conditions in Garfield County while ignoring best science. The LUPA/EIS did not disclose any of these factors. Garfield County requests a complete socio-economic analysis consistent with Regulatory Flexibility Act standard.

Issue Number: PP-UT-GRSG-15-15-53
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS does not consider socio-economic conditions in Garfield County. Specifically, the LUPA/FEIS does not consider economic impacts to small communities and small businesses as required by the Regulatory Flexibility Act. Proposed grazing restrictions are not evaluated in light of their impact on grazers and ranchers in Garfield County; and the Bureau of Land Management and the Forest Service propose to apply these prescriptions on lands are not suitable GRSG habitats. These issues must be resolved with Garfield County prior to a record of decision on the LUPA/FEIS.

Issue Number: PP-UT-GRSG-15-15-70
Organization: Garfield County Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socioeconomic impacts that will result from

Summary:

The Utah GRSG PLUPA/FEIS violates NEPA and fails to meet the standards of the Federal Data Quality Act by not using new, readily available data from sources such as the Utah Department

the 3.1 mile radius buffer in the Panguitch and southern Parker Mountain population areas in Garfield County.

Issue Number: PP-UT-GRSG-15-28-28
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socioeconomic impacts that will result from the 3.1 mile radius buffer.

Issue Number: PP-UT-GRSG-15-33-12
Organization: Daggett County Commission
Protestor: Karen Perry

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socio-economic impacts that will result from the 3.1 mile radius buffer.

Issue Number: PP-UT-GRSG-15-38-32
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA-EIS has insufficiently identified and analyzed the socio-economic impacts that will result from the 3.1 mile radius buffer in the Parker Mountain population area in Paiute County.

Issue Number: PP-UT-GRSG-15-40-26
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The LUPA/FEIS has insufficiently identified and analyzed the socio-economic impacts that will result from the 3.1 mile radius buffer.

of Workforce Services; does not provide an adequate assessment of the proposed rules on small businesses, small organizations and small governmental jurisdictions as required by this Act; fails to include a socio-economic analysis consistent with Regulatory Flexibility Act standard; and fails to adequately analyze the socio-economic impacts resulting from a 3.1 mile radius buffer of local communities.

Response:

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

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2 and Forest Service Handbook 1909.15, Chapters 10 and 20). The agencies need not speculate about all conceivable impacts, but they must evaluate the reasonably foreseeable significant effects of the proposed action.

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

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

The Utah GRSG PLUPA/FEIS discusses and analyzes the socioeconomic of the planning area in Chapter 3, Section 3.23, pages 3-231 to 3-267, Chapter 4, Section 4.23, pages 4-372 to 4-404, and Chapter 5, pages 5-191 to 5-195. The PLUPA/FEIS describes the methods, tools, and assumptions used to evaluate the socioeconomic resources for the planning area. Appendix W contains the Economic Impact Analysis Methodology which describes the methods and data that underlie the economic impact modeling analysis. This analysis used IMPLAN 2011. This means that parameters such as productivity and trade data reflect estimates for the study area released in the 2011 IMPLAN version. These parameters typically do not meaningfully change from one year to another and would likely not be substantially affected by more recent growth trends in employment or output in specific sectors. Prior to running the model, cost and price data were converted to a consistent dollar year (2011) using sector-specific adjustment factors from the IMPLAN model. Unless stated otherwise, the values in this appendix are expressed in year 2011 dollars. This economic impact analysis model provides a quantitative representation of the production relationships between individual economic sectors. The economic modeling analysis

uses information about physical production quantities and the prices and costs for goods and services. The inputs required to run the IMPLAN model are described in Appendix W. The resulting estimates from the IMPLAN model, by alternative, are in Chapter 4, Environmental Consequences, Section 4.23, Social and Economic Conditions. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region's economy. The model provides estimates of how a specific economic activity translates into jobs and income for the region including the local communities (Utah GRSG PLUPA/FEIS, Appendix W).

In Chapter 3, page 3-235, the PLUPA/FEIS discusses "Interest Groups and Communities of Place" taking into consideration, "There is a range of interest groups in the socioeconomic study area, including groups that focus advocacy on resource conservation and others that focus advocacy on resource uses such as livestock grazing and developed recreation opportunities. There are also groups that represent coalitions of interest groups." The PLUPA/FEIS considers various communities of people who are bound together because of where they reside, work, visit etc. and this information is considered used in the analysis in the PLUPA/FEIS. (Chapter 3, page 3-236).

In Chapter 3, page 3-241, the Utah GRSG PLUPA/FEIS discusses the Economic Conditions of the planning area and provides a summary of economic information, including trends and current conditions. It also identifies and describes major economic sectors in the socioeconomic study area that can be affected by management actions. Most likely affected would be those economic activities that rely on or could rely on BLM-administered and National Forest System lands, such as recreation, livestock grazing, or energy development (Chapter 3, page 3-241). In Chapter 4, this information is used for the analysis. In Chapter 4, Section 4.23.2, Methodology and Assumptions, the PLUPA/FEIS, the analysis of social and economic impacts were considered. Under Section 4.23.3, Economic Impacts, the FEIS discusses impacts from management actions affecting grazing allotments. Impacts for all alternatives are qualitatively discussed for other types of restrictions or RDFs (which includes the 3.1 mile buffer) that are contingent upon proximity to lek areas and/or meeting desired range conditions. The potential impacts of grazing closures on overall grazing employment, earnings, and output were estimated quantitatively. Under Alternatives B, D, and E, and the Proposed Plans, GRSG habitat would remain available for livestock grazing; impacts would be similar to Alternative A. Additionally, under the Proposed Plans, livestock grazing may need to be adjusted in order to meet Land Health Standards and to conserve, enhance, or restore GRSG habitat based on specific GRSG habitat objectives. This could result in local economic impacts that cannot be quantified at this time (Chapter 4. Page 4-375).

By using IMPLAN the Utah GRSG PLUPA/FEIS complied with NEPA by considering social science activities, used the most current data and information to assess the effects to the local economy in the planning area and used the best available references and resources to support conclusions in the document. By doing this, the Utah GRSG PLUPA/FEIS complied with the Federal Data Quality Act (Information Quality Act). Please refer to the Administrative Procedure Act section of this report for applicability of the Regulatory Flexibility Act to this planning effort. References used in the Utah GRSG PLUPA/FEIS are found in Volume III, Chapter 7, References. Also response to comments about impacts to rural counties and communities during

the Draft LUPA/EIS were addressed in the PLUPA/FEIS Appendix X, Section 22.3 (PP x-45 to x-47). Utah GRSG PLUPA/FEIS, Chapter 4, Section 4.23 provides additional discussion and impacts to counties were included where possible and appropriate.

The agencies complied with NEPA's requirement to consider, analyze and take a hard look at the environmental consequences/impacts to socioeconomics of the area in Utah GRSG PLUPA/FEIS planning effort.

Impacts - Recreation

Issue Number: PP-UT-GRSG-15-43-1

Organization: BlueRibbon Coalition

Protestor: Don Amador

Issue Excerpt Text: The Proposed LUPA/FEIS does not make clear whether any existing route will be closed to continuing (or future) motorized use. Instead, the documents present a confusing mix of concepts, some new, such as

“sagebrush focal areas”, “anthropogenic disturbance” thresholds within “biologically significant units”, and general prescriptions for lek buffers. It seems likely that some of these concepts will be applied, or already have been determined, to restrict or prohibit continuing motorized use of some route(s). The documents fail to disclose such determinations or the future prospect of such determinations.

Summary:

The Utah GRSG PLUPA/FEIS violated NEPA by failing to disclose and analyze which routes would be closed to future motorized use in the planning area.

Response:

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground, site specific planning decision or actions, the scope of the analysis was

conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In Chapter 3, Section 3.18, page 3-177 to 3-180 of the PLUPA/FEIS, current travel management is discussed for the planning area. OHV use on BLM-administered lands in the planning area is managed as either limited to designated roads and trails, or as open to cross-country travel. The BLM has completed travel management planning efforts resulting in designated travel plans for the entire planning area and summary of the current status of travel planning is discussed in this Chapter.

The Forest Service does not use similar OHV management categories. OHV use on National Forest System lands within the planning area is limited to roads, trails, and areas that have been designated through a transportation planning process. Within the planning area, the Forest Service has completed travel management planning for National Forest System lands across all relevant population areas. Each National Forest in Utah has a motor vehicle use map showing designated route systems. National forests in the Intermountain Region are in various stages of amending their travel management plan according to the 2005 rule; some National Forests have completed the process, while others are still underway with analysis. Designation decisions are made locally, with public input and in coordination with state, local, and tribal governments.

As discussed in Chapter 4 of the PLUPA/FEIS, under the Proposed Plan implementation-level travel and transportation planning would be completed after completion of this LUPA/EIS in accordance with National BLM Travel Management guidance. Route designations would be made specific to travel management needs and seasonal habitat needs of GRSG. Routes considered unnecessary would be closed while other routes could be designated as limited with seasonal or daily access restrictions. Travel systems would be managed with an emphasis on improving the sustainability of the travel network in a comprehensive manner to minimize impacts on GRSG and maintain motorist safety. Under adaptive management, if a hard trigger is tripped in PHMA, travel management planning would become top priority or designated routes would be re-evaluated and revised if determined to be causing population level impacts. (Chapter 4, page 4-134).

Utah GRSG PLUPA/FEIS complied with NEPA by considering and used the best available references and resources to support conclusions in the PLUPA/FEIS. References used in the Utah GRSG PLUPA/FEIS are found in Volume III, Chapter 7, "References".

The BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences and impacts travel management in the Utah GRSG PLUPA/FEIS planning effort and will analyze additional site specific travel planning upon approval of the Utah GRSG PLUPA/FEIS.

Impacts - Grazing

Issue Number: PP-UT-GRSG-15-02-4

Organization: Sevier County Commission

Protestor: Garth Odgen

Issue Excerpt Text: In the FEIS, in particular statements made by the USFS. We sense a major shift in how livestock grazing is being addressed. The USFWS in its 2010 decision to designate GRSG as a candidate species, did not identify livestock grazing as a species conservation threat. In the FEIS, livestock grazing is treated as a major species conservation threat and given considerable attention, more than wildfire. Invasive species and conifer encroachment are identified as the primary GRSG conservation threats in Utah. This is particularly evident in the USFS proposed plans. We request the role of livestock grazing as a species threat status be clarified in the section in the FEIS that comment on grazing and GRSG.

Issue Number: PP-UT-GRSG-15-18-20

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Issue Number: PP-UT-GRSG-15-26-19

Summary:

The Utah GRSG PLUPA/FEIS is inadequate because it:

- failed to identify why livestock grazing was identified as a major species conservation threat to GRSG in the PLUPA/FEIS;
- failed to adequately analyze the effects of grazing, specifically on cheatgrass;
- violates 43 CFR Part 4180 and H-4180-1 by superseding the mandatory rangeland health standards with GRSG habitat objectives; and
- is inconsistent with local plans in violation of FLPMA.

Response:

The Utah GRSG PLUPA/FEIS is the result of the March 2010, US Fish and Wildlife Service (USFWS) USFWS's 12-Month Findings for Petitions to List the Greater GRSG (*Centrocercus*

Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS must be consistent with Utah range health standards and a plan cannot amend a rule (43 CFR §1610.3-2(a)). These new limitations on grazing are not consistent with the Rangeland Health Standards, because they do not provide for diversity of vegetation. Management for sagebrush will crowd out vegetation below the mature brush. It will also maintain only one level of succession for a primary species. They are also contrary to the Utah GSG Plan (Supra at 12-14).

Issue Number: PP-UT-GRSG-15-38-7

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: Arbitrarily and capriciously, the BLM/FS designate livestock grazing as a threat to GRSG conservation. The designation is a clear violation of the State's and Piute County's consistency rights under FLPMA 202(c)(9). Furthermore, BLM/FS have failed to comply with NEPA requirements for scoping, identification of issues, analysis, disclosure, and resolution of inconsistencies regarding livestock grazing.

urophasianus) as Threatened or Endangered (p. ES_2). Major threats identified by USFWS in their March 2010 listing decision that apply to the Utah Sub-region included grazing components such as improper livestock grazing, wild horses and burros and large wildlife use (p.ES-3 and 4). The FEIS (p. 4-41 to 4-52) addresses the environmental consequences of grazing and puts it in this context “Research has shown that livestock grazing in GRSG habitat may either improve or decrease habitat quality, depending on the type of habitat, spatial and temporal scale, and how the grazing is administered (Beck and Mitchell 2000).” The discussion includes specific situations where well-prescribed livestock management may positively influence GRSG habitat suitability and situations where it can degrade critical habitat.

The PLUPA/FEIS properly identified improper grazing as a GRSG threat and used the best available science for evaluating proposed changes in guidance for livestock grazing.

The Utah GRSG PLUPA/FEIS fully assesses and discloses the environmental consequences of livestock grazing on upland plant communities and invasive plant species, including cheatgrass, in Section 4.3 Special Status Species – Greater Sage Grouse (p. 4-6 to 4-135), Section 4.8 Vegetation (Including Noxious Weeds, Riparian Areas, and Wetlands) (p. 4-153 to 4-170), Section 4.16 Livestock Grazing/Range Management (p. 4-227 to 4-252) and in the Cumulative Effects analysis in Section 5.4 Special Status Species – Greater Sage Grouse (p. 5-27 to 5-161) and Section 5.9 Vegetation (Including Noxious Weeds, Riparian Areas, and Wetlands) (p. 5-165 to 5-169).

As the Utah GRSG PLUPA/FEIS discusses, “Of particular concern to GRSG habitats is invasive plant species, most notably downy brome, otherwise known as cheatgrass. Invasive plant species can proliferate with surface disturbance (Rice and Mack 1991; Gelbard and Belnap 2003; Zouhar et al. 2008) or without disturbance (Young and Allen 1997; Roundy et al. 2007), and multiple factors (e.g., wildfire, energy development, infrastructure, mining, and over-grazing) may result in invasive plant species colonizing, replacing, and outcompeting desirable native species” (Utah LUPA/FEIS p. 4-37) and “Under controlled situations, where livestock is used as a targeted vegetation treatment tool, livestock can reduce fine fuel loads (e.g., cheatgrass) (Diamond et al. 2009). Recent” (p. 4-45).

The Utah GRSG PLUPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal

should it be implemented” was provided.

The Utah GRSG PLUPA/FEIS has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

Livestock grazing permit modification issued by BLM must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. Changes to livestock management deemed necessary to meet or progress toward meeting management objectives are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These activity plan-level analyses will tier to the RMP analysis and build on the environmental analysis when specific actions are proposed.

The protestor asserts the Utah GRSG PLUPA/FEIS will “violate the BLM rangeland health rules by superseding the mandatory rangeland health standards with sage grouse habitat objectives.” This is not the case because future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits issued by BLM are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR 4160 are still be available to the affected parties. BLM has not taken a pre-decisional approach because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made.

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

In accordance with this requirement, the BLM has given consideration to state, local, and Tribal plans that are germane to the development of the Utah GRSG PLUPA/FEIS. The BLM has worked closely with state, local, and Tribal governments during preparation of the PLUPA/FEIS. Chapter 6, Consultation and Coordination, Section 6.4, Cooperating Agencies specifically, describes coordination that has occurred throughout the development of the Utah GRSG PLUPA/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 6 - Section 6.5, Coordination and Consistency, of the Utah GRSG PLUPA/FEIS. The agency will discuss why any remaining inconsistencies between the Utah GRSG PLUPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD) for the Utah GRSG PLUPA/FEIS planning effort.

In addition to the BLM's invitations to a wide variety of agencies to participate as cooperating agencies, US Department of the Interior regulations (43 CFR 46.225(c)) require the BLM, as lead agency, to consider any request by a government entity to participate as a cooperating agency (BLM Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners, pages 8-9). From the time that the Notice of Intent was published in the Federal Register and throughout the development of the EIS, an agency could notify the BLM requesting cooperating agency status. Section 202 of the FLPMA requires the BLM and Forest Service, to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of, or for, such lands with the land use planning and management programs of other federal departments and agencies, and of the States and local governments within which the lands are located.

All agencies participating as cooperating agencies have been given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft EIS, and identification of issues and data during public scoping and the Draft LUPA/EIS public comment period, as required by 40 CFR 1503.2 and 40 CFR 1506.10. Further, coordination continued with cooperating agencies in order to identify consistency issues and to be compliant with the relevant laws and regulations. While the laws and regulations associated with cooperating agencies and coordination with other federal agencies and state, local, and tribal governments, state that coordination must occur; they do not prescribe the methods necessary to meet the legal or regulatory requirements. Based on the coordination efforts describe above, the BLM and Forest Service have met the legal and regulatory requirements for coordination and in the preparation of the Utah GRSG PLUPA/FEIS.

See also the response to the FLPMA and NFMA Coordination with State, Local, and Tribal Governments issues.

Impacts - Other

Issue Number: PP-UT-GRSG-15-15-52
Organization: Garfield County
Commission
Protestor: Brian Bremmer

Issue Excerpt Text: The Bureau of Land Management and the Forest Service also ignore (the documented positive impacts of agriculture and grazing as well as the benefits of mitigation and reclamation efforts in connection with energy development. Many of the positive impacts are documented on NRCS websites, but the federal agencies refuse to use positive information from a sister agency.

Issue Number: PP-UT-GRSG-15-18-18
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: The BLM has failed to take the legally required 'hard look' at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

Issue Number: PP-UT-GRSG-15-34-3
Organization: Avian Power Line
Interaction Committee
Protestor: Mike Best

Issue Excerpt Text: The Utah LUPA states “In PHMA, where existing guy wires are determined to have a negative impact on GRSG or its habitat; they should be removed or appropriately marked with bird flight diverters to make them more visible to GRSG in flight (pp. 2-30 to 2-31).” Because guy wires extend from a structure to the ground, there is theoretically a potential for GRSG collisions. However, data from APLIC member utilities indicates that GRSG collisions with guy wires on electric utility structures have not been documented. The structures themselves may serve as a visual cue and flying birds may be avoiding guy wires because they are seeing the associated towers. Because of the lower risk of collision, large-scale marking of power

pole guy wires in sagebrush habitats is not likely to provide a measurable conservation benefit. However, if collisions are documented on a particular structure or section of line, appropriate line marking methods could be implemented as part of a company’s APP. In addition to marking guy wires, the impacts of removing guy wires have not been analyzed in the LUPA FEIS. Guy wires cannot simply be removed without altering the stability, integrity, and safety of the line. The removal of guy wires would result in the need for taller, more robust structures, potential replacement of structures, and potentially more surface disturbance.

Summary:

The Utah GRSG PLUPA/FEIS violated NEPA by failing to take a ‘hard look’ at the effectiveness of proposed mitigation measures, especially those related to agriculture and grazing; the impact of cheatgrass invasion in determining patterns of rangeland fire; and the impacts of removing guy wires. The BLM also failed to use the information provided by its sister Federal agency the NRCS regarding the positive role of agriculture and grazing, as well as the mitigation associated with energy projects.

Response:

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

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

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

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

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

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

For instance, Chapter 4 of the Utah GRSG PLUPA/FEIS discusses impacts from cheatgrass under each of the alternatives and specifically in the plan under Wildland Fire Management and considers cheatgrass invasion in relation to wildland fire in a programmatic way (Utah GRSG PLUPA/FEIS, page 4-34). Chapter 4 of the Utah GRSG PLUPA/FEIS (P. 4-156 and 4-218) discusses the effects of vegetation and wildland fire management on Cheatgrass (invasive annuals): “Fire is particularly damaging to sagebrush ecosystems. Mature sagebrush does not re-sprout after a fire, but is replenished by wind-dispersed seed from adjacent unburned stands or seeds in the soil. Depending on the species and the size of a burn, sagebrush can reestablish within 5 years of a burn, but a return to a full pre-burn community cover can take 15 to 30 years (Manier et al. 2013, pp. 133-134). Fire suppression may be used to maintain habitat for GRSG (NTT 2011, pp. 25-26). When management decreases fire size by controlling natural ignitions, the indirect impact is that vegetation ages across the landscape, and early successional vegetation communities, are diminished. Fire suppression may preserve the condition of some vegetation communities, as well as habitat connectivity. This is particularly important in areas where fire frequency has increased because of weed invasion, or where landscapes are highly fragmented. Fire suppression can also lead to increased fuel loads, which can lead to more damaging or larger-scale fires in the long term. Fire also increases opportunities for invasive species, such as cheatgrass, to expand (Brooks et al. 2004), so fire suppression can indirectly limit this expansion.

Under the Proposed Plans, guidance would include more specific indicators and desired conditions for each habitat type than any other alternative. In addition, specific acreage objectives have been identified for conifer removal (180,900 acres) and annual grass treatments (48,000 acres) on BLM and National Forest System lands in PHMA for a ten year period based on VDDT. These actions would allow for vegetation treatments that could target areas most in need of improvement, resulting in the reduction of annual invasive grasses, and conifer encroachment resulting in an increasing trend towards FRCC desired historic conditions” (Utah

GRSG PLUPA/FEIS, Chapter 4)). More specific analysis of site-specific issues related to cheatgrass and fire would be conducted at the time particular fire or other vegetation management projects are proposed for implementation, and such analysis would tier to the programmatic analysis found in the Utah GRSG PLUPA/FEIS.

In Chapter 4, Infrastructure Development (including all ROWs and utility corridors) (page 4-272) discusses how ROWs would be managed under the Utah GRSG PLUPA/FEIS in a general programmatic way. Removal of guy wires from existing infrastructure was not specifically analyzed in the PLUPA/FEIS, however upon renewal of existing authorizations or new proposed facilities, new site specific NEPA analysis would be conducted and the placement of guy wires would be assessed at that time. The Required Design Features for Lands and Realty located in Appendix G, page G-10 would apply to renewals and new proposed projects.

In Chapter 4, Section 4.16.7, page 4-251, the PLUPA/FEIS considered both the positive and adverse impacts livestock grazing in relation to infrastructure, including ROWs. The benefits of mitigation and reclamation efforts relative to energy development was considered and analyzed in the PLUPA/FEIS Chapter 4, page 4-158.

Utah GRSG PLUPA/FEIS complied with NEPA by considering and used the best available references and resources to support conclusions in the PLUPA/FEIS. References used in the Utah GRSG PLUPA/FEIS are found in Volume III, Chapter 7, References. Specifically, the BLM took into account information from the NRCS, as noted on page References-23. This publication has therefore been included in the References section.

The BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences/impacts of cheatgrass and consider and use the best available information in the Utah GRSG PLUPA/FEIS planning effort.

GRSG - General

Issue Number: PP-UT-GRSG-15-13-8

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: West-wide, the several BLM LUPAs/FEISs are arbitrarily and capriciously rigid and non-adaptive, because they mechanically force one-size-fits-all habitat management schemes and restrictions that ignore the significant sub-regional habit differences across the West. Utah's landscape is dominated by islands of habitat widely separated by canyons and mountains; whereas Wyoming's landscape is dominated by wide expansive areas of contiguous sage grouse habitat. The various

LUPAs/FEISs fail to account for and adapt to these important sub-regional differences across the West. Many of the restrictions in the Utah BLM LUPA/FEIS were obviously just imported from other sub-regions with no thought of how they logically relate to Utah's dominant landscape.

Issue Number: PP-UT-GRSG-15-18-21

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not made a showing through its collective NEPA analyses that GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science,

with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and Eastern Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that responses of GRSG to human-induced habitat alternations are remarkably similar across the species' range. Given that the science does not differ significantly across the species' range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

Issue Number: PP-UT-GRSG-15-19-10
Organization: Beatty & Wozniak for Exxon-Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The Lander planning area includes high-density GRSG habitat, yet imposes more reasonable GRSG measures on development, prescribing a 5% disturbance threshold with viable exception criteria as compared to the Utah LUPA's proposed 3% disturbance threshold. However, despite this significant departure from a 2014 land use document, the LUPA provides no justification or explanation for this difference in GRSG protective measures. This dramatic difference in the

BLM land use plans for the same species is the hallmark of arbitrary and capricious decision-making that would not withstand legal scrutiny under a challenge brought pursuant to the Administrative Procedures Act. The BLM must consider revising the LUPA to provide reasonable management prescriptions in line with the Lander RMP.

Issue Number: PP-UT-GRSG-15-20-60
Organization: American Petroleum Institute / Western Energy Alliance
Protestor: Richard Ranger

Issue Excerpt Text: In the LUPAs, the BLM expressly exempts certain renewable electric transmission projects from the species and habitat management prescriptions and restrictions. Yet, the BLM acknowledged in the LUPA and FEIS that these projects will have significant impacts in GRSG habitat. This disparate treatment is compounded by the fact that, under the LUPA, the BLM will still count these transmission projects significant environmental impacts and surface disturbance in priority habitat against the surface disturbance cap calculation imposed against the oil and gas industry and other developers of public resources.

Issue Number: PP-UT-GRSG-15-20-62
Organization: American Petroleum Institute / Western Energy Alliance
Protestor: Richard Ranger

Issue Excerpt Text: The affected LUPAs contain inconsistent explanations, and do not consistently apply or explain what provisions apply and what provisions do not. For example, the Nevada and Northeastern California LUPA expressly explains that the transmission project's surface disturbance counts against the cap that is applicable to other industries, but in contrast, this application is only implicitly provided for in

the NW Colorado LUPA and other LUPAs applicable to Wyoming and Utah.

Issue Number: PP-UT-GRSG-15-31-1

Organization: Governor, State of Wyoming Alliance

Protestor: Matthew Mead

Issue Excerpt Text: There are internal inconsistencies. For example, in some of the documents, livestock grazing is referred to as a surface-disturbing activity. For example, “Impacts from surface disturbing activities such as livestock grazing and other mineral development could lead to loss, alteration, and fragmentation of habitat and displacement of special status wildlife” (9 Plan, Chapter 2, Section 2.13, p. 2-214). The BLM has defined “Surface Disturbance” and “Disruptive Activities” in Information Bulletin (18) WY-2007-029, Guidance for Use of Standardized Surface Use Definitions, and again in BLM IB WY-2012-019. Livestock grazing or trailing activities should not be considered “surface disturbance” or a “disruptive activity”. The FEIS for the 9-Plan states, “Livestock grazing is not considered a surface-disturbing activity” (See, Chapter 4, Section 4.7.2, p. 4-89). This statement should be reflected throughout the Plans, removing inconsistency.

Issue Number: PP-UT-GRSG-15-32-10

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The BLM is inconsistent about its rationale to decline the identification of reverse triggers in Utah. The BLM and Forest Service have supported the concept in the Idaho and Southwestern Montana GRSG Proposed LUPA/Final EIS (Idaho FEIS). In that plan, the BLM proposes a mechanism to remove hard trigger responses once the habitat or

population shows a return to pre-trigger values. The Idaho FEIS states:

Remove any adaptive management response when the habitat or population information shows a return to or an exceedance of the 2011 baseline values within the associated Conservation Area in accordance with the Adaptive Management Strategy. In such a case, upon removal of the adaptive management response, the original habitat and population triggers would apply. The state protests the BLM’s refusal to provide for reverse triggers in the proposed plan amendments for Utah.

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

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14). The authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4); the Utah plan should avoid doing the same), prohibit renewable energy development, and require managers to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/around winter range to preserve the areas by reducing future fire risk (SD FEIS: 48).

Issue Number: PP-UT-GRSG-15-37-3

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: The Nevada/Northeastern California plan has adopted this desired condition for managing sage-grouse habitat (2-18, Table 2-2). This provision sets a science-based (Lockyear et al.) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

Issue Number: PP-UT-GRSG-15-37-5
Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: The Utah plan should follow the example set by the Nevada and Oregon plans. Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses the BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [GRSG] habitat due to climate stress" as a threat to GRSG; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on GRSG and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species. The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas" generally high elevation areas (typically above 5,000 feet) with limited

Summary:

Protests identified inconsistencies among the various Sub-regional GRSG Land use plan amendments. These differences and broad level management actions may lead to arbitrary decisions in each sub-region.

habitat disturbance that the BLM has identified as likely to provide the best habitat for GRSG over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current GRSG range. The purpose of these areas is to benefit GRSG over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Issue Number: PP-UT-GRSG-15-38-9
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The BLM adopted the Wyoming State GRSG Plan (with maps) but not Utah's plan, even though both were developed by the respective wildlife agencies with equal expertise and jurisdiction. This is arbitrary and capricious.

Issue Number: PP-UT-GRSG-15-40-7
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The BLM adopted the Wyoming State GRSG Plan (with maps) but not Utah's plan, even though both were developed by the respective wildlife agencies with equal expertise and jurisdiction. This is arbitrary and capricious pick-and-choose agency action on full display.

Response:

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM and the Forest Service have used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level.

The agencies have allowed some inconsistencies among sub-regional plans as a means to address specific threats at a local and sub-regional level and for other reasons as discussed below.

Consistent with the National GRSG Planning Strategy (BLM 2011), the BLM as a lead agency, together with the Forest Service as a cooperating agency, prepared 15 EISs with associated plan amendments and revisions. Five of the 15 EISs involve national forest system lands. Threats affecting GRSG habitat were identified and the intensity of these threats vary by management zones. Within each management zone, differences in ecological conditions and ecological site potential affect the area's susceptibility to the various threats and its restoration potential. Further, each sub-region has varying local situations.

Each LUPA/FEIS takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests. Developing the LUPAs involved unprecedented collaboration with state agencies and leadership and were built upon local GRSG conservation efforts initiated by a number of states, including Wyoming's core area strategy, Idaho's three-tiered conservation approach, and Oregon's "all lands, all threats" approach. Where available, state population data and habitat use information were considered in developing management approaches in the LUPAs. Some states have regulatory measures in place for improved habitat protection, other rely on voluntary actions. These variations were accounted for in the analyses.

Conservation measures are in the context of all the laws governing public land use and reflect the differing regulations and policies for the BLM and Forest Service. For example, the BLM proposed plans identified goals, objectives, and management actions and Forest Service plans identified desired future conditions, objectives, standards, and guidelines. Conservation measures are also in the context of the objectives of each alternative, keeping in mind that each alternative represents a distinct approach to meeting the purpose and need.

Each LUPA/FEIS, in the beginning of Chapter 4, recognizes that certain information was unavailable because inventories either have not been conducted or are not complete in that planning area, therefore some impacts cannot be quantified. Where this data gap occurs,

subsequent site-specific inventory data could be collected for a project level analysis to determining appropriate application of LUPA-level guidance.

All these variables influenced the environmental analyses and management direction, resulting in portions of the LUPAs where there is uniformity across the landscape range and other aspects where there are differences.

See also responses to protest points about specific habitat objectives and management actions (such as density and disturbance caps).

GRSG Density and Disturbance Cap

Issue Number: PP-UT-GRSG-15-16-5
Organization: Iron County Commission
Protestor: Dale Brinkerhoff

Issue Excerpt Text: The BLM is proposing to adopt a disturbance cap calculated at no more than 3% human disturbance within the total available habitat in the area around a population. The BLM and the FS define the area covered by the disturbance cap as the aggregate of the priority habitat within the newly-defined Biologically Significant Units (BSU), and within a proposed project area. The use of Biological Significant Units was not analyzed in the draft EIS and is therefore contrary to NEPA and cannot become part of the final decision.

Issue Number: PP-UT-GRSG-15-20-40
Organization: American Petroleum Institute / Western Energy Alliance
Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the Agencies must clearly define and publish maps and acreages of the BSUs within which the disturbance caps apply. See Proposed LUPA/Final EIS at E-1. The public has no way of knowing which areas constitute BSUs or their size and therefore cannot assess how impacts will be evaluated.

Issue Number: PP-UT-GRSG-15-22-12

Organization: Western Watersheds Project
Protestor: Michael Connor

Issue Excerpt Text: The plan does not include grazing as a surface disturbance subject to the disturbance cap. Rather, the plan considers it a diffuse disturbance. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupt vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns to other uses.

Issue Number: PP-UT-GRSG-15-26-13
Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS implements a 5 percent cap on anthropogenic disturbances and prohibits all surface disturbances and activities unless the site is under the 5% (Utah LUPA/FEIS 2-60, GRSG MA GL 023). Neither the DEIS nor the FEIS cite to any authority for a 5%

anthropogenic disturbance cap. Presumably, the BLM relies on the NTT Report and the reports cited therein for the 5% threshold.

Regardless, the best available science does not support a 5% disturbance cap.

Summary:

Protesters dispute the application of density and disturbance caps of being insufficient to protect GRSG as the calculation does not include disturbance associated with livestock grazing. BLM did not disclose how much disturbance is currently mapped in each BSU. Additionally, BSUs should be mapped as a means of disclosing areas to the public so that disturbance caps can be estimated. Additionally, the caps are not based on supportable science.

Response:

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8)

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

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed LUPA that address these impacts. Regarding disturbance mapping in RMPA, Appendix E discusses the methods and data used in calculating disturbance in the BSUs. Per the appendix, the calculation of disturbance within a given BSU will occur during the analysis and planning of site-specific project proposals. Additionally, the issue of supplementation is addressed in that section of this report.

The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in this RMPA.

Mapping and calculations associated with the density and disturbance caps will occur at the project level and will therefore provide for public disclosure of the current condition of the BSUs. In addition, Appendix L presents the BLM’s baseline disturbance inventory for the planning area. Based on this data, the PLUPA/FEIS did analyze the effects of a 3% and 5% disturbance cap, based on the existing levels of disturbance as contained in the inventory. This information will continue to be refined and improved after the plan is approved and implemented.

GRSG - Adaptive Management

Issue Number: PP-UT-GRSG-15-20-22

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Second, the Agencies cannot implement the “responses” to the soft triggers because there is nothing to

implement. The Proposed LUPA does not define any concrete actions that BLM will implement in response to the triggers (See Proposed LUPA/Final EIS at B-8). The planning regulations do not permit BLM to change the management prescriptions in an RMP via an open-ended placeholder.

Issue Number: PP-UT-GRSG-15-20-37

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the soft management triggers and responses set forth in the Proposed LUPA as arbitrary because the adaptive management strategy does not describe how the agencies will determine whether their management actions “cause or contribute to” population or habitat declines.

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

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: As enumerated above, the state has numerous concerns with the BLM’s adaptive management strategy for the proposed plan amendments in Utah. BLM cannot avoid a plan amendment under FLPMA in the future by contemplating a variety of management decisions based on a myriad of projected scenarios. Likewise, BLM cannot use the adaptive management

Summary:

The Adaptive Management Plan associated with the LUP Revision is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist. Additionally, the management actions proposed under the Adaptive management plans would require further plan amendments according to 43 CFR 1610.5-5.

Response:

Applying specific responses at a land use plan level would not be appropriate as such may not address the site-specific issues or “causal factors” that initiated the tripped soft trigger. The RMPA provides for various implementation-level responses that will more appropriately address

plan to avoid the requirements of an EIS process under NEPA. For these reasons, the adaptive management strategy in the plan is flawed, misguided, and violates FLPMA and NEPA and must be rewritten.

Issue Number: PP-UT-GRSG-15-32-8

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: FLPMA requires that all future proposed revisions to duly-adopted Resource Management Plans that are based on a change in circumstance ultimately require an amendment to the plan, pursuant to 43 CFR § 1610.5-5. The BLM does not have the luxury of contemplating several different future scenarios involving several pre-determined corresponding solutions to avoid an amendment. The court in Klamath Siskiyou Wildlands Center v. Boody, 468 F.3d 549 (2006) (Boody) looked at a similar misguided adaptive management strategy and analyzed it.

Issue Number: PP-UT-GRSG-15-32-9

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: As the court held in Boody, the BLM cannot circumvent the requirement of an amendment process under FLPMA by drafting an adaptive management strategy of the type proposed.

the causal factors in these situations (see section 2.7.1 and Appendix C). These responses have been analyzed within the range of alternatives in the FEIS and would therefore not require further analysis. The BLM and Forest Service are within their authority and appropriately applied an adaptive management plan to conserve GRSG habitat.

GRSG - Land Use Allocations

Issue Number: PP-UT-GRSG-15-25-2

Organization: Snell & Wilmer LLP for Alton Coal Development, LLC

Protestor: Denise Dragoo

Issue Excerpt Text: The FEIS released on June 1, 2015, identifies the South Panguitch Population Area, including the entire 3,576 acre Alton lease tract, as Priority Habitat, imposing more restrictive conditions than the current General Habitat designation. Moreover, in a departure from the draft analysis in the LUPA DEIS, the FEIS for the plan suggests that not all portions of the area will be considered for leasing. The DEIS states that “all of the decision area within the Panguitch Population Area is acceptable for further consideration for leasing”. The FEIS is revised to state that “most of the decision area within the Panguitch Population Area is acceptable for further consideration for leasing.”

Issue Number: PP-UT-GRSG-15-32-17

Organization: State of Utah

Summary:

The Utah GRSG PLUPA/FEIS arbitrarily changed the classification of the Panguitch Population Area from General Habitat to Priority Habitat without any evidence or analysis in the PLUPA/FEIS. This change in classification of habitat could potentially affect the leasing of coal resources on public lands in this area.

Response:

Changes in the GRSG habitat classification for the Panguitch Population Area are described and explained in Section 2.1 of the Utah GRSG PLUPA/FEIS (p. 2-1). The changes made for habitat classification were described as follows: PHMA and GHMA delineations were adjusted for a variety of reasons identified during public comments; in coordination with cooperating agencies; and based on internal review (p 2-1). The adjustments were considered within the range of alternatives analyzed in the Draft EIS, so no supplement is required.

Protestor: Kathleen Clarke

Issue Excerpt Text: In the BLM’s Draft EIS for the LUPA, BLM determined that the GRSG population in the Panguitch Population Area was “low risk” and therefore the Panguitch Population Area was General Habitat which would allow for future mine expansion. However, in the FEIS the BLM arbitrarily and capriciously changed the classification of the Panguitch Population Area from General Habitat to highly restrictive Priority Habitat, which may block Alton Coal from expanding its operations on to BLM land. Unfortunately the BLM did not provide any evidence or analysis in the FEIS explaining why it made this change. The state protests this reclassification of the Panguitch Population Area and requests that the BLM eliminate the priority habitat designation for the Panguitch Population Area. The BLM’s unexplained and unsupported reclassification is arbitrary and capricious and therefore unlawful.

It is further explained that the changes made “...included review and evaluation of population distribution and trends, GPS and radio telemetry data, the presence of existing developments and valid existing rights, and the potential to improve, connect or expand habitat.” The adjustments made were considered and analyzed in the range of alternatives of the Utah GRSG Draft LUPA/EIS. The specific adjustment made for the Panguitch Population Area resulted in “changing the portions of the Panguitch Population Area south of the town of Hatch from GHMA to PHMA” (p. 2-1). The Utah GRSG PLUPA/FEIS is a variation of the preferred alternative (Alternative D), though it does include several actions that, while new, are qualitatively within the range of alternatives analyzed in the Draft LUPA/EIS.

The BLM and Forest Service considering relevant information from public comments, having addressed and analyzed the allocations in the range of alternatives of the Draft LUPA/EIS, and adequately explaining the changes made, complied with NEPA.

GRSG - Habitat Objectives

Issue Number: PP-UT-GRSG-15-26-16
Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The BLM applies an incorrect standard here; it states that “[g]razing will continue to occur in GRSG habitat, so long as that habitat is meeting science-based resource objectives.” BLM must manage these lands according to rangeland standards, 43 CFR Part 4180, and the Wyoming and Utah Rangeland Health Standards.

Issue Number: PP-UT-GRSG-15-26-17
Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments
Protestor: Constance Brooks

Issue Excerpt Text: The BLM has not documented whether the lands in the Planning Area capable of producing sagebrush can reach the 70 percent threshold in Sweetwater or Uinta County, Wyoming or the Utah counties. Assuming lands that produce sagebrush can reach BLM’s 70% sagebrush within the PHMA and GHMAs, BLM has not analyzed whether

those lands can produce 10-30% sagebrush canopy cover. Utah LUPA/FEIS at 2-22; 2-249. Thus, BLM's blanket prescription is not justified on the basis of any analysis that 70 percent in the Planning Area is better than another percentage. The BLM’s cursory reference to Technical Reference 1734-6, Interpreting Indicators of Rangeland Health is inadequate (Utah LUPA/FEIS 2-22). The Technical Reference 1734-6 details a visual observation made by a team of people as a starting point to describe a site. It is not meant to be the binding guideline on which to base the 70% capability assumption. Thus, the BLM's reliance on the technical reference appears to be an arbitrary selection not tailored to the Planning Area, a clear violation of NEPA's hard look standard.

Issue Number: PP-UT-GRSG-15-38-13
Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS ignores significant localized habitat differences that exist in Piute County, Utah. Habitat quality varies throughout the County, and BLM/FS analysis is arbitrary and capricious because it fails to consider

any difference across its designated habitat. Much of the habitat proposed for designation and prescriptions is occupied by conifer woodlands, disqualifying it from GRSG use. Piute County has carefully mapped GRSG habitat based on standards described in the LUPNEIS and based on other localized information. The BLM and FS have ignored the better data and adopted a “one-size-fits-all” habitat management scheme. Piute County dominated by islands of habitat widely separated by conifer woodlands, canyons and mountains; whereas other areas may be dominated by

wide contiguous expanses of sagebrush ecosystems. The LUPNEIS fails to consider and disclose these important differences. Many of the prescriptions in the Utah BLM LUPA-EIS were obviously cut and pasted from other documents with no thought of how they apply to Piute County's condition. This flaw is amplified by the COT report, which specifically stated there is a need to use local range and landscape science to dictate local management of habitat and species.

Summary:

- The BLM violates 43 CFR Part 4180 with the requirement that “[g]razing will continue to occur in GRSG habitat, so long as that habitat is meeting science-based resource objectives.”
- The BLM and Forest Service ignore significant localized habitat differences and did not document whether the lands in the Planning Area capable of producing sage brush can reach the 70% threshold and BLM did not analyze whether those lands can produce 10-30% canopy cover.

Response:

Livestock grazing permit modification must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR 4160 are still available to the affected parties. Site-specific decisions regarding livestock grazing permits have not been made in the LUPA/EIS and changes to permits would only occur as necessary to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made. The BLM has not violated 43 CFR Part 4100 because the requirement that “grazing will continue to occur in GRSG habitat, so long as that habitat is meeting science-based resource objectives” is consistent with the Range Management Regulations found in 43 CFR Part 4100.

The CEQ regulations require an environmental impact statement to:

...succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply

referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. (40 CFR 1502.15)

The PLUPA/FEIS is a programmatic NEPA effort to conserve GRSG and its habitat across a broad geographic area. As such, the BLM and Forest Service described the current conditions and trends in the affected environment broadly, across a range of conditions, appropriate to program-level land use planning actions. Section 3.8 Vegetation (Forest, Rangelands, Riparian and Wetlands, and Noxious Weeds) (p. 3-64 to 3-99) describes conditions statewide, conditions in population areas (including Uintah, Carbon, Emery, Parker Mountain, Panguitch, Bald Hills, Hamlin Valley, Sheeprocks, Ibapah, Box Elder, Rich, Strawberry, Wyoming – Uinta, and Wyoming – Black Fork), use of vegetative, forestry and woodland products, and provides regional context.

The Great Basin Vegetation Modeling process used in evaluating trends in GRSG habitat involved a vegetation dynamics development tool, an interagency and science review team, and was supported by a number of datasets including LANDFIRE Biophysical Settings Models, ReGAP, and Utah's Statewide Precipitation GIS Layer (Appendix V). The PLUPA/FEIS displays the general vegetation types in the planning area in Map 3.8-1 based on the Southwest Regional GAP Analysis Project (ReGAP) land cover (USGS 2005), and describes distribution, trends, and conditions for vegetation types within the planning area (pp.3-64 through pp.3-99). The Southwest ReGAP was used in the vegetation analysis, as it was "considered more accurate and more appropriate for vegetation analysis compared to other land cover descriptions, such as LANDFIRE" (pp.3-64). Trends, distribution, and conditions for sagebrush communities as well as those dominated by pinyon-juniper, aspen, conifer, desert shrub/salt desert scrub, grassland, mountain shrub, nonvegetated/other, water/riparian/wetlands, agriculture, developed/disturbed, and invasives are described. The three most common vegetation communities in the planning area are desert shrub/salt desert scrub (21% of the planning area), pinyon-juniper (20% of the planning area), and sagebrush (18 percent of the planning area) (Utah GRSG PLUPA/FEIS, p.3-77).

Sagebrush availability (percent of sagebrush within a unit area) was addressed in the GRSG Monitoring Framework (Appendix C). The sagebrush community is defined as the ecological systems that have the capability to support sagebrush vegetation and seasonal GRSG habitats within the range of GRSG. The methodology to determine both the current availability of sagebrush on the landscape and the context of the amount of sagebrush on the landscape at broad and mid-scales is described, along with five datasets used in the analysis (Table C.3). Uncertainties and adjustments in the use of these datasets are also described, as well as the process for updating information on sagebrush availability within GRSG habitat, annually (C-16 to C-18).

Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13 and Chapter IV, B at 29; Forest Service Handbook 1909.12 – Land Management Planning). A more quantified or detailed and specific analysis would be required where the scope of the decision included implementation actions. As specific actions that may affect the area come under consideration, the BLM and Forest Service will conduct subsequent NEPA analyses

that include site-specific project and implementation-level actions. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

The BLM and Forest Service considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan-level. The BLM and Forest Service reviewed suggested studies and references to determine: 1) if they presented new information that would need to be incorporated into the Utah GRSG PLUPA/FEIS; 2) if they were references already included in the Draft GRSG LUPA/EIS; or 3) if the references provided the same information as already used or described in the Draft GRSG LUPA/EIS. Any study or reference that provided new relevant information was incorporated into the Utah PLUPA/FEIS.

The Utah GRSG PLUPA/FEIS provides an updated and expanded discussion of the environmental consequences, including the assumptions and disturbance thresholds, of the presented alternatives. As required by 40 CFR 1502.16, the Utah PLUPA/Final EIS provides a discussion of the environmental impacts of the alternatives including the proposed action, any adverse environmental effects that cannot be avoided should the alternatives be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources should the proposal be implemented. The Utah GRSG PLUPA/FEIS provides sufficiently detailed information to aid in determining whether to proceed with the proposed plan in a manner such that the public could have an understanding of the environmental consequences associated with the alternatives, in accordance with 40 CFR 1502.1.

The BLM and Forest Service considered the best available information and science in the evaluation of current condition and trends of vegetation types at broad and mid-scales throughout the planning area, in the analysis of direct, indirect, and cumulative effects on vegetation, and in the monitoring of sagebrush capability and availability.

[GRSG - Livestock Grazing](#)

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

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated. In order to conserve, protect, and enhance GRSG populations, the plan must include restrictions on spring grazing in all GRSG

breeding habitat (WWP Comments at 17). In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting GRSG (See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008). This nesting season is crucial for the species' survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and

the failure to even consider it, are shortcomings of the plan.

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

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: The agencies also fail to define grazing as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1- June 15) (PLUPA/FEIS at 2-19 and H-1). And yet, the best science recommends that grazing be restricted during this same

period. However, the only seasonal restrictions on livestock grazing pertain to vague and inadequate limits on trailing and bedding activities near occupied leks (PLUPA/FEIS at 2-47). This limited protection is inconsistent with other perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PLUPA/FEIS should be revised to limit spring season harms to leks.

Summary:

- The Utah GRSG PLUPA/FEIS also fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity. The distinction between livestock surface disturbance and disruption and other types of actions is arbitrary and capricious.
- The Utah GRSG PLUPA/FEIS fails to analyze seasonal restrictions, does not set utilization limits or stocking rates, and does not mandate specific terms and conditions to grazing permits.

Response:

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

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). Likewise the Forest Service is guided by CEQ (40 CFR 1500-1508) and Forest Service Handbook 1909.15 on NEPA implementation.

Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8): "GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and

temporal scales can have similar, but less visible effects.” Though grazing is not identified as a discrete threat, impacts from improper grazing are addressed and there are provisions and management actions proposed in the NTT Report and incorporated in the Utah GRSG PLUPA/FEIS that address these impacts. Livestock grazing management objectives 1 through 18 are described on pages 2-27 through 2-29. The agencies did not fail to use the best available science in developing management actions that address threats to the GRSG in the Utah GRSG PLUPA/FEIS.

- When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives. When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

In accordance with CEQ guidance and BLM's Land Use Planning Handbook and BLM IM No. 2012-169, the considers a range of alternatives that makes the area available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. The analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The agencies developed a reasonable range of alternatives that meet the purpose and need of the Utah GRSG PLUPA/FEIS and that address resource issues identified during the scoping period. The Utah GRSG PLUPA/FEIS analyzed seven alternatives for livestock grazing which are described in Chapter 2, Proposed Action and Alternatives. The Proposed Plan Amendment is detailed in Section 2.6 (p. 2-11 through 2-67) and 2.9 Summary Comparison of Proposed Plan Amendment and Draft Alternatives (p. 2-76 through 2-82). The alternatives for livestock grazing, alternatives A, B, C1, C2, D, E, and F, are detailed specifically in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-143 through 2-166).

The BLM and Forest Service have considerable discretion through grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands and National Forest System lands in an RMP/LMP. Suitable measures, which could include reduction or elimination of livestock grazing, or changes to season of use, are provided for in this FEIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental analyses and review. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the RMP/LMP objectives.

All alternatives would allow for the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification for permits issued by BLM would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives. Livestock grazing permit modification for permits issued by the Forest Service would be in accordance with the Range Management Regulations found in 36 CFR 222.

The PLUPA/FEIS considered a reasonable range of alternatives and considered grazing restrictions in the Utah GRSG PLUPA/FEIS in full compliance with NEPA; changes to individual permits are not appropriate at the land management planning scale and would occur at the implementation stage.

GRSG - Mitigation

Issue Number: PP-UT-GRSG-15-17-12

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: Habitat Mitigation Requirements May Not Reflect Achievable Conditions.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: However, it is not clear that such site-specific conditions will apply to the requirements for solid minerals reclamation. A “one-size fits all” approach to the landscape habitat requirements does not match the reality of varied environments including topography, climate, elevation and other natural factors which influence what conditions are achievable.

Issue Number: PP-UT-GRSG-15-20-28

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The terms of federal leases do not authorize BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See, e.g., BLM Form 3110-11, Offer to Lease and Lease for Oil and Gas (Oct. 2008). Although lease rights are subject to “applicable laws, the terms, conditions, and attached stipulations of [the] lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance,” see BLM Form 3110-11, neither BLM’s planning regulations nor its leasing regulations contain any requirement to provide compensatory mitigation and do not authorize BLM to require compensatory mitigation.¹⁸ See 43 C.F.R. pts. 1600, 3100. Moreover, no BLM or Department of the Interior order requires compensatory mitigation of oil and gas lessees. In fact, for nearly two decades, BLM has consistently taken the position that it would not require compensatory mitigation of lessees. (See BLM Instruction Memorandum No. 2008-204, Offsite Mitigation (Oct. 3, 2008); BLM Instruction Memorandum No. 2005-069,

Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal, and Energy Rights-of-Way Authorizations (Feb. 20, 2005); Wyoming BLM Instruction Memorandum No. WY-96–21, Statement of Policy Regarding Compensation Mitigation (Dec. 14, 1995)). Additionally, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a “net conservation gain” is not contemplated in any regulations or formal departmental policy. Accordingly, the terms of federal oil and gas leases do not contemplate the Proposed LUPA’s requirement that lessees provide

compensatory mitigation to provide a net conservation gain.

Issue Number: PP-UT-GRSG-15-24-8

Organization: CE Brooks & Associates for Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The Utah LUPA/FEIS adopts regional mitigation direction which suffers serious issues regarding scope and jurisdiction and thus ignores the limits of BLM and Forest Service authority to regulate state and private land or effects a taking of such rights (Utah LUPA/FEIS at 2-70 Appendix D).

Summary:

The PLUPA/FEIS violates existing regulations at 43 CFR 1600 and 3100 by requiring compensatory mitigation, including achievement of a “net conservation gain” of GRSG habitat; may require reclamation to conditions that are not achievable on certain sites, due to local variation; and exceeds the BLM’s jurisdiction by adopting regional mitigation.

Response:

FLPMA and other applicable law authorize the BLM to provide for reasonable mitigation of impacts caused by development on public lands. In FLPMA, Congress declared it to be the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values....” FLPMA §102(a)(8).

FLPMA also directs the BLM to manage the public lands in accordance with the principles of multiple use and sustained yield (FLPMA § 302(a)). In defining multiple use and sustained yield, Congress called for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” and for “achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use” (FLPMA § 103(c) & (h)). The multiple use and sustained yield principles guide the BLM through its land use planning process, FLPMA § 202(c)(1), and its land use planning regulations contemplate that the BLM will monitor and evaluate the effectiveness of mitigation measures (43 CFR § 1610.4-9). Moreover, through land use planning, the BLM identifies desired outcomes in the form of goals and objectives for resource management (43 CFR § 1601.0-5(n)(3)). “Goals” are broad statements of desired outcomes that are not usually quantifiable, such as maintain ecosystem health and productivity, promote community stability, ensure sustainable development, or meet Land Health Standards. “Objectives” identify specific desired outcomes for resources, are usually quantifiable and measurable, and may have established timeframes for achievement

(BLM Land Use Planning Handbook, H-1601-1 (2005) at 12). Mitigation is one tool that the BLM can use to achieve the goals and objectives it establishes in land use plans.

BLM Instruction Memorandum (IM) No. 2008-204 outlines policy for the use of offsite mitigation for BLM land use authorizations. In making decisions that are within its discretion (taking into account statutes, regulations, and contractual/property rights of the requester), the BLM has an obligation to approve only land use authorizations that are consistent with its mission and objectives. This may mean that the BLM may be unable to permit certain land use authorizations without appropriate mitigation measures. Onsite mitigation alone may not always be possible or sufficient, though often resources are present offsite that can offer suitable compensation for remaining onsite impacts. Consequently, offsite mitigation may be an effective management tool to ensure appropriate land use authorizations.

In accordance with the preceding law, regulation, and policy, the requirement for a net conservation gain derives from the Purpose and Need of the Utah GRSG PLUPA/FEIS, which is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. The BLM and Forest Service will consider such measures in the context of their multiple-use and sustained yield mandates under the FLPMA, the Multiple Use and Sustained Yield Act, and the NFMA (p. 1-4). The requirement for a net conservation gain accounts for uncertainty associated with the effectiveness of mitigation.

Chapter 4, Section 4.3, Special Status Species – Greater GRSG (Vol. 2, p. 4-6), discloses the environmental consequences associated with the impacts on GRSG and its habitat from activities carried out in conformance with this plan, in addition to BLM and Forest Service management actions. In undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, including 43 CFR 3100, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions (Appendix A, p. D-1). Given that impacts would vary by project, more detailed consideration and analysis of appropriate GRSG mitigation measures would occur on a project-specific basis.

Regarding adoption of the Regional GRSG Mitigation Strategy, the BLM and Forest Service are not seeking to regulate state and private land. It is BLM policy for RMPs to identify areas subject to constraints for oil and gas leasing, and identify specific lease stipulations that will be employed to accomplish resource condition objectives (BLM Handbook H-1601-1, p. C-23 to C-24). BLM planning decisions apply to all public lands, even when the only public land interest is the mineral estate (i.e., “split-estate”) (43 CFR 1601.0-7). The Mineral Leasing Act requires that the “the Secretary of Interior...shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of the surface resources.” This requirement under the MLA applies to all federal oil and gas leases, regardless of surface ownership.

Thus, the BLM has the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts (e.g., applying a lease stipulation) that may result from federally authorized mineral lease activity.

All BLM-permitted actions on split-estate lands (i.e., Federal mineral estate under private surface) would be subject to the same stipulations and management direction in the Utah GRSG PLUPA/FEIS as leased Federal mineral estate on Federal surface lands (MA-MIN-24, p. 2-23).

Lastly, Objective GRSG-3 (p. 2-14) explains that Habitat Objectives for Greater GRSG – BLM Proposed Plan (see Table Objective GRSG-3) summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in Table Objective GRSG-3 were adjusted based on local science and monitoring data to define the range of characteristics used in the Utah Sub-region. Thus, the habitat objectives provide the broad vegetative conditions we strive to obtain across the landscape that indicate the seasonal habitats used by GRSG. The habitat objectives will be part of the GRSG habitat assessment to be used during land health evaluations (see Appendix C). These habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas. Therefore, the determination on whether the objectives have been met will be based on the specific site's ecological ability to meet the desired condition identified in the table.

The Utah GRSG PLUPA/FEIS complies with FLPMA and other applicable law, including 43 CFR 1600 and 3100 by identifying appropriate compensatory mitigation measures, including to achieve a “net conservation gain” of GRSG habitat, establishes lease stipulations for split-estate lands in compliance with statute, regulation, and BLM policy, and properly recognizes that habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas.

[GRSG – Data and Inventories](#)

Issue Number: PP-UT-GRSG-15-01-2

Organization: Utah Farm Bureau

Protestor: John Keeler

Issue Excerpt Text: Also in reviewing the BLM FinalEIS document, Chapter 2, maps 2.1-2.7 it is clear that the BLM and State of Utah overdrew the acreage of potential GRSG habitat. When the LWGs re-reviewed every area in the state that was listed as “potential GRSG” many of these areas were reduced because they are, in fact, “not potential” habitat acres. The majority of these acres were heavily infested Pinyon/Juniper acres. These re-reviewed maps are part of the public record in this EIS process but were not included in the BLM

FinalEIS document.

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

Organization: Sevier County

Protestor: Garth Oden

Issue Excerpt Text: Our LWGs have site-specific data regarding GRSG habitat-vegetation data. We applaud the BLM use of this information to develop Utah sub-region specific habitat guidelines. We are concerned that the USFS did not use this information to develop the guidelines in Table GRSG-17 GEN-DC-003. The Utah GRSG habitat vegetation data represents the best available science and the USFS must use it.

Issue Number: PP-UT-GRSG-15-02-6

Organization: Sevier County

Protestor: Garth Oden

Issue Excerpt Text: The basis of the USFS plans is to provide desired seasonal habitat conditions. These conditions are provided in Table GRSG-GEN-DC-003 Seasonal Habitat Desired Conditions for GRSG, page 2-40 and 2-41. The BLM used Utah specific ceo-region habitat vegetation data which was compiled by Utah State University. This dataset represents the best available science and should be adopted by the USFS in their proposed plans. The failure of the USFS to recognize these data undermines the validity of the proposed plans.

Issue Number: PP-UT-GRSG-15-13-2

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat. Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: Further evidence of BLM/FS's penchant to cherry-pick data is demonstrated by the BLM's recent decision concerning "essential" GRSG habitat in the area encompassed by the Alton Coal Lease-by-Application, adjacent to Garfield County and in the Panguitch GRSG population area. Despite local federal offices', the state's and local government's clear statements that the area is not essential habitat, and unequivocal statements that the state's Conservation Plan does not evidence the intent to delineate this acreage as essential, BLM /FS have unilaterally decided the land is essential, have arbitrarily characterized it as important habitat and therefore unsuitable for leasing. The BLM/FS's decision regarding the use of state data is not only unapp01table on the facts, it violates the intent of Congress as expressed in the Report language accompanying the 2015 Appropriations Act, and, in this case tosses the intent of the relevant unsuitability criterion on its head.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The BLM/FS are proposing to employ datasets which are less accurate than the direct field data employed by the state and adopted in Garfield County's Conservation Plan. Garfield County opposes and protests the BLM's proposal and finds it based on less accurate data than field checked information in the Cmnty Plan. Garfield County also finds the BLM/FS proposal inconsistent with the Data Quality Act, consistency/coordination requirements of FLPMA, and coordination requirements of NFMA. Management areas, habitat and projects must be evaluated, and the disturbance caps monitored, according to the most accurate, field-checked data possible. For example, recent field

examinations of proposed projects have determined that the site was not habitat, or of only marginal usability, even though it originally had been mapped differently. This verified, field checked data is vital, and the BLM/FS process has no clear path to employ it. Garfield County employs the NRCS (coincidentally a sister agency to the Forest Service) methodology to determine habitat type and management prescriptions. The objective, site specific methodology is more accurate and uses better science than the BLM/FS proposed adoption of BSUs that are more myth than reality.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The failure of the BLM/FS to recognize and employ Garfield County's refined data severely undermines the validity of the LUPA/EIS violates consistency requirements and violates the Data Quality Act. Garfield County demands consistency, cooperation and coordination regarding delineation of GRSG habitat and habitat types to the maximum extent allowed by law.

Issue Number: PP-UT-GRSG-15-15-48

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The LUP AIFEIS ignores species population data, predator impacts, and site specific data from Garfield County. Land treatments to restore sagebrush habitat on federal lands have reversed GRSG declines in Garfield County. The Bureau of Land Management and the Forest Service did not analyze this.

Issue Number: PP-UT-GRSG-15-15-49

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The Bureau of Land Management and the Forest Service ignore approximately 10,000 acres of habitat improvements in the Panguitch and southern Parker Mountain population areas in Garfield County.

Issue Number: PP-UT-GRSG-15-15-50

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The Bureau of Land Management and the Forest Service ignore natural population fluctuation data for the Panguitch and southern Parker Mountain population areas in Garfield County.

Issue Number: PP-UT-GRSG-15-15-51

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The Bureau of Land Management and the Forest Service ignore invasive conifers and predation which are significant threats in the Panguitch and southern Parker Mountain population areas in Garfield County. The LUPA/FEIS does not consider, analyze, address and disclose the impacts of predation and conifer encroachment on federal lands in Garfield County's GRSG populations. The Bureau of Land Management and the Forest Service only borrow loose information from other sources without validity in Garfield County. This contradicts best science and opposes data in the State Plan and Garfield County's refinement (which address conifer encroachment and predation). The Bureau of Land Management and the Forest Service, violate the State's and county's FLPMA 202(c)(9) consistency rights, the Data Quality Act, NEP A, and NFMA. }

Issue Number: PP-UT-GRSG-15-15-6

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: Considering Objective GRSG-3, Garfield County and the State of Utah have site-specific data regarding habitat and invasive conifer data. BLM/FS have failed to use the available data and have inaccurately classified habitat. The inaccuracies are reflected in descriptions of the current setting, analysis of impacts, maps and tables, and throughout the LUP A/EIS.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The Proposed Land Use Plan Amendment (PLUPA) does not clearly identify what areas are truly priority habitat management areas (PHMA). Furthermore, PLUPA improperly identifies what areas of the Simplot Vernal Mine are priority habitat management areas. Considerable areas of the Vernal Mine are not priority habitat and in fact are pinyon-juniper habitat or have other characteristics that do not meet the criteria for priority habitat. The specific element of the plan that contains this protested restriction is: MA-GRSG-I: Identify PHMA and GHMA as follows (Map 2.6). Minor adjustments to PHMA/GHMA external boundaries should be made if BLM biologists, in coordination with state of Utah biologists, determine site-specific conditions warrant such changes to more accurately depict existing or potential GRSG habitat [PLUPA, pages 2-16, 2-17]. The agencies have failed to identify what is truly GRSG habitat and have included non-GRSG habitat as PHMA. The process to reclassify areas from PHMA or GHMA to non-habitat is too cumbersome and resource intensive.

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

Organization: Snell & Wilmer

Protestor: Denise Drago

Issue Excerpt Text: The total extent of current habitat disturbance in the entire Panguitch Population Area is only “1.2 percent”. The BLM, therefore, determined that the GRSG population in the Panguitch Population Area is “low risk”. This “low risk” characterization was initially reflected in the BLM's Draft EIS for the LUPA (DEIS), wherein the BLM determined that the Panguitch Population Area is within a General Habitat Management Area (General Habitat). With the issuance of the FEIS, however, the BLM arbitrarily and capriciously, and in direct conflict with all available evidence including its own Affected Environment Chapter, changed the classification to a Priority Habitat Management Area (Priority Habitat). The BLM identified this change in classification in FEIS, Chapter 2, the Proposed Action and Alternatives discussion. Contrary to law, the BLM did not provide any evidence or analysis explaining why it made this change to the South Panguitch Population Area imposing a more restrictive Priority Habitat classification.

Issue Number: PP-UT-GRSG-15-25-3

Organization: Snell & Wilmer

Protestor: Denise Drago

Issue Excerpt Text: Alton Coal protests the BLM's designation of the South Panguitch Population Area, including the entire 3,576 acre Alton Coal Tract, as a Priority Habitat on three grounds discussed as follows...the FEIS does not contain any explanation for adopting the more restrictive Priority Habitat designation for the South Panguitch Population Area and, therefore, is arbitrary and capricious. The LUPA/DEIS considered the less stringent General Habitat designation as applied to the South Panguitch Population Area. For the first,

time, the FEIS reclassifies the South Panguitch Population Area to the more stringent Priority Habitat. The BLM does not provide an explanation for this change, nor does it present new information or changed circumstances as the basis for this designation change. The BLM does not present studies, data, or policies justifying departure from the DEIS alternatives analysis identifying the area a General Habitat. Moreover, BLM does not point to existing data and analysis to justify new designation of the South Panguitch Population Area. This decision must be reversed and the South Panguitch Population area, including the entire Alton Coal Tract, should be properly classified as General Habitat. Further, the BLM disregards data that does not support change from General to Priority Habitat. On October 27, 2014, the United States Department of the Interior, Fish and Wildlife Service (USFWS) issued a memo identifying priority habitat most vital to the species [GRSG] persistence.” Identified as “Priority Habitat Management Areas” (PHMA), the USFWS described these areas as “strongholds” with the highest densities of species and other criteria important for the persistence of the species, including:

- Existing high-quality sagebrush habitat for GRSG;
- Highest breeding densities of GRSG;
- Areas identified in the literature as essential to conservation and persistence of the species; and,
- A preponderance of current federal ownership, and in some cases, adjacent protected areas that serve to anchor the conservation importance of the landscape.

Issue Number: PP-UT-GRSG-15-25-6

Organization: Snell & Wilmer

Protestor: Denise Drago

Issue Excerpt Text: In Alton Coal’s

comments to the DEIS, Alton Coal presented evidence that ‘in spite of mining activities’ GRSG are raising chicks in Sink Valley. Alton Coal’s comments to the DEIS include the report of Dr. Steve Petersen. Dr. Petersen is the wildlife biologist who has monitored the Southern Panguitch population since 2006 for Alton Coal. Dr. Petersen’s CV is attached as Exhibit 8. Dr. Petersen uses this information and data from other published reports to show the positive response of the GRSG to improvements in habitat. This report shows that GRSG in the South Panguitch area experienced a population increase between 2012 and 2015 in the presence of surface mining activity that commenced in 2010. Between 2006 and 2011, the numbers of male birds observed strutting on the Sink Valley lek steadily declined. In 2006, 14 male birds were observed strutting on the Sink Valley lek. During pre-mining base line studies, the population steadily declined “with only 2 birds observed in 2009, 1 bird in 2010.” Prior to the commencement of mining activity in 2010, there was concern that the breeding population would not return. Since mining commenced onsite in 2010, however, Alton Coal implemented predation control, evasive species removal, and sagebrush habitat enhancement measures. In 2012, the GRSG returned to the area, shifting breeding location to a hillside located in sage dominated valley approximately .55 miles away from the original lek. The new lek, located in an area preserved and enhanced by Alton Coal, .35 miles from the closest mining activity supported 12-15 males observed annually over the three year period between 2011 and 2014. Additionally, 20-60 GRSG were observed including a number of chicks and young birds raised in the area. Dr. Petersen’s report shows that habitat enhancement under the Coal Hollow mitigation plan and predation control within

the mine area has positive impacts on GRSG populations in the South Panguitch Area. Mining and reclamation activities may also have a positive impact. Although these activities are not counted toward the mitigation requirements under the mine permit, the GRSG population benefits from mine operations that clear pinyon-juniper from the mine site (eliminating a perch for predators) and contemporaneous reclamation and revegetation of surface mining areas with sagebrush and vegetation favorable to GRSG. The expansion of these mining activities onto federally leased lands could be precluded by the more restrictive limitations under Priority Habitat designation. For instance, a 3% disturbance cap, imposition of a 3.1 mile lek buffer, without any apparent exceptions, a density restriction for mining facilities larger than 640 acre in size and seasonal development restrictions, may well combine to result in little or no area available for coal mining on federal lands within the South Panguitch Population Area. Dr. Petersen's report suggests that gains in the GRSG population during the past four years would not have occurred without mitigation measures taken and or funded by Alton Coal. Further, if coal mining is allowed under the Alton tract lease application, the South Panguitch Population will benefit from the proposed habitat enhancement of over 7,000 acres under the habitat conservation plan for the Alton Coal Tract as detailed in the lease SDEIS. The strict restrictions to mine development under the Priority Habitat designation are unnecessary and may well result in a set back to the GRSG population, which benefits from the mitigation measures implemented by Alton Coal Development.

Issue Number: PP-UT-GRSG-15-26-11
Organization: CE Brooks and Associates
Protestor: Constance Brooks

Issue Excerpt Text: The USFWS memorandum appears to have major quality and credibility issues. It cites a mere seven sources for identifying more than three million acres of SFAs across the GRSG's range and does not appear to have been peer reviewed – both are major methodological flaws straining against NEPA and the DQA.

Issue Number: PP-UT-GRSG-15-27-10
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: West-wide, the several BLM LUPA/FEISs are arbitrarily and capriciously rigid and non-adaptive, because they mechanically force one-size-fits-all habitat management schemes and restrictions that ignore the significant sub-regional habitat differences across the West. The sub-regional landscape in Utah is dominated by islands of habitat widely separated by canyons and mountains; whereas Wyoming's landscape is dominated by wide expansive areas of contiguous GRSG habitat. The various LUPAs/FEISs fail to account for and adapt to these important sub-regional differences across the West. Many of the restrictions in the Utah BLM LUPA/FEIS were obviously just imported from other sub-regions with no thought of how they logically relate to Utah's dominant landscape. This flaw is amplified by the COT report, which specifically stated there is a need to use local range and landscape science to dictate local management of habitat and species.

Issue Number: PP-UT-GRSG-15-27-11
Organization: Utah Association of Counties
Protestor: J. Mark Ward

Issue Excerpt Text: The reports on which

the LUPA/FEIS rests break from scientific protocols by assuming, incorrectly, that a temporary decrease in lek counts means an overall population decline. Those reports ignore species population data that refute the idea of a population decline in the West. Those reports ignore the over 560,000 acres of habitat improvements undertaken in Utah, recently documented by the Western Governor's Association publication GRSG Inventory, 2014 Conservation Initiatives. Those reports ignore natural population fluctuation data. Those reports inexplicably ignore the single greatest threat to GRSG in the West: predation. The LUPA/FEIS has no respect from local governments for failing to adequately address predation, and it is in sharp conflict with the Utah Plan which does try to address predation, thus violating the State and counties' FLPMA 202(c)(9) consistency rights. Those reports also ignore the documented positive impacts of agriculture and grazing as well as the benefits of mitigation and reclamation efforts in connection with energy development. The LUPA/FEIS fails to reflect current up-to-date socio economic data pertaining to many counties.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in many areas where in fact no GRSG exist. Thus for those areas the BLM arbitrarily and capriciously identified them as GRSG habitat.

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

Organization: Utah Association of Counties

Protestor: J. Mark Ward

Issue Excerpt Text: The LUPA/FEIS arbitrarily spreads management prescriptions uniformly across all acres of identified habitat. This ignores the scientifically documented reality that GRSG population distributions are skewed, i.e., concentrated in limited areas of dense development. The LUPA/FEIS arbitrarily fails to focus on such areas in a way that would bring most lift to the species population, and instead spreads restriction and negative economic impact uniformly across the alleged habitat areas. Thus needlessly wide swaths of economic harm will result from the LUPA/FEIS when the birds would be better off were restrictions concentrated where the birds are. This is arbitrary and capricious.

Issue Number: PP-UT-GRSG-15-28-10

Organization: Box Elder County

Protestor: Stan Summers

Issue Excerpt Text: West-wide, the several BLM LUPAs/FEISs are arbitrarily and capriciously rigid and non-adaptive, because they mechanically force one-size-fits-all habitat management schemes and restrictions that ignore the significant sub-regional habit differences across the West. Utah's landscape is dominated by islands of habitat widely separated by canyons and mountains; whereas Wyoming's landscape is dominated by wide expansive areas of contiguous GRSG habitat. The various LUPAs/FEISs fail to account for and adapt to these important sub-regional differences across the West. Many of the restrictions in the Utah BLM LUPA/FEIS were obviously just imported from other sub-regions with no thought of how they logically relate to Utah's dominant landscape. This flaw is amplified by the COT report, which specifically stated there is a need to use local range and landscape science to dictate local

management of habitat and species.

Issue Number: PP-UT-GRSG-15-28-11

Organization: Box Elder County

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act. Those reports break from scientific protocols by assuming, incorrectly, that a temporary decrease in lek counts means a population decline. Those reports ignore species population data that refute the idea of a population decline in the West. Those reports ignore the over 560,000 acres of habitat improvements undertaken in Utah, recently documented by the Western Governors' Association publication GRSG Inventory, 2014 Conservation Initiatives. Those reports ignore natural population fluctuation data. Those reports inexplicably ignore the single greatest threat to GRSG in the West: predation. The LUPA/FEIS has no respect from local governments for failing to adequately address predation, and it is in sharp conflict with the State Plan which does try to address predation, thus violating the State and county's FLPMA 202(c)(9) consistency rights. Those reports also ignore the documented positive impacts of agriculture and grazing as well as the benefits of mitigation and reclamation efforts in connection with energy development. The LUPA/FEIS fails to reflect current up-to-date socio economic data pertaining to the County.

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

Organization: Box Elder County

Protestor: Stan Summers

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where

in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat.

Issue Number: PP-UT-GRSG-15-28-9

Organization: Box Elder County

Protestor: Stan Summers

Issue Excerpt Text: The LUPA/FEIS arbitrarily spreads management prescriptions uniformly across all acres of identified habitat. This ignores the scientifically documented reality that GRSG population distributions are skewed, i.e., concentrated in limited areas of dense development. The LUPA/FEIS arbitrarily fails to focus on such areas in a way that would bring most lift to the species population, and instead spreads restriction and negative economic impact uniformly across the alleged habitat areas; needlessly wide swaths of economic harm when the birds would be better off were restrictions concentrated where the birds are.

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

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The Information or Data Quality Act guidance refers to data utility as the usefulness and reliability of the information to the intended user. Because the BLM intentionally mischaracterized the state's 2009 habitat map as depicting all included area as useful to GRSG, the BLM has deeply undermined the utility of the information provided by the state. The BLM's misuse and rebranding of the state's 2009 map could jeopardize future restoration efforts benefitting GRSG and unduly restrict activities in areas that, in fact, present absolutely no habitat value for the bird. The BLM has not met its own standards of information or data quality by disseminating misinformation in the FEIS.

The BLM's rebranded 2009 GRSG habitat map, not does meet the objectivity, utility, or integrity requirements under the Act.

Issue Number: PP-UT-GRSG-15-15-46

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The LUPA/EIS ignores significant localized habitat differences that exist in Garfield County, Utah. Habitat quality varies throughout the County. The Bureau of Land Management and the Forest Service analysis fails to consider vegetation and terrain difference across its designated habitat, so it is arbitrary and capricious. Garfield County has mapped Sage Grouse habitat using GIS measures and verified by Satellite imagery. Based on standards described in the LUPA/EIS and based on other localized information, much of the habitat proposed for designation by the federal agencies is covered by Pinyon / Juniper forests and does not qualify for GRSG habitat. This is confirmed by NRCS evaluation methods. Bureau of Land Management and the Forest Service have ignored Garfield County's analysis and have used generalized maps that result in less than 50% accuracy.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The LUPA/EIS states that "the [BSU] population area boundaries were drawn to include all UDWR mapped occupied GRSG habitat in Utah plus areas within 5 miles of occupied leks. The boundaries are also large enough to include areas that are not considered GRSG habitat but have been identified as lands that could provide impmiant cmmectivity or facilitate the movement of GRSG between habitats." The purpose of this boundary rather than the

boundaries established by the state's SGMAs and the County's coinciding SGMAs is unclear. The county's SGMAs include significant areas which have been found to clearly and obviously lack characteristics necessary for GRSG habitat or which could become habitat only through modification, improvement or enhancement. These areas are labeled "opportunity areas" the state and county plans and many may now serve as movement facilitation areas or as areas that can be modified to provide a multitude of benefits, including GRSG conservation. However, their current condition prohibits inclusion in habitat mapping until appropriate modification occurs.

Issue Number: PP-UT-GRSG-15-02-5

Organization: Sevier County

Protestor: Garth Oden

Issue Excerpt Text: The FEIS on page 2-2 introduces the concept of the Sagebrush Focal Areas (SFA). On October 27, 2014, the USFWS in a memorandum to the BLM and Forest Service identified strongholds for GRSG as having the highest densities of GRSG and other criteria important for the persistence of the species. These SFAs will have additional restriction placed on them which include review of livestock grazing permits/leases. Although SFAs designations are limited in Utah SOMA, we question how the identification of the SFAs implements the USFWS COT report conservation principles which arc stated as the basis of the FEIS.

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

Organization: Carbon County

Protestor: Casey Hopes

Issue Excerpt Text: Such improvements throughout the West were recently documented by the Western Governors

Association publication “Sage Grouse Inventory, 2014 Conservation Initiatives, March 2015.” This publication documents significant evidence that state and local conservation efforts are substantial, effective, and should be allowed to continue without an ESA listing or federal land management plans that are inconsistent with state and local plans.

Issue Number: PP-UT-GRSG-15-04-8

Organization: Carbon County

Protestor: Casey Hopes

Issue Excerpt Text: Population stability is proof that existing management under Alternative A (see Table 4.1) is working, at least in Utah, and should be allowed to continue to work. Page 3-7 of the DEIS contains a statement that identification of long-term population trends is difficult and that the population “reached lows in the mid 1990’s but have since increased.” The DEIS also states that the average number of males attending leks has also stabilized between 1996 and 2012. These statements verify our position that existing management has turned around the past declines and produced stable or increasing populations today. These existing management efforts, being coordinated and implemented by local GRSG working groups, are much more effective than one-size-fits-all management prescriptions administered from Washington DC.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: In September of 2012, despite requests from the state to adopt the state’s newer, more accurate habitat delineations, the BLM declined to use the state mapping of habitat types. In 2014, the BLM/FS denied Garfield County’s request

to meet to attempt to resolve inconsistencies between habitat designations in federal and local plans and informed the County the federal agencies would not communicate, cooperate and/or coordinate with the local cooperating agency. Instead BLM/FS created its own unsupported mapping delineations. Rather than employ the best available science from the state, the BLM and the FS morphed the state’s carefully mapped categories, including the generally useable habitat labeled “other” into one category labeled “Priority Habitat”, and self-created a second category labeled “General Habitat”. Concuently, the BLM/FS totally ignored Garfield County’s further refined data, even though it was significantly impacted by local wildlife biologists from the federal agencies.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The refusal to employ the state’s carefully defined and the County’s further refined habitat categories, and instead create two wholly new categories represents not only a refusal to adopt the highest and best scientific data, but is completely contrary to the BLM’s own procedures for the use of new and significant information.

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

Organization: Alan Prouty

Protestor: Simplot Livestock

Issue Excerpt Text: The result of classifying lands as PHMA that are clearly not habitat for GRSG is that such lands become encumbered with new prohibitions and requirements. For Simplot’s mining operations north of Vernal, such classification will add difficulty in obtaining approval for actions in areas that are truly

not GRSG habitat. Dealing with such situations will require the resources, both of Simplot's and of the federal/state agencies to deal with a situation created by agency carelessness. The PLUPA refers to a protocol in Appendix N for making changes in habitat classification. PLUPA element MA-GRSG-5 has additional conditions for authorizing activities in "PHMA areas" that are later determined to be not suitable GRSG habitat. However, the problem such an approach has is the tremendous amount of resources needed to get such decisions and reclassifications of habitat made. Instead of creating new bureaucratic processes, the federal agencies should take more care to initially determine what priority habitat is, what general habitat is and what is non-habitat.

Issue Number: PP-UT-GRSG-15-32-2

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The Utah State Office of the BLM dismissively ignored the copious amount of detailed information Utah was able to provide, as a direct result of the two decades of work by the state and its researchers, in order to employ other, less detailed data in order to further its own pre-ordained outcomes for the NEPA process. As a result, BLM's failure to use the 2012 data amounts to an arbitrary and capricious decision to avoid the best available data, and violates NEPA's requirement for a "hard look."

Issue Number: PP-UT-GRSG-15-32-20

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: As a result of the BLM's use of the Copeland paper rather than engaging in the required detailed analysis, all environmental or economic

determinations in the FEIS must be redone to reflect the more accurate data yet to be produced. Failure to do so constitutes an arbitrary and capricious decision to avoid the BLM's regulations, and violates the NEPA provisions requiring a hard look.

Issue Number: PP-UT-GRSG-15-32-5

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: This Parker Mountain area is a perfect example of how the BLM and Forest Service resource management and land use plan amendments should incorporate site-specific science to achieve long-term conservation benefits. By deliberately discounting local research in their proposed land use amendments in the FEIS, the Forest Service is not utilizing the best science for successful GRSG conservation, and is therefore acting in an arbitrary and capricious manner.

Issue Number: PP-UT-GRSG-15-15-15

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The BLM/FS have not presented any definition of the term connectivity as used in the definition of a BSU. Instead, the BLM/FS and the FWS all use the term as a cover for a lot of inaccurate or unproven myths about bird movement. The state's scientific studies of the West Tavaputs and Anthro Mountain areas demonstrated that no significant genetic connectivity exists where the FWS had opined there should be some. Areas included within the boundaries of priority habitat should be identified with a specific purpose such as nesting or winter habitat, not used as a place to sweep land in pursuant to some vague FWS wish list.

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

Organization: Morgan County
Protestor: Logan Wilde

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat. Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives.

Issue Number: PP-UT-GRSG-15-33-2
Organization: Daggett County Commission
Protestor: Karen Perry

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where in fact no GRSG exist. Thus for those areas the BLM arbitrarily and capriciously identified them as GRSG habitat. Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claimed that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives.

Issue Number: PP-UT-GRSG-15-38-2

Organization: Paiute County
Protestor: Rick Blackwell

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas of Piute County where in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat.

Issue Number: PP-UT-GRSG-15-39-2
Organization: Tooele County
Protestor: Wade Bitner

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat.

Issue Number: PP-UT-GRSG-15-39-8
Organization: Tooele County
Protestor: Wade Bitner

Issue Excerpt Text: The LUPA/FEIS arbitrarily spreads management prescriptions uniformly across all acres of identified habitat. This ignores the scientifically documented reality that GRSG population distributions are skewed, i.e., concentrated in limited areas of dense development. The LUPA/FEIS arbitrarily fails to focus on such areas in a way that would bring most lift to the species population, and instead spreads restriction and negative economic impact uniformly across the alleged habitat areas; needlessly wide swaths of economic harm when the birds would be better off were restrictions concentrated where the birds are. This is arbitrary and capricious.

Issue Number: PP-UT-GRSG-15-39-9

Organization: Tooele County

Protestor: Wade Bitner

Issue Excerpt Text: The LUPA/FEIS is based on incorrect science and faulty data, all in violation of the Federal Data Quality Act. Those reports break from scientific protocols by assuming, incorrectly, that a temporary decrease in lek counts means a population decline.d. Those reports ignore species population data that refute the idea of a population decline in the West.e. Those reports ignore the over 560,000 acres of habitat improvements undertaken in Utah, recently documented by the Western Governors Association publication GRSG Inventory, 2014 Conservation Initiatives.f. Those reports ignore natural population fluctuation data.g. Those reports inexplicably ignore the single greatest threat to GRSG in the West: predation. The LUPA/FEIS has no respect from local governments for failing to adequately address predation, and it is in sharp conflict with the State Plan which does try to address predation, thus violating the State and county's FLPMA 202(c)(9) consistency rights. Those reports also ignore the documented positive impacts of agriculture and grazing as well as the benefits of mitigation and reclamation efforts in connection with energy development. The LUPA/FEIS fails to reflect current up-to-date socio economic data pertaining to the County.

Issue Number: PP-UT-GRSG-15-41-2

Organization: Beaver County

Protestor: Michael Dalton

Issue Excerpt Text: Within the LUPA/FEIS, the BLM utilized habitat maps for Alternatives A-D which showed areas of habitat in which no GRSG actually exist. The UDWR has supplied current habitat

maps to the BLM which were shown in Alternative E but not in the former alternatives. The BLM has capriciously ignored higher quality data in the rush to finalize the LUPA draft.

Issue Number: PP-UT-GRSG-15-42-2

Organization: Uintah County

Protestor: Michael McKee

Issue Excerpt Text: Utah BLM arbitrarily and capriciously adopted and used for Alternatives A-D, so-called GRSG habitat maps showing habitat in certain areas where in fact no GRSG exist. Thus for those areas BLM arbitrarily and capriciously identified them as GRSG habitat. Utah BLM arbitrarily and capriciously rejected GRSG maps tendered to Utah BLM by Utah Division of Wildlife Resources (UDWR) in or about September, 2012, the Utah BLM claiming that those UDWR maps were not submitted timely. That is not true; Utah BLM used the UDWR maps in time to develop Alternative E. The LUPA/FEIS gives no explanation why the UDWR maps were used for Alternative E but not the other alternatives.

Issue Number: PP-UT-GRSG-15-38-4

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: Utah BLM's failure to use the September 2012 UDWR maps refined by Piute County based on scientific and site specific land use and invasive species information in the Parker Mountain area for Alternative A is arbitrary and capricious for the reason that only Piute County's refined version of the habitat maps correctly describes actual habitat.

Issue Number: PP-UT-GRSG-15-38-8

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA-EIS uses GRSG focal areas in direct conflict with the Utah Plan and Piute County's refinement. GRSG focal areas also contradict the stated basis of the LUPA-EIS (FWS COT report

conservation principles). GRSG focal areas ignore more scientific, site specific habitat information contained in the County's plan and do not protect the highest density lekking populations in the Parker Mountain population area.

Summary:

The Utah PLUPA/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by:

- incorrectly identifying habitat;
- failing to use site-specific data;
- failing to use consistent datasets between agencies; and
- failing to use the 2014 Western Governors Association publication

Response:

Before beginning the Utah PLUPA/FEIS and throughout the planning effort, the BLM and the Forest Service considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The data needed to support broad-scale analysis of the 4 million acre planning area are substantially different than the data needed to support site-specific analysis of projects. The PLUPA/FEIS data and information is presented in map and table form and is sufficient to support the broad scale analyses required for land use planning.

Additionally, the BLM and the Forest Service consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service, the State of Utah Governor's Public Lands Policy Coordination Office, and the State of Wyoming. This cooperation continued throughout the development of the Draft LUPA/EIS and the PLUPA/FEIS. A variety of adjustments were made to PHMA and GHMA delineations for the PLUPA/FEIS due to reasons identified during public comments, in coordination with cooperating agencies, and based on internal review. This included review and evaluation of population distribution and trends, GPS and radio telemetry data, the presence of existing developments and valid existing rights, and the potential to improve, connect or expand habitat. The adjustments are outlined on page 2-1 of the Utah PLUPA/FEIS. The Western Governors' Association published the 2014 GRSG Inventory on April 2, 2015. As such, it was not available during preparation of the Utah PLUPA/FEIS.

The BLM and Forest Service considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan-level. The BLM and Forest Service reviewed suggested studies and references to determine if they presented new information that would need to be incorporated into the Utah PLUPA/Final EIS, were references already included in the Draft LUPA/EIS, or if the references provided the same information as already used or described in the Draft LUPA/EIS. Any study or reference that provided new relevant information was incorporated into the Utah PLUPA/FEIS.

In regard to differences in desired seasonal habitat conditions between the BLM and the Forest Service, each agency applied the best available science to the specific lands land they are responsible to manage. On page 4-115 of the FEIS this is addressed as follows:

“The Proposed Plans include more specific vegetation objectives, which are included in vegetation objectives tables. These objectives are based on the ecology of GRSG population areas within the planning area. In developing these objectives, the BLM and Forest Service started with guidelines included in Connelly et al. 2000 and made adjustments based on local nesting and brood-rearing data that have been collected in conjunction with research projects conducted in Utah. In the Draft EIS, the BLM and Forest Service had included a more generalized objective for desired cover percentages and heights for sagebrush, grasses, and forbs in seasonal habitats. The general objectives included under Alternatives B and D stated that seasonal habitats would be managed to meet habitat guidelines from scientific literature (e.g., Connelly et al. 2000 and Hagen et al. 2007). Inclusion of more specific objectives could result in increased certainty and greater levels of consistency when considering implementation-level actions, such as term permit renewals. Following these objectives could prevent improper grazing practices. In addition, following more specific vegetation objectives may, in some cases, improve the quality of habitat and decrease opportunities for predation. Improved habitat conditions and decreases in predation should increase nest success and chick survival.”

As discussed in Chapter 3 (page3-168) of the FEIS, the amount of lands authorized for grazing within mapped occupied habitat for GRSG is about five times greater for the BLM. The relative amount of lands is also a consideration in the need to make more or less adjustments for different localities.

As specific actions that may affect the area come under consideration, the BLM and Forest Service will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. For example, the Forest Service’s seasonal habitat desired conditions for GRSG allows for seasonal dates to be adjusted and buffer distances to be changed if there is appropriate information (Utah PLUPA/FEIS Table GRSG-17 GEN-DC-003). In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Appendix N contains a detailed description of the habitat identification process, as well as provisions for identifying habitat at the site-specific level during implementation activities (PLUPA/FEIS, p. N-5). As such, the BLM and Forest Service obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives with regard to GRSG habitat designations.

[Administrative Procedures Act](#)

Issue Number: PP-UT-GRSG-15-15-66

Protestor: Brian Bremmer

Organization: Garfield County
Commission

Issue Excerpt Text: The many rigid inflexible provisions of the LUPA/FEIS referenced above all contribute to a violation of the Regulatory Flexibility Act of 1980. The LUPA/FEIS gives no thought to achieving “statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.” Also the LUPA/FEIS is extremely short on soliciting “the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact” of the LUPA/FEIS

Issue Number: PP-UT-GRSG-15-20-4

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the Agencies’ adoption of several elements of the Proposed LUPA, specifically, the compensatory mitigation requirement, the “net conservation gain” standard, and conservation measures that include lek buffer distances, RDFs, and density and disturbance caps, because each constitutes a substantive rule that the Agencies cannot apply before they complete the formal rulemaking procedures required by the APA.³ See 5 USC § 553. Additionally, the Trades protest the limitations on modifications and waivers of No Surface Occupancy (NSO) stipulations in PHMA because they improperly amend a BLM regulation without BLM completing the formal rulemaking procedures. Because the land use planning process is not equivalent to a formal rulemaking, these provisions of the Proposed LUPA are void until the Agencies adopt these rules in accordance with APA rulemaking procedures.

Issue Number: PP-UT-GRSG-15-20-5

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. First, the Proposed LUPA prohibits waivers and modifications despite the regulation’s language that stipulations “shall be subject to modification or waiver.” Second, the Proposed LUPA expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and DWR. These direct contradictions reflect that BLM is attempting to alter its regulations through the LUPA.

Issue Number: PP-UT-GRSG-15-21-8

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The Agencies have not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7), which is one of the criteria needed to uphold a protest.

Issue Number: PP-UT-GRSG-15-26-7

Organization: CE Brooks & Associates for Wyoming Coalition of Local Governments

Protestor: Constance Brooks

Issue Excerpt Text: The BLM, therefore, has not: (1) justified this substantial increase in protected habitat with benefits to GRSG; (2) evaluated the impacts of adding restrictions such as ROW avoidance to almost one million acres of newly

designated habitat; or (3) analyzed an important aspect of the GRSG conservation strategy in Wyoming. GHMA is instead an arbitrary and capricious predetermined outcome based on the NTT Report, which in fact did not specify any criteria for the GHMA classification.

Issue Number: PP-UT-GRSG-15-27-24

Organization: Utah Association of Counties

Protestor: Mark Ward

Issue Excerpt Text: The many rigid inflexible provisions of the LUPA/FEIS referenced above spell a violation of the Regulatory Flexibility Act of 1980. The LUPA/FEIS gives no thought to achieving “statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.” Also the LUPA/FEIS is extremely short on soliciting “the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact” of the LUPA/FEIS.

Issue Number: PP-UT-GRSG-15-28-23

Organization: Box Elder County Commission

Protestor: Stan Summers

Issue Excerpt Text: The many rigid inflexible provisions of the LUPA/FEIS referenced above all contribute to a violation of the Regulatory Flexibility Act of 1980. The LUPA/FEIS gives no thought to achieving “statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.” Also the LUPA/FEIS is extremely short on soliciting “the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact” of the LUPA/FEIS.

Issue Number: PP-UT-GRSG-15-38-17

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The LUPA/EIS misleadingly omits reference to the NTT Report in the list of planning criteria. This is misleading, because the National GRSG strategy and accompanying BLM Instruction Memorandum (IM) 2012-044, by its very terms, relies on and follows the NTT Report. So omitting the NTT Report as part of the list of criteria under Section 1.7.1, arbitrarily hides the NTT Report, as it is part and parcel of the National GRSG Conservation Strategy.

Issue Number: PP-UT-GRSG-15-38-28

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The many rigid inflexible provisions of the LUPA-EIS referenced above all contribute to a violation of the Regulatory Flexibility Act of 1980. The LUPA-EIS gives no thought to achieving “statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.” Also the LUPA-EIS is extremely short on soliciting “the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact” of the LUPA-BIS.

Issue Number: PP-UT-GRSG-15-40-12

Organization: Juab County Commission

Protestor: Clinton Painter

Issue Excerpt Text: The LUPA/FEIS misleadingly omits reference to the National Technical Team Report (2011) (NTT Report) in the list of planning criteria. This is misleading, because the National GRSG strategy and accompanying BLM Instruction Memorandum (IM) 2012-044, by its very

terms, relies on and follows the NTT Report. So to not candidly reference the NTT Report as part of the list of criteria under Section 1.7.1, arbitrarily cloaks the widely panned NTT Report, as it is part and parcel of the National GRSG Conservation Strategy.

Issue Number: PP-UT-GRSG-15-40-22
Organization: Juab County Commission
Protestor: Clinton Painter

Issue Excerpt Text: The many rigid inflexible provisions of the LUPA/FEIS

Summary:

The BLM and Forest Service acted arbitrarily and capriciously, and in violation of the Administrative Procedure Act, when they:

- implemented a number of changes to management practices - including a “net conservation standard,” required design features, lek buffer distances, and density and disturbance caps – without first completing a formal rulemaking process;
- made changes to existing regulations – in this case, the process for applying waivers, exemptions, and modifications, without first completing a formal rulemaking process; and
- designated without fully analyzing the impacts of a General Habitat Management Area on such uses as ROWs.

The management prescriptions identified in the LUPA violate the Regulatory Flexibility Act of 1980 because they impose too many unnecessary burdens on the public.

Response:

The Federal Land Policy Management Act details the BLM’s broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. (Refer to section 1.5.2 of the Utah GRSG PLUPA/FEIS for a discussion of corresponding Forest Service policy.) A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Utah GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve greater GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM’s and Forest Service’s planning processes respectively allow for analysis and consideration of a range of alternatives to conserve, enhance, and restore Greater GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

referenced above all contribute to a violation of the Regulatory Flexibility Act of 1980. The LUPA/FEIS gives no thought to achieving “statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.” Also the LUPA/FEIS is extremely short on soliciting “the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact” of the LUPA/FEIS.

Regulations v. Land Use Planning

The regulations concerning land use planning, 43 CFR 1610, states that “guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed... [including] national level policy which has been established through...Director-approved documents. (Section 1610.1(a)(1)).

The introduction to this RMP Amendment details how Director-approved guidance, BLM Instruction Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

Finally, the protestors are incorrect that the Proposed LUPA’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. That regulation does not require BLM to provide for waivers or modifications but instead provides regulatory limits on BLM’s ability to allow waivers or modifications if BLM determines (e.g., consistent with the plan and its regulatory authority) that it wishes to grant one.

Therefore, the elements of the Utah GRSG PLUPA/FEIS do not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally, and the process followed for this planning effort specifically, provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA. The proposed plan describes the basis for its proposed actions and the science upon which it is based; it is not arbitrary or capricious under the APA – which, regardless, is the standard of review of agency action in federal court, not BLM’s administrative protest procedures. Additional rationale will be provided in the Record of Decision.

ROW Impacts Analysis

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

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

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an individual ROW application), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies

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

The Lands and Realty section of the Affected Environment chapter, pages 3-180 through 3-190, describes in detail the existing conditions and regional and statewide trends for the BLM's lands and realty program, including ROW's as well as similar private land equivalent uses (see Tables 3.67 through 3.71). Similarly, Chapter 4 of the LUPA describes the environmental consequences of the Lands and Realty decisions, including ROWs, on pages 4-268 through 4-275. This analysis discusses all alternatives and a wide breadth of potential impacts.

Therefore, The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts regarding Lands and Realty, including ROWs, in the Utah GRSG PLUPA/FEIS.

Regulatory Flexibility Act

The Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a significant number of small entities (SISNOSE). Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises. The Utah GRSG PLUPA/FEIS is not considered a rule as contemplated by the Regulatory Flexibility Act and its accompanying legislation.

[Energy Policy Act of 2005](#)

Issue Number: PP-UT-GRSG-15-20-30

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed LUPA should clarify that the BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed LUPA. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of NEPA "and other applicable law" have been completed (30 USC § 226(p)(2)). Thus, BLM can only defer decisions on permits when the requirements of NEPA "and other applicable law" have not been met (See Id). The BLM's planning authority conferred through

FLPMA is not "other applicable law" that allows BLM to defer development due to the density and disturbance limitations on existing federal leases because RMPs developed pursuant to FLPMA are subject to valid existing rights (See Colo. Env't'l Coal, et al., 165 IBLA 221, 228 (2005)). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, the BLM may only defer or deny development on new leases. The BLM should revise the Proposed LUPA to clearly state that the BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed LUPA.

Issue Number: PP-UT-GRSG-15-20-34

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: The requirement that lessees mitigate impacts to greater GRSG to provide a “net conservation gain” is more restrictive than necessary. The Agencies could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 USC § 1732(b). Though inconsistent with FLPMA, the Agencies did not even consider requiring that mitigation achieve “no net loss” of greater GRSG habitat. Because the requirement that mitigation achieve a “net conservation gain” is inconsistent with EPAct, the Agencies must revise the Proposed LUPA to remove the “net conservation gain” requirement.

Issue Number: PP-UT-GRSG-15-20-35

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in Section IX(B), *infra*. Furthermore, in the Final EIS, the Agencies did not analyze whether alternative buffer distances would offer substantially similar protection to the greater GRSG (See Proposed LUPA/Final EIS, Chapter 2, App. F.) Because the lek buffer distances are unnecessarily restrictive, the Agencies must revise the Proposed LUPA to identify measures that comply with the directives of EPAct.

Issue Number: PP-UT-GRSG-15-20-36

Summary:

The Utah GRSG PLUPA/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing by:

- deferring APDs;
- implementing lek buffer distances;
- imposing noise restrictions; and

Organization: American Petroleum Institute / Western Energy Alliance

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the requirement on National Forest System lands and in PHMA that lessees limit noise from discretionary activities during construction, operation, and maintenance to not exceed 10 decibels above ambient sound levels (not to exceed 20-24 dB) at occupied leks from two hours before to two after official sunrise and sunset during breeding season is overly restrictive, particularly because the noise limitation is not justified by science (See Proposed LUPA/Final EIS at 2-33). The Agencies should have analyzed the effects of less stringent noise limitations. Indeed, even the USGS has observed that the effects of noise on the greater GRSG are not well understood (See USGS Report at 91; see also Patricelli, G.L. et al., Recommended Management Strategies to Limit Anthropogenic Noise Impacts on Greater GRSG in Wyoming, Human-Wildlife Interactions 7:230-249). Furthermore, the threshold of 20 – 24 decibels is unreasonable. The Occupational Safety & Health Administration’s (OSHA) sound level scale discloses that ambient noise levels at the North Rim of the Grand Canyon average 25 dBA and that a “soft whisper” at two meters is approximately 35 dBA. See OSHA, Occupational Noise Exposure. Accordingly, EPAct required the Agencies to consider and adopt less restrictive measures.

- providing for a “net conservation gain” of GRSG habitat.

Response:

The Utah GRSG PLUPA/FEIS does not propose deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6.2 of the PRMP/FEIS beginning on page 2-35.

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 U.S.C. section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval, and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval (COA) and best management practices that will be employed to accomplish these objectives in areas open to leasing (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Utah GRSG PLUPA /FEIS presents a set of oil and gas conditions of approval and best management practices necessary to meet the goals and objectives for each resource and resource use in the planning area.

The Utah GRSG PLUPA /FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (Utah GRSG PLUPA/FEIS, Chapters 4 and 5). By comparing impacts across the alternatives, the BLM and FS determined which management actions in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Utah GRSG PLUPA /FEIS.

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for Greater GRSG—A Review” (USGS 2014). The Proposed Plans include a management action to incorporate the lek buffer distances identified in the report during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft LUPA/EIS release, applying these buffers was addressed in the Draft LUPA/EIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, Alternatives B and C identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, and elimination of grazing. For example, Alternative C proposed closure to fluid, saleable and non-energy leasable minerals in all GRSG habitats. In Alternative C, all GRSG habitats were also excluded from ROW development. Also considered in the range of alternatives were Alternatives D and E, which identified and analyzed fewer restrictions on development in GRSG habitat than Alternatives B and C. Alternative D proposed avoidance and exclusion of ROWs within various buffers (1 and 4 miles) within both PHMA and GHMA, as well as considering closures for saleable and non-energy leasable minerals within buffers. Alternative E considered no actions within 1 mile of a lek, if visible, and seasonal restrictions out to 3.1 miles from the lek. Accordingly, the management decision to apply lek buffers for development within certain habitat types during NEPA analysis at the implementation stage is

within the range of alternatives analyzed. The impacts of the lek buffers on GRSG are disclosed in Section 4.3 of the Utah GRSG PLUPA/FEIS.

Similarly, a range of alternatives was developed around noise restrictions. The impacts of noise restrictions on GRSG are disclosed in Section 4.3 of the Utah GRSG PLUPA/FEIS.

Based on the impacts analysis performed, the BLM and FS determined that the stipulations, conditions of approval, and best management practices considered are not overly restrictive, are necessary to meet the goals and objectives of the PLUPA/FEIS, and do not violate the Energy Policy Act.

The guidance in the Utah GRSG PLUPA/FEIS to provide for a net conservation gain is not a stipulation, condition of approval, or best management practice that will be applied to leases or Applications for Permit to Drill. Instead, it is part of the mitigation strategy in response to the overall landscape-scale goal, which is to enhance, conserve, and restore GRSG and its habitat. In addition, as it relates to mitigation, pages 2-70 through 2-71 of the PLUPA/FEIS state:

“Consistent with the Proposed Plans’ goals outlined in Sections 2.6.2, 2.6.3 and 2.6.4, the intent of the Proposed Plans is to provide a net conservation gain to the species. To do so, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840 – Special Status Species Management, Section .02B, which states “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA,” (and Forest Service Manual 2672.1, which states: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”).

Because it is not a stipulation, condition of approval, or best management action applied to a lease or application for permit to drill, this mitigation guidance does not violate the Energy Policy Act of 2005.

Air Quality, Climate Change, and Noise

Issue Number: PP-UT-GRSG-15-37-4

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Utah plan analyzes the ecological consequences of climate change for GRSG and its habitat. The “Environmental Consequences” section

(4.5) contains an extensive discussion titled, “Effects of Climate Change on GRSG” using projections described above to outline and map changes to GRSG habitat, and comparing habitat changes/alignment by alternative (table 4.11). Between this section, and the GRSG section (4.3.7), the consequences chapter covers

many of the well-documented impacts of climate change on GRSG, including changes to the fire regime, invasion by annual grasses and encroachment by woody vegetation (4-128 - 4-147). However, the plan also appears to contradict itself on these matters, noting at one point that climate change is as an “extenuating factor” whose “influence on population change are little understood at this time” (3-14).

Issue Number: PP-UT-GRSG-15-37-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Properly addressing climate change in GRSG planning would

require the BLM to analyze the effectiveness of their proposed conservation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis of climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate as their baseline for analysis. For example, the impacts of habitat disturbance may be more pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

Summary:

In order to properly address climate change in Greater GRSG planning, BLM needs to do the following:

- Evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
- Examine cumulative environmental consequences in a changed climate as the baseline; and
- Correct inconsistencies in the document.

Response:

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The Forest Service also has internal guidance to use the best available science on climate change that is relevant to the planning unit and the issues being considered in planning. Forest Service guidance goes on to state, “The affected environment section of the EIS is a good place for a basic description of the influence of climate change on the planning unit. This discussion establishes the current climatic baseline, describes predicted changes, and the uncertainty associated with the predicted changes.” The BLM and Forest Service apply this direction to the preparation of RMP revisions and amendments, as indicated in Chapter 1, Section 1.6.2 “Issues Identified for Consideration in the Utah Sub-region Greater GRSG Land Use Plan Amendments” of the Utah GRSG PLUPA/FEIS. Climate is discussed in Chapter 3, Section 3.5 (Climate Change), Chapter 4, Section 4.5 (Climate Change), and Chapter 5, Section 5.6 (Climate Change) of the Utah GRSG PLUPA/FEIS.

As indicated in the Chapter 4 discussion of environmental consequences, climate change is considered with regard to the potential effect it could have on various resources to the extent that is practicable. For example on page 4-138, “Climate change also increases the likelihood of

erosion, wildfire, and the encroachment of invasive plants, all of which would negatively impact sagebrush habitat. Soil erosion in particular is a concern, as it is considered the greatest threat to shrubland sustainability (Society for Range Management 1995). Additionally, habitat encroachment will be a concern as vegetation communities shift upwards in elevation in response to the warmer climate. This can cause habitat fragmentation, which would have detrimental effects on Greater GRSG populations. It is anticipated that climate change may interact with other change agents in the future to degrade and reduce Greater GRSG habitat (Bryce et al. 2012).” It would be highly speculative to analyze a future climate change scenario as a baseline for the cumulative impacts assessment.

In the future, as tools for predicting climate change in a management area improve and changes in climate affect resources and necessitate changes in how resources are managed, the BLM may be required to reevaluate decisions made as part of this planning process and to adjust management accordingly.

With regard to potentially conflicting information, BLM and Forest Service have made their best effort to avoid including any information in the Utah GRSG PLUPA/FEIS that is contradictory and to use well-documented sources of information. As stated above, tools for climate change management are evolving and information will continue to be refined.

The BLM and Forest Service complied with Secretarial Order 3289 and Forest Service guidance in developing the Utah GRSG PLUPA/FEIS.

Areas of Critical Environmental Concern

Issue Number: PP-UT-GRSG-15-18-22

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, the BLM created a completely new, less-restrictive

designation called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where the BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs, yet has instead developed a new, less-restrictive designation for them, BLM has failed to put designation of ACECs first, in violation of FLPMA.

Summary:

The Utah GRSG PLUPA/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs. The BLM failed to evaluate and to protect relevant and importance values. The BLM created Sagebrush Focal Areas, which are less restrictive than an ACEC designation, and failed to provide an explanation as to how such a designation would protect the identified resource values.

Response:

BLM policy does not require that a potential ACEC's relevant and important values be protected to the same level or degree of protection in all plan alternatives: "[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention" (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that "[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes" (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The Utah GRSG PLUPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Proposed LUPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Additionally, Section 2.6.1, Development of the Proposed LUPA, describes how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for greater GRSG in the most valuable habitat.

The BLM adequately considered the protection of relevant and important values in the Utah GRSG PLUPA/FEIS.

Fire

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

Organization: Garfield County

Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The BLM/FS have failed to use best science in evaluating the impacts of fire in Garfield County. The federal agencies have mis-characterized GRSG habitat and have included tens of

thousands of acres of Pinyon/Juniper woodlands. The Pinyon/Juniper woodlands have occurred because of federal fire suppression. GRSG habitat could benefit significantly from a return to historic fire regimes. This constitutes a major scientific and objectivity flaw in the federal plans and creates a major inconsistency with Garfield County's plan.

Summary:

The Utah GRSG PLUPA/FEISA violates NEPA by failing to evaluate the impacts of fire and to identify areas where fire would benefit GRSG habitat.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number

to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The Utah GRSG PLUPA/FEIS provides the following vegetation objective (p. 2-22): “In all SFA and PHMA, the desired condition is to maintain a minimum of 70% of lands capable of producing sagebrush with 10 to 30 percent sagebrush canopy cover. The attributes necessary to sustain these habitats are described in Interpreting Indicators of Rangeland Health (BLM Tech Ref 1734-6).” Areas that once were sagebrush but are now dominated by pinyon/juniper are recognized as capable of producing sagebrush and thus have been included as GRSG habitat. The Proposed LUPA/FEIS also includes the following fire management direction (p. 2-27): “Within acceptable risk levels use a full range of fire management strategies and tactics, including the management of wildfires to achieve resource objectives, across the range of GRSG habitat consistent with LUP direction.” Chapter four, p. 4-218 evaluates the effects of actions proposed by the PLUPA/FEIS on fire and vegetation: “Under the Proposed Plan, guidance would include more specific indicators and desired conditions for each habitat type than any other alternative. In addition, specific acreage objectives have been identified for conifer removal (180,900 acres) and annual grass treatments (48,000 acres) on BLM and National Forest System lands in PHMA for a ten year period based on VDDT. These actions would allow for vegetation treatments that could target areas most in need of improvement, resulting in the reduction of annual invasive grasses, and conifer encroachment resulting in an increasing trend towards FRCC desired historic conditions.”

The fire management direction to manage wildfires to achieve resource objectives applies across all acres regardless of habitat status within the plan, thus fire can be used to restore historic fire intervals. Because the fire management direction provides the flexibility to manage wildfires to meet resource objectives across the entire planning area it is not necessary to specify where fire would benefit GRSG habitat. The information presented in Utah Greater GRSG PLUPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

Fluid Minerals

Issue Number: PP-UT-GRSG-15-19-7

Organization: Beatty & Wozniak for Exxon-Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Utah Division of Wildlife Resources (UDOW) and FWS, the

BLM is ceding its authority over oil and gas development to the FWS. In other words, providing the FWS with a de facto veto authority over decision-making vested solely with BLM via the Mineral Leasing Act and FLPMA. The BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency. See 43 CFR § 3101.1-4.

Summary:

The Utah GRSG PLUPA/FEIS violates FLPMA and the MLA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

Response:

As stated in 43 CFR 3101.1-4, “a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.” While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer’s determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, “BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented,” (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

As part of management action MA-MIN-15, the Utah GRSG PLUPA/FEISS identifies the proposed process the BLM, State of Utah, and USFWS will use to approve exceptions to lease stipulations such as No Surface Occupancy (NSO) for new leases in PHMAs.

The PLUPA/FEIS provides specificity to the process of granting exceptions, modifications and waivers, and therefore does not violate FLPMA, the MLA, or BLM policy and guidance for the aforementioned reasons.

Solid Minerals – including Mining Law of 1872

Issue Number: PP-UT-GRSG-15-10-1
Organization: Utah Phosphate Company
Protestor: Paul Poister

Issue Excerpt Text: Withdrawal of lands for mineral entry, or other proposed restrictions on surface use disturbance inadequately analyzed. In its response to comments that the BLM did not do enough analysis for actions in the priority habitat areas, the BLM and USFS pointed out “a more quantified or detailed and specific analysis would be required only if the scope of the decision included implementation actions” (Appendix X Response to

Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement p. X-26). The LUPA would withdraw 88% of the federal mineral estate from phosphate leasing within the planning area (FEIS 4-330). This constitutes a specific implementation action necessitating a detailed and specific action.

Issue Number: PP-UT-GRSG-15-10-2
Organization: Utah Phosphate Company
Protestor: Paul Poister

Issue Excerpt Text: Not only are the values of the resources withdrawn from phosphate

leasing not estimated in the analysis, the lost economic benefits to local communities are not estimated. Further, the effect on health and human environment is inadequately addressed. In UPC's comments, we pointed out that the proposed stipulation requiring underground mining rather than surface mining is potentially infeasible and unsafe. No further evaluation of the feasibility or safety of the proposed stipulation has been included in the FEIS. The LUPA does not adequately protect human health by implementing the arbitrary, infeasible stipulation on what little phosphate development may be allowed under the LUPA.

Issue Number: PP-UT-GRSG-15-10-3
Organization: Utah Phosphate Company
Protestor: Paul Poister

Issue Excerpt Text: While the FEIS added a map (3-21-5) that shows Known Phosphate Lease Areas, including areas with high development potential, the FEIS included only a cursory evaluation of the effect of withdrawal of those resources (Map 2-38 Proposed Plan: Non-Energy Solid Leasable Minerals). Estimates of the potential resources, and their values, were not developed to adequately evaluate the effect of the withdrawal on productivity, product transport and pricing, foreign competitiveness or potential loss of tax revenue.

Issue Number: PP-UT-GRSG-15-10-4
Organization: Utah Phosphate Company
Protestor: Paul Poister

Issue Excerpt Text: Impacts to trust lands are insufficiently evaluated in connection with withdrawal of phosphate leasing in high potential phosphate areas adjacent to state trust (Map 2-38 Proposed Plan: Non-Energy Solid Leasable Minerals) lands.

Additionally, the LUPA broadly includes private and state land within the Priority Habitat Management Areas. Management of these areas is not under the jurisdiction of the BLM or the USFS and should not be included in management proscriptions.

Issue Number: PP-UT-GRSG-15-11-1
Organization: Duchesne County Commission
Protestor: Ronald Winterton

Issue Excerpt Text: Withdrawal of lands for mineral entry, or other proposed restrictions on surface use disturbance inadequately analyzed. In its response to comments that the BLM did not do enough analysis for actions in the priority habitat areas, the BLM and USFS pointed out "a more quantified or detailed and specific analysis would be required only if the scope of the decision included implementation actions" (Appendix X Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement p. X-26). The LUPA would withdraw 88% of the federal mineral estate from phosphate leasing within the planning area (FEIS 4-330). This constitutes a specific implementation action necessitating a detailed and specific action.

Issue Number: PP-UT-GRSG-15-11-2
Organization: Duchesne County Commission
Protestor: Ronald Winterton

Issue Excerpt Text: Not only are the values of the resources withdrawn from phosphate leasing not estimated in the analysis, the lost economic benefits to local communities are not estimated. Further, the effect on health and human environment is inadequately addressed. In UPC's comments, we pointed out that the proposed stipulation requiring underground mining

rather than surface mining is potentially infeasible and unsafe. No further evaluation of the feasibility or safety of the proposed stipulation has been included in the FEIS. The LUPA does not adequately protect human health by implementing the arbitrary, infeasible stipulation on what little phosphate development may be allowed under the LUPA.

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

Organization: Duchesne County Commission

Protestor: Ronald Winterton

Issue Excerpt Text: While the FEIS added a map (3-21-5) that shows Known Phosphate Lease Areas, including areas with high development potential, the FEIS included only a cursory evaluation of the effect of withdrawal of those resources (Map 2-38 Proposed Plan: Non-Energy Solid Leasable Minerals). Estimates of the potential resources, and their values, were not developed to adequately evaluate the effect of the withdrawal on productivity, product transport and pricing, foreign competitiveness or potential loss of tax revenue.

Issue Number: PP-UT-GRSG-15-11-4

Organization: Duchesne County Commission

Protestor: Ronald Winterton

Issue Excerpt Text: Impacts to trust lands are insufficiently evaluated in connection with withdrawal of phosphate leasing in high potential phosphate areas adjacent to state trust (Map 2-38 Proposed Plan: Non-Energy Solid Leasable Minerals) lands. Additionally, the LUPA broadly includes private and state land within the Priority Habitat Management Areas. Management of these areas is not under the jurisdiction of the BLM or the USFS and should not be

included in management proscriptions.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The State Director's decision erred and is not supported by the record before BLM for the following reasons:

1. The restrictions on non-energy mineral development are not proportional to the risk that such development poses to GRSG.
2. The decisions fails to comply with FLPMA.
3. The FEIS fails to address cumulative loss of phosphate reserves and subsequent impacts on food security.

Issue Number: PP-UT-GRSG-15-17-8

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The PLUPA/FEIS is markedly deficient in two aspects related to phosphate. First, the PLUPA/FEIS fails to account for the cumulative effects of withdrawals, prohibitions and restrictions to access phosphate ore in the West. The PLUPA for Idaho removes 4,870 acres from potential leasing for phosphate. This area is 25% of the unleased KPLA in southeastern Idaho. Further restrictions (proposed plan elements AD-1 and AD-4) will add additional acres that are not available for mining. The Utah PLUPA withdraws 186,700 acres from phosphate mining, including almost 43,000 acres of high potential phosphate development.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: Second, the PLUPA/FEIS does not discuss how the loss

of access to phosphate ore will impact American agriculture.

Issue Number: PP-UT-GRSG-15-21-10
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: The Agencies have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation’s need for domestic sources of minerals. The BLM is in violation of the MMPA, and for the reasons described herein, the PLUPA is illegal; it cannot be implemented and is thus, a fatal flaw that can only be cured by publishing a Revised PLUPA and a Supplemental FEIS BLM.

Issue Number: PP-UT-GRSG-15-21-7
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: The Proposed Plan’s withdrawal of thousands of acres, 228,500 acres in SFAs alone, conflicts with § 22 of the General Mining Law, and the Mining and Minerals Policy Act and cannot be implemented through the land use planning process. Withdrawals of this magnitude can only be made by an Act of Congress or by the Secretary of the Interior pursuant to the requirements and procedures of FLPMA § 204(c) for a period not to exceed 20 years, discussed in detail below.

Issue Number: PP-UT-GRSG-15-25-4
Organization: Snell & Wilmer LLP for Alton Coal Development, LLC

Protestor: Denise Dragoo

Issue Excerpt Text: The BLM’s new Priority Habitat designation of the Alton Coal Tract is also inconsistent with the State of Utah's determination that the area is suitable for mining. The Governor's Office has informed BLM that, “the state does not agree with BLM that lands encompassed by the Alton Coal Lease-by-Application are ‘essential’ for maintaining this wildlife species as required by Criterion 15”.

Issue Number: PP-UT-GRSG-15-25-9
Organization: Snell & Wilmer LLP for Alton Coal Development, LLC
Protestor: Denise Dragoo

Issue Excerpt Text: Pursuant to Section 522 (e) of SMCRA, 30 USC § 1273(e), the Secretary is required to evaluate federal lands for suitability for coal leasing. Rules implementing this requirement specify twenty suitability criteria at 43 CFR § 3461.5 for assessing lands unsuitable for all or certain methods of coal mining. These suitability criteria are also incorporated into the BLM’s Resource Management Plans. Criterion 15 protects land that the state and BLM jointly agree is “essential habitat” that serves a critical function to resident species which qualify as species of wildlife of high interest to the state. Criterion 15 gives the BLM the discretion to identify such habitat as “unsuitable” for surface coal mining. However, an unsuitability determination requires joint approval by the BLM and the state in identifying the area as “essential habitat.” The State of Utah has specifically determined that the Alton Coal tract does not include habitat essential to the sage grouse. Moreover, even if the area is identified as unsuitable, Criterion 15 does not categorically preclude surface mining development. The federal rule setting forth Criterion 15 provides flexibility that allows

surface mining activity in essential habitat if the BLM, in consultation with the state, determines that “all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected” (emphasis added). The BLM makes the unilateral determination that Priority Habitat is “essential habitat for maintaining GRGS for purposes of the suitability criteria set forth at 43 CFR § 3461.5(0)(1).” Contrary to the plain language of Criterion 15 and in clear contravention of the federal rule, the BLM makes this designation without the required agreement with the state. Indeed, BLM made this determination in direct conflict with the State of Utah. Second, BLM’s Priority Habitat designation disregards flexibility required under Criterion 15 that allows coal mining in areas of “essential habitat” where coal mining “will not have a significant long-term impact to the species”.

Issue Number: PP-UT-GRSG-15-32-14

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The FEIS inaccurately represents Criterion 15 of the BLM regulations concerning the determination of suitability for the leasing of coal for any particular tract of land.

Issue Number: PP-UT-GRSG-15-32-15

Summary:

The Utah GRSG PLUPA/FEIS fails to adequately analyze impacts to:

- State trust lands in connection to withdrawal of phosphate leasing in high potential areas;
- Phosphate reserves and subsequent impacts on food security and agriculture;
- Non-energy leasable minerals as a result of land withdrawals; and
- Human health and environment as a result of lease stipulations requiring underground mining.

The Utah GRSG PLUPA/FEIS violates the SMCRA by inaccurately representing Criterion 15 (43 CFR 3461.5) and omitting the state’s role in the assessment of lands unsuitable for coal

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The FEIS incorrectly omits the state’s role in this determination, and incorrectly suggests that the BLM may unilaterally make a suitability determination.

Issue Number: PP-UT-GRSG-15-32-16

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The state protests the inaccurate reflection of the BLM’s regulations, and the intentional omission of the state’s role in making suitability determinations for coal leasing for potential surface operations. The intent of the regulation, as evidenced by the initial discussions published in the Federal Register, and within a Secretarial Opinion, was that Criterion 15 was the place in the coal leasing review process, where the state could raise issues of habitat essential for the species it manages, according to constitutional law. The idea of joint determinations was finalized as a guard against the state recommending too much land be determined essential, in the BLM’s discretionary opinion.

leasing.

Response:

On Land Use Allocation Decisions for GRSG Benefit

The Federal Land Policy Management Act details the BLM's broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Utah GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve greater GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore Greater GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

The first Special Status Species goal of the Utah GRSG PLUPA/FEIS, detailed on Page 2-13, is to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners.”

Additionally, the BLM's responsibility to avoid “undue degradation” as required in FLPMA is not in conflict with the Utah GRSG PLUPA/FEIS's “net conservation gain” goals outlined in Sections 2.6.2, 2.6.3, and 2.6.4. The intent of the Proposed Plan is to provide a net conservation gain to the species. To do so, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. This is consistent with BLM Manual 6840 mentioned above.

On withdrawals and “de facto” withdrawals

The Federal Lands Policy and Management Act requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning.

Specifically, Section 202(e)(2) states “[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate.” Upon approval of the plan, the BLM will comply with the applicable reporting requirements set forth in FLPMA Section 202 as necessary and appropriate.

The proposed plan does not withdraw any lands that would trigger the reporting requirements of section 204 of FLPMA. The proposed plan's actions would be an exercise of BLM's planning authority under section 202 of FLPMA, not the withdrawal authority of section 204, and, in fact, the Utah GRSG PLUPA/FEIS proposes to exclude some uses within SFAs and PHMAs, for reasons discussed in the PLUPA/FEIS. There is no "de facto" withdrawal. The LUPA does recommend the withdrawal of approximately 228,500 acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy.

Additionally, 43 CFR 1610.6, which addresses the implementation of this requirement, states that the report from the Secretary to the Congress regarding decisions excluding major uses from over 100,000 acres of land, "shall not be required prior to approval of a resource management plan. . . . The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use." Based on this regulation, the Secretary is not required to provide this report till the RMP is signed and the BLM is ready to begin implementation.

On the management of state trust lands

Management Action MA-GRSG-3, detailed on 2-18 to 2-18, provides details on how the disturbance cap concept will be applied within BSUs. This regime does not prescribe prohibitions or management actions on state and private land – it only applies to projects that would disturb federal lands or federal mineral estate. While the disturbance cap would count all applicable disturbances within a Biologically-Significant Unit (BSU), including those on non-federal lands, the BLM would have no authority under the plan to limit development outside of Federal lands or Federal mineral estate.

On Adequate Analysis of Impacts

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

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

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

Protests in this section focused primarily on the impacts the plan would have on nonenergy leasable minerals, such as phosphate.

- In Chapter 2, the Utah GRSG PLUPA/FEIS outlines the applicable management actions for nonenergy leasable in MA-MIN-2 through MA-MIN-4 (pp. 2-33 through 2-34).
- Section 3.21.2 (p. 3-208 through 3-211) gives a primarily qualitative analysis of the existing statewide trends and conditions for nonenergy leasable minerals, including potential for development, the greater economic context of Utah's resources on a regional, national, and international scale, and current producers.
- Sections 3.21.7 and 3.21.8 (p. 3-218 through 3-224) provide more of a quantitative assessment of trends and regional context of mineral development broken down by landowner and region.
- Section 4.21.2 (pages 4-318 through 4-332) provides a qualitative and quantitative analysis of the impacts of the various alternatives (including the Proposed Plan) on nonenergy leasable minerals.
- Section 4.23.3 discusses the economic impacts of the various alternatives (including the Proposed plan), and discusses impacts to phosphate leases specifically on pages 4-385 through 4-386. Social impacts are also discussed from a general perspective in this section.

The analysis provided in the Proposed LUPA/FEIS is sufficient for the purposes of a broad-scale, land use planning effort, and complies with NEPA's requirement to analyze the environmental consequences/impacts, including those for nonenergy leasable minerals, in the Utah GRSG PLUPA/FEIS.

On Criterion 15

The BLM carries out the review of Federal lands under section 552(b) of SMCRA principally through its land use planning assessments, including the unsuitability criteria established for all or certain stipulated methods coal mining. This includes Criterion 15 (43 CFR 3461.5(o)(1)), which states that "Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered unsuitable."

The Utah GRSG PLUPA/FEIS states in the description of the alternatives how the BLM and the State of Utah would continue to implement Criterion 15: "For all other areas, upon receipt of a coal lease application in GRSG habitat, the BLM will review criterion 15 set forth in 43 CFR 3461.5 to determine if the specific area being proposed for lease is suitable. If the BLM and the State of Utah 'jointly agree' the federal lands do not contain GRSG habitat that is 'of high interest to the state and which are essential for maintaining [this] priority wildlife...species,' the area shall be considered suitable for further coal leasing consideration".

The Utah GRSG PLUPA/FEIS addresses Criterion 15 and the BLM's ongoing relationship with the State of Utah when implementing the suitability criteria established under law, policy, and regulation.

Special Status Species

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: For the foregoing reasons, protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as the BLM's responsibility to prevent undue degradation to sage grouse habitats under FLPMA, the Forest Service's responsibility to maintain viable populations under NFMA, and both agencies' duties to uphold the responsibilities outlined in their respective Sensitive Species policies. The agencies' failure to apply adequate lek buffers to conserve sage grouse, both inside and outside of Priority Habitats, in the face of scientific evidence, agencies' own expert opinions, and their own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Issue Number: PP-UT-GRSG-15-18-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In the Utah RMP EIS, BLM has failed to apply in its proposed plan amendment the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and as a result, development approved under the proposed plan violates the directives of BLM Sensitive Species Policy and will result in both unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these

areas, undermining the effectiveness of the GRSG plan amendment strategy as an adequate regulatory mechanism in the context of the decision.

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The Objectives of BLM's sensitive species policy includes the following: "To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA" (BLM Manual 6840.02). Under this policy, District Managers and Field Managers are tasked with "Ensuring that land use and implementation plans fully address appropriate conservation of BLM special status species" (BLM Manual 6840.04(E)(6)).

Issue Number: PP-UT-GRSG-15-18-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act. The agency, through the Utah RMP Amendment, needs to provide management that will prevent this decline of sage grouse across the planning area.

Summary:

Application of ineffective stipulations and continuing to drive the sage grouse toward ESA listing is a violation of BLM Sensitive Species Policy. In the Utah GRSG PLUPA/FEIS, BLM fails to apply in its proposed plan recommended sage grouse protections which violate directives of BLM Sensitive Species Policy.

The Forest Service must maintain viable populations of sage grouse well-distributed across National Forest units pursuant to the National Forest Management Act and its 1982 implementing regulations

Response:

Contrary to the protest issues raised, the proposed land use plan revision for Utah GRSG PLUPA/FEIS analyzed in the PLUPA/FEIS does satisfy the BLM's Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM's Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for the conservation (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM multiple use mission, as specific in the FLPMA (Manual 6840.2).

The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans." (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4).

As described and analyzed in the Utah GRSG PLUPA/FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapters 1 and 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis (1.5 Planning Processes and Section 2.1 Changes Between the Draft LUPA/EIS and Proposed LUPA/Final EIS). The BLM considered and incorporated conservation measures identified in the COT Report, The Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of Greater GRSG (*Centrocercus urophasianus*) (Manier et al. 2013) (also known as the BER Report), and a number of other GRSG Conservation Documents as described in Section 1.9, Relationship to Other Documents (p. 1-25 to 1-27).

Since land planning-level decisions are broad in scope, analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The

baseline data provides the necessary basis to make informed land use plan-level decisions. Again, the Utah GRSG PLUPA/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Utah GRSG PLUPA/FEIS, the management proposed in the Utah GRSG PLUPA/FEIS satisfies BLM's intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Please refer to the NFMA-Viability section of this report for more detailed discussion about how the Utah GRSG PLUPA/FEIS complies with the viability requirement.

Lands and Realty

Issue Number: PP-UT-GRSG-15-15-45

Organization: Garfield County
Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The BLM and Forest Service rules for future disturbance are inconsistent with existing facilities that are functioning in harmony with existing GRSG populations. Impacts from new infrastructure must not be presumed to be different than impacts from the same facilities that currently exist. Management prescriptions which designate human developed facilities as incompatible with GRSG habitat should also be applied to existing facilities of the same type and used for comparison between the no action alternative and other scenarios. The entire argument regarding human disturbance is irrelevant in the Panguitch and southern Parker Mountain population areas in Garfield County because the areas do not conform to COT and NTT establish habitat descriptions. Garfield County's plan does not impose different restrictions for new verses existing infrastructure. The Bureau of Land Management and the Forest Service are inconsistent with their own prescriptions by preventing activities credited with impacting GRSG in areas that currently have those same activities. Areas with infrastructure need to be classified as non-

habitat, due to existing conditions, or such conditions must be acceptable inhabit.

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

Organization: Simplot Livestock

Protestor: Alan Prouty

Issue Excerpt Text: The Proposed Land Use Plan Amendment (PLUPA) to address the management of Greater GRSG (GSG) recognizes that existing rights have to be honored. MA-GRSG-3 discusses "existing rights." However, MA-GRSG-3 and other elements of the PLUPA appear to place extensive requirements on the ability to exercise "an existing right." Furthermore, it is not clear that the PLUPA provides for the infrastructure and auxiliary features necessary for the development and extraction of phosphate minerals.

To successfully develop a mineral resource requires the ability to access the deposit (roads), have electrical power (transmission lines), develop water sources (wells, pipelines), manage waste materials (such as tailings in a tailings pond) and transport ore (such as through a pipeline). All of these mine features require an anthropogenic disturbance. For example, Simplot's Vernal Mine has an ore slurry pipeline that goes from the Vernal mine to Simplot's fertilizer plant in Rock Springs, WY. This pipeline

crosses both Forest Service and BLM land, including such land that is classified as PHMA and GHMA.

Issue Number: PP-UT-GRSG-15-38-12

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The State Highway and the existing transmission line already exist and GRSG are present in limited numbers. Piute County's plan does not

impose restrictions on this area but does identify more viable habitat above designated elevations and outside the highway/powerline impact area for GRSG conservation. BLM/FS are inconsistent with their own prescriptions by disallowing activities they say impact GRSG in areas that currently have those activities. The areas need to be classified as non-habitat, due to existing conditions, or such conditions must be acceptable in habitat.

Summary:

The Utah GRSG PLUPA/FEIS fails to adequately account for existing facilities that are functioning in harmony with existing Sage Grouse populations and the effects of the same type of future facilities. It also restricts the the ability to exercise existing rights.

Response:

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

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). Neither agency is required to speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

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

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

In the PLUPA/FEIS, Chapter 4, Section 4.19, Lands and Realty, existing ROWs, designated utility corridors, and communication sites would be managed to protect valid existing rights and

were considered in the analysis. Impacts to GRSG from existing and future infrastructure and development were considered and addressed as discussed on page 4-272 to 4-275. Under the PLUPA/FEIS, required design features and the disturbance cap would apply to new proposed projects or renewals and additional site specific NEPA analysis would be required (PLUPA/FEIS, Chapter 4, Section 4.19, pages 4-258 to 4-275). Additional analysis on the effects to GRSG from infrastructure is discussed in Chapter 4, Section 4.3.7, Special Status Species, Greater GRSG, page 4-124 to 4-124.

The agencies complied with NEPA's requirement to consider and analyze the environmental consequences/impacts from lands and realty projects to GRSG in the Utah GRSG PLUPA/FEIS.

Environmental Justice

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The BLM/FS have failed to properly analyze custom culture heritage of the area and have failed to disclose those issues in the socioeconomic section and in the Equal Access to Justice evaluation. Residents of the Panguitch and Southern Parker Mountain population areas are primarily decedents of the Mormon pioneers that settled these mountain valleys. The original settlers and their posterity today have a particular custom, culture, heritage and social status not found in other areas of the world. The dominance of a specific cultural, particularly where it exists in much greater

percentage than the other portions of the nation constitutes a protected group. The BLM and FS have failed to recognize the vast majority of the people in the area assert they have been given the charge by God to multiply and replenish the earth, subdue it and have dominion over it.

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

Organization: Garfield County

Protestor: Brian Bremner

Issue Excerpt Text: The BLM/FS failed to identify, recognize, analyze, and disclose the significant cultural issues in the socioeconomic portion and in the Equal Access to Justice review of the document.

Summary:

The Utah GRSG PLUPA/FEIS failed to consider and analyze environmental justice for a protected group with particular customs, cultural heritage and social status found within the Panguitch and Southern Parker Mountain Greater GRSG (GRSG) population area.

Response:

Chapter 3 of the Utah GRSG PLUPA/FEIS succinctly addresses Environmental Justice (p. 3-262 through 3-267) and provides data detailing both population race/ethnicity and low-income populations on a county basis for identified groups such as Black or African American, Alaskan Native or American Indian, and Asian. As described in Chapter 4 of the Utah GRSG PLUPA/FEIS, Section 4.23.6 Environmental Justice Impacts (p. 4-402), the analysis clearly states, "Based on the description of minority presence in the primary study area in Chapter 3, and based on definitions in relevant guidance, no minority populations were identified in the primary study area." and "Of the 22 counties in the Socioeconomic Study Area, ten have a higher percentage of residents below the poverty line than the overall Utah percentage below the poverty line and four...have a higher percentage of residents below the poverty line than the national percentage." Thus it was concluded that there was no disproportionately high and adverse impacts on minority populations or low-

income populations under the management alternatives considered (Utah GRSG PLUPA/FEIS, p. 4-402 and 4-403).

The study and analysis of environmental justice as described and analyzed in the Utah GRSG PLUPA/FEIS is consistent with the guidance in Appendix D (p. 11) in the BLM's Land Use Planning Handbook.

The BLM considered relevant information for the consideration of Environmental Justice impact analysis.

Travel Management

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

Organization: Wayne County Commission

Protestor: Newell Harward

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-14-10

Organization: Morgan County Commission

Protestor: Logan Wilde

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-15-67

Organization: Garfield County Commission

Protestor: Brian Bremmer

Issue Excerpt Text: The travel restrictions imposed by the LUPA/FEIS unreasonably interfere with Garfield County's rights and the public's use of county roads vested under R.S. 2477. Consequently, the LUPA/FEIS violates valid existing rights. In addition, Bureau of Land Management and the Forest Service arbitrarily and capriciously impose restrictions on new roads in a manner inconsistent with treatment of existing roads.

Issue Number: PP-UT-GRSG-15-18-14

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Road densities are also an issue, because sage grouse avoid habitats adjacent to roads. Holloran (2005) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to GRSG populations. This road density should be applied as a maximum density in Priority and General Habitats, and in areas that already exceed this threshold, existing roads should be decommissioned and revegetated to meet this standard on a per-square-mile-section basis. The agencies' proposed plan amendments fail to provide adequate limits on road density.

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Both agencies fail to provide that new roads in Utah accessing multiple wells or housing developments be located more than 1.9 miles from leks in Core Areas (FEIS at 2-40, 2-50); this is necessary to prevent significant impacts to GRSG based on the best available science. Guidance for Wyoming (FEIS at 2-64) approaches the correct standard, but this needs to reflect the mandatory "prohibit"

rather than the discretionary “restrict.” In order to bring the Utah RMP amendment up to scientific standards for road location and development, BLM must apply NTT (2011) recommendations as well as road density limits in accord with the best available science.

Issue Number: PP-UT-GRSG-15-21-3
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located. These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Resources Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan, BLM the will interfere with potential access to minerals as well as the public’s right-of-way across Federal lands. Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with

resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, the Agencies have not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

Issue Number: PP-UT-GRSG-15-21-4
Organization: American Exploration and Mining Association
Protestor: Laura Skaer

Issue Excerpt Text: The travel and transportation restrictions described under the Proposed Plan create de facto withdrawals and thus, violate § 22 of the General Mining Law and the Surface Resources Act. As previously discussed, the misuse of the term “Valid Existing Rights” in the context of the travel and transportation restrictions does not ensure pre-discovery access to public lands with or without mining claims. BLM must uphold AEMA, NMA, UMA, and IMA-NA’s protest of the PLUPA/FEIS because it does not comply with applicable laws, regulations, policies and planning procedures.

Issue Number: PP-UT-GRSG-15-27-25
Organization: Utah Association of Counties
Protestor: Mark Ward

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with counties’ rights in the public’s use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-28-24
Organization: Box Elder County Commission
Protestor: Stan Summers

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

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

Organization: Simplot Livestock

Protestor: Darcy Helmick

Issue Excerpt Text: It is critical that permittees have the ability to have administrative use of off-road vehicles for livestock management and improvement maintenance. Permittees are legally required by the grazing regulations and by their Grazing Permits to manage their livestock and to maintain their range improvements. Permittees need access to do both.

Issue Number: PP-UT-GRSG-15-33-11

Organization: Daggett County Commission

Protestor: Karen Perry

Issue Excerpt Text: The travel restrictions imposed by the LUPA/FEIS unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-38-29

Organization: Paiute County

Protestor: Rick Blackwell

Issue Excerpt Text: The travel restrictions imposed by the LUPA/EIS unreasonably interfere with the county's rights and the public's use of county roads vested under R.S. 2477. Consequently, the LUPA/EIS violates valid existing rights. In addition, BLM/FS arbitrarily and capriciously impose restrictions on new roads in a manner inconsistent with treatment of existing roads.

Issue Number: PP-UT-GRSG-15-40-23

Organization: Juab County Commission

Protestor: Clinton Painter

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-41-5

Organization: Beaver County Commission

Protestor: Michael Dalton

Issue Excerpt Text: The travel restrictions imposed by the LUPA/FEIS unreasonably interfere with the county's rights in the public's use of county B and D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-42-11

Organization: Uintah County Commission

Protestor: Michael McKee

Issue Excerpt Text: The travel restrictions imposed by the LUPA/GRSG unreasonably interfere with the county's rights in the public's use of county Band D roads vested under R.S. 2477.

Issue Number: PP-UT-GRSG-15-43-3

Organization: BlueRibbon Coalition

Protestor: Don Amador

Issue Excerpt Text: FAILURE TO ADDRESS OHV NOISE. The documents suggest that motorized activities, including OHV use, are expected to have a larger footprint on the landscape. They are anticipated to have the greatest level of impact due to noise levels, compared to nonmotorized uses, such as hiking or equestrian use. BRC submitted the following OHV noise management prescription in our comment letter, consider adopting a defensible standard, such as the 2003 California State OHV Sound Law which states, "Sound emissions of

competitive off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Sound emissions of all other off-highway vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 dBA if manufactured prior to January 1,

1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable.”

Notwithstanding our comments and the vague threat that failure to address vehicle noise could be used to justify restrictions, the Proposed LUPA/FEIS fail to meaningfully address this factor. We ask that this oversight be addressed in a supplemental analysis.

Summary:

- The Utah GRSG PLUPA/FEIS violates NEPA by failing to utilize best available science to identify limits on road location and density.
- The Utah GRSG PLUPA/FEIS is inconsistent with BLM Manual 1626 because it fails to balance access needs with resource management goals and objectives.
- The Utah GRSG PLUPA/FEIS violates counties’ rights under R.S. 2477 by unreasonably interfering with the public’s use of roads vested under R.S. 2477.
- The Utah GRSG PLUPA/FEIS violates the grazing regulations by failing to provide administrative off-road vehicle access for permittees to manage livestock and maintain range improvements.
- The Utah GRSG PLUPA/FEIS violates section 22 of the General Mining Law and the Surface Resources Act by creating de facto withdrawals and affecting rights of ingress and egress.
- The Utah GRSG PLUPA/FEIS fails to include an OHV Noise Management Standard.

Response:

Best Available Science

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

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

The Utah GRSG PLUPA/FEIS considered Alternative B, which was based on “A Report on National Greater GRSG Conservation Measures” (NTT, 2011). Consistent with p. 11 of the NTT report this alternative would “In PHMA, limit motorized travel to existing roads, primitive roads, and trails at a minimum, until such time as travel management planning is complete and routes are either designated or closed” (FEIS, p. 2-170).

The BLM and Forest Service utilized Holloran's 2005 findings, the NTT report, and the USGS Report on Conservation Buffer Distance Estimates for Greater GRSG to define allowable maximum landscape anthropogenic disturbance, required distance from leks for new authorizations, and density of mining or energy facilities.

As discussed previously under the NEPA—Range of Alternatives Section, of this report, the BLM and Forest Service complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM regulations, policy, and guidance. The management actions in the Proposed LUPA/Final EIS fall within the range of alternatives for protecting GRSG related to travel management, including travel limitations, road maintenance, and road construction.

The Utah GRSG PLUPA/FEIS includes a list of references (Chapter 7), which lists information considered by the BLM and Forest Service in preparation of the PLUPAFEIS.

As described in responses to comments, the BLM and Forest Service have not added a restriction that would limit road densities to less than 0.09 km per km² (Wisdom et al. 2011) in GRSG habitat because the threshold established by Wisdom used coarse road data. When taking into consideration actual road density information, use of this threshold is not appropriate. Based on the GRSG Monitoring Framework, the Proposed LUPA/FEIS includes surface disturbance direct areas of influence when calculating acreage for the disturbance cap, which would include consideration of existing disturbance (e.g., existing roads) when determining whether a project should be deferred or permitted.

The BLM and Forest Service relied on high quality information in the preparation of the Utah GRSG PLUPA/FEIS.

Manual 1626

BLM Manual 1626 at .06 states “The Travel and Transportation Management (TTM) planning process will be incorporated into the development of all Resource Management Plans (RMP) to ensure access needs are balanced with resource management goals and objectives.” The overall purpose for the Utah GRSG PLUPA/FEIS is “to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat” (p. 1-5).

In addition to ensuring access needs are balanced with resource management goals and objectives the BLM Travel and Transportation Manual also refers to 43 CFR 8342.1 – Designation, which describes the required considerations for travel management designations as “The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

- Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

- Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.
- Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
- Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.”

Travel management designations in the Utah GRSG PLUPA/FEIS balance travel management needs with the purpose and need of the PLUPA/FEIS and is therefore consistent with BLM Manual and federal regulation.

R.S. 2477

Revised Statute (R.S.) 2477 (enacted 1866) stated that “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted” this statute was repealed by the Federal Land Policy and Management Act (FLPMA) of 1976, however Section 701 of FLPMA provided that nothing “...shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use authorization existing on the date of approval of this Act”. Therefore, for a route to be an R.S. 2477 right-of-way, it must have existed before the passage of FLPMA (October 21, 1976).

BLM Travel and Transportation Management Manual 1626 at .06A2h states that “A travel management plan is not intended to provide evidence bearing on or addressing the validity of any R.S. 2477 assertions. R.S. 2477 rights are determined through a process that is entirely independent of the BLM's planning process. Consequently, travel management planning should not take into consideration R.S. 2477 assertions or evidence. Travel management planning should be founded on an independently determined purpose and need that is based on resource uses and associated access to public lands and waters. At such time as a decision is made on R.S. 2477 assertions, the BLM will adjust its travel routes accordingly.”

Because the legally binding determination of whether a R.S. 2477 ROW exists is a judicial one, at such time as a decision is made by the courts on any R.S. 2477 assertions, the BLM and Forest Service would adjust its travel routes accordingly.

The Forest Service Travel Management Policy states; written authorizations issued under federal law or regulations or legally documented rights-of-ways held by State, county or other local public road authorities are exempt from travel management regulations as prohibited within 36 CFR 261.13.

Livestock Grazing Access and Access for BLM Authorized Uses

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental

concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans.

The BLM's authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principles of multiple use and sustained yield as required by FLPMA and its implementing regulations is broad. Actions taken under land use plans may include imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and during the life of the plan.

The Taylor Grazing Act does not restrict the BLM's discretionary authority to identify some public lands as closed to cross-country motorized travel to manage livestock grazing. The Forest Service Travel Management Policy states; written authorizations issued under federal law or regulations or legally documented rights-of-ways held by State, county or other local public road authorities are exempt from travel management regulations as prohibited within 36 CFR 261.13. Grazing permits issued pursuant to 36 CFR 222 may include specific authorization for motor vehicle use.

"De facto" Withdrawals

General Mining Act of 1872 (30 USC 22) states that:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

Surfaces Resources Act of 1955 (30 USC 612) states that:

"(b) Reservations in the United States to use of the surface and surface resources. Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto"

Per BLM H-3809-1 "Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent unnecessary or undue degradation (FLPMA, 43 CFR 3809.415). Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

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

The Utah GRSG PLUPA/FEIS is consistent with BLM direction to balance mining claimant’s right and requirement to access claims with FLPMA’s requirement to prevent unnecessary or undue degradation.

The Forest Service Travel Management Policy states; written authorizations issued under federal law or regulations or legally documented rights-of-ways held by State, county or other local public road authorities are exempt from travel management regulations as prohibited within 36 CFR 261.13. The Forest Service must provide reasonable access, which is dependent on the level of activities proposed or ongoing

OHV Noise Management Standard

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14) if it is determined not to meet the proposed action’s purpose and need (BLM Handbook H-1790-1, Section 6.6.3).

Comment response in Appendix X of the Utah GRSG PLUPA/FEIS states (p. X-43) that “Noise restrictions in the EIS only apply to discretionary activities (e.g., special recreation permits for competitive events) and would not apply to dispersed recreational use. The noise standards included in the Utah GRSG PLUPA/FEIS were developed based on the best available science regarding the impacts of noise on GRSG. ”

While noise management standards themselves would be an individual action within an alternative, the BLM appropriately dismissed the action proposed because it would not respond to the plan’s purpose and need of “identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (p. 1-4)”.

As part of the Forest Service site specific travel management analysis the criteria in § 212.55, effects of sound, could be considered as part of the analysis prior to a travel management decision. The Forest Service will identify appropriate mitigation during site specific project analysis

Reasonably Foreseeable Development Scenario

Issue Number: PP-UT-GRSG-15-32-19

Organization: State of Utah

Protestor: Kathleen Clarke

Issue Excerpt Text: The state protests the failure to amend Appendix R to include

important, relevant scientific data in the required discussion of the Reasonably Foreseeable Development scenario for oil and gas development. In addition, the information in Appendix R was generated using information which was not prepared or review by persons with the requisite

expertise. As a result, the FEIS lacks sufficient information upon which to make the required oil and gas resource occurrence determinations, and to thereafter make development potential ratings within GRSG habitat.

Summary:

The Utah GRSG PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science by failing to include important, relevant scientific data in the Reasonably Foreseeable Development scenario.

Response:

As explained in Appendix R (Oil and Gas Reasonably Foreseeable Development Scenario for Greater GRSG Occupied Habitat in Utah Sub-Region; p. R-2) and Appendix X (Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement; p. X-37) of the Utah GRSG PLUPA/FEIS, the BLM has collected sufficient information to support the analysis in this broad-scale planning document. For the Oil and Gas Reasonably Foreseeable Development Scenario for GRSG Occupied Habitat in Utah Sub-Region, the BLM used a modified version of the oil and gas potential map contained in the US Geological Survey publication Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of GRSG (*Centrocercus urophasianus*), also known as the BER. This map was originally included in a peer reviewed document titled Mapping Oil and Gas Development Potential in the US Intermountain West and Estimating the Impacts to Species (Copeland et al. 2009). During development of the Draft LUPA/EIS, the baseline map was reviewed by qualified BLM mineral specialists, including geologists and petroleum engineers, in the BLM Utah State Office. Numerous changes were made to the map to more accurately reflect oil and gas potential in the planning area. For example, approximately 3,339,234 acres of additional moderate potential, and 265,278 acres of additional high potential were identified. A modified version of the map developed by Copeland et al. was used for the Draft LUPA/EIS because it estimates oil and gas potential for all GRSG habitat in the planning area, and there are few if any products similar to this available. As such, the BLM has used the best available science in the preparation of the Oil and Gas Reasonably Foreseeable Development Scenario for GRSG Occupied Habitat in Utah Sub-Region.