



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

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

March 15, 2019

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## Acronyms

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

## Protesting Party Index

<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
Carrie Mann	Friends of the Earth	Dismissed – Comments Only
Kent Connelly	Wyoming Coalition of Local Governments	Denied – Issues and Comments
Laura Skaer	American Exploration and Mining Association	Denied – Issues and Comments
Michael Wetzel	N/A	Dismissed – No Standing
Wally Johnson	Sweetwater County	Denied – Comments Only
Nada Culver*, Brian Rutledge, Mary Greene, Robert McEnaney, Robert Gaudet, Dan Heilig, Shales Harrison	The Wilderness Society*, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Western Values Project, Wyoming Outdoor Council, Wyoming Wilderness Association	Denied – Issues and Comments
Greta Anderson	Western Watersheds Project	Denied – Issues and Comments

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

## Endangered Species Act (ESA)

### **The Wilderness Society**

#### **Nada Culver**

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

**Summary:** The BLM cannot rely on findings from the 2015 Endangered Species Act (ESA) consultations because there are new risks of harm related to the new purpose and need, circumstances, and policies that underlie the Proposed RMP Amendment/Final EIS.

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

In 2015, the Bureau of Land Management (BLM) Wyoming engaged in informal consultation and determined that there would not be any effects on listed species from the actions proposed in 2015. In 2018, the BLM Wyoming again engaged in informal consultation regarding the Proposed RMP Amendment/Final EIS. It was again determined that there would not be any effects on listed species from the actions proposed in the 2018 Proposed RMP Amendment/Final EIS. Therefore, the BLM has fulfilled its obligations under Section 7 of the ESA.

Because the BLM has fulfilled its obligations under Section 7 of the ESA, the BLM denies this protest.

## [FLPMA—Areas of Critical Environmental Concern \(ACECs\)/Research Natural Areas \(RNAs\)](#)

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** BLM has failed to carry out its FLPMA-mandated obligation to prioritize the designation and protection of areas of critical environmental concern (ACECs) by failing to designate sage-grouse habitat as an ACEC. *WWP et al. 2018 at 66-67*. As defined in the PRMP, Biologically Significant Units (BSUs) contain “relevant and important” habitat for sage-grouse. Consequently, they meet the criteria for designation as ACECs. 43 CFR § 1610.7-2. Nevertheless, BLM never even considered designating sage-grouse ACECs in the process of producing the PRMP, let alone prioritizing such designation. This violated NEPA and FLPMA.

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

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

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

The BLM properly considered and analyzed the designation of ACECs in 2015. No new information suggests it is necessary to reconsider those decisions and BLM has determined the issue of ACECs to fall outside the scope of this effort to better align federal management with state management plans.

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

## [FLPMA—Consistency with State and Local Plans](#)

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

#### **Kent Connelly**

**Issue Excerpt Text:** (1) Failed to coordinate with Coalition members and ensure consistency with local plans and policies as required pursuant to the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. §§ 1711(b), 1712(c)(9), 1712(f), 1714(c)(1)(8); 1718, 1720, 1721, 1733, 1739(e), and the National Environmental Policy Act ("NEPA") 42 U.S.C. §§ 4321- 4375;

**Summary:** The BLM failed to coordinate with local governments to ensure consistency with local plans and policies.

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

law and the purposes of this act.” However, BLM land use plans may be inconsistent with state, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

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

In accordance with these requirements, the BLM has given consideration to state, local, and tribal plans that are germane to the development the Proposed RMP Amendment/Final EIS. The BLM held a public comment period between the draft and final documents and has worked closely with state, local, and tribal governments during preparation of the Proposed RMP Amendment/Final EIS. Chapter 5 describes coordination that has occurred throughout the development of the Proposed RMPA/Final EIS.

A list of the local, state, and tribal plans that the BLM considered can be found in Section 1.6. Pursuant to 40 CFR 1506.2(d), the agency will discuss why any remaining inconsistencies between the Proposed RMP Amendment/Final EIS and relevant local, state, and tribal plans cannot be resolved in the record of decision (ROD) for the Proposed RMP Amendment/Final EIS. The goal of this proposed plan is to align with state sage-grouse plans. Local and tribal governments are encouraged to work with their state to ensure those plans address local sage-grouse issues.

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

## **FLPMA—General**

### ***American Exploration & Mining Association***

#### ***Laura Skaer***

**Issue Excerpt Text:** Although FLPMA Section 202(c)(9) gives state and local governments a specific statutory role in the federal land use planning process, it does not authorize BLM to defer to state or local plans if they conflict with Federal law and the purpose of FLPMA. With respect to the proposed mitigation standard, BLM has unlawfully deferred to the State of Wyoming and appears to have capitulated to the states' demands for consistency rather than seeking to resolve the conflicts between the states' plans and federal law.

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

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

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

of federal wildlife management authority, federal agencies are often too deferential to states, and the management scheme described in the FEIS would exacerbate this shortcoming. We protest on this basis.

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

#### **Kent Connelly**

**Issue Excerpt Text:** FLPMA does not authorize delegation of any land management authority to a state agency. Nor did Congress give Wyoming Game and Fish Department authority to manage federal lands. Although Wyoming Game and Fish enjoys authority over wildlife only a federal land agency may manage the federal land. Neither Wyoming or any state agency can impose its management objectives on federal land. Thus, the provisions of the 2018 Plan that grant final authority to Wyoming Game and Fish Department to determine the need for compensatory mitigation (to a Net Conservation Gain) violates the fundamental division between state and federal authority. As is evident by Wyoming statutes, Wyoming Game and Fish works to manage wildlife in Wyoming and thus its mission is fundamentally different than the BLM's multiple use mandate for federal lands. BLM's relinquishment of its authority to Wyoming Game and Fish is blatant and a fundamental step away from the controlling language of FLPMA and BLM regulations.

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

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

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

In accordance with the above-identified requirements, the BLM has given consideration to state, local and tribal plans that are germane to the development of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. The BLM has worked closely with state, local, and tribal governments during preparation of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. Chapter 5 describes the coordination that has occurred throughout the development of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. A list of the local, state, and tribal plans that the BLM considered can be found in Chapter 1, Section 1.7. While BLM may not delegate land management authority to the state, it does recognize that the state has special expertise and authority as a wildlife manager. Therefore, the BLM carefully considered state recommendations for managing wildlife habitat. The BLM may also recognize state permitting authority when applicable.

Variouly throughout the Wyoming Proposed RMP/Final EIS, BLM describes consultation with the State of Wyoming and USFWS as part of coordination with the Adaptive Management Working Group and as part of permitting decisions, helping fulfill BLM's obligation to coordinate with state governments (43 CFR 1610.3-1). Nowhere in the plan is there a decision that delegates or otherwise cedes federal decision-making authority to the State of Wyoming.

The agency will discuss why any remaining inconsistencies between the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS 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).

The agency will discuss why any remaining inconsistencies between the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS 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).

Furthermore, as specified in the planning effort’s purpose and need (page ES-2), FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and wildlife. As the sovereign entities with the lead role in managing game species, including Greater Sage-Grouse, states play a critical role in conserving the Greater Sage-Grouse and its habitat.

For the reasons stated above, the BLM has acted consistent with its statutory authority and satisfied the consistency requirements under FLPMA in preparation of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. It therefore denies this protest

***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** During the 2015 greater sage-grouse land use planning process, several memoranda, studies, and reports were prepared in response to and, in many cases, relied upon to adopt restrictions on multiple use on federal lands for the purported purpose of protecting an unlisted species. These documents include: 1. NTT Report; 2. COT Report; 3. SO 3330; 4. 2014 FWS Memo; 5. 2014 FWS Mitigation Framework; 6. 2014 USGS Lek Buffer Study; 7. "Range-Wide Network of Priority Areas for Greater Sage-Grouse?A Design for Conserving Connected Disturbances or Isolating Individual Zoos?" by Michele R. Crist, Steven T. Knick, & Steven E. Hanser (USGS, Open-File Report 2015-1158) ("Crist Study"); and 8. Monograph. These documents suffer from significant defects, including being outcome-orientated and reverse-engineered. Most importantly, these documents rely on landscape-scale land use planning principles that Congress rejected when it used the Congressional Review Act (5 U.S.C. §801 et seq. "CRA") to rescind BLM's Planning 2.0 Rule

***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** Congress has made it clear that FLPMA does not authorize landscape-scale management of public lands. Therefore, the 2018 PRMPA must not be based on landscape-scale management philosophies

**Summary:** BLM has unlawfully based the Proposed RMP Amendment/Final EIS on landscape-scale land use planning principles, which Congress rejected its rescission of the Planning 2.0 under the Congressional Review Act.

**Response:** Section 202 of FLPMA, 43 United States Code (USC) 1712, directs the Secretary to develop, maintain, and revise land use plans governing the use of the public lands. Further, the BLM is to “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” (43 USC 1712(c)(2)).

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

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

***The Wilderness Society***

***Nada Culver***

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

***The Wilderness Society***

***Nada Culver***

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

***The Wilderness Society***

***Nada Culver***

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

***The Wilderness Society***

***Nada Culver***

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

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

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

At the beginning of Chapter 3 of the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS, the RMP explains that the BLM analyzed the management situation in full compliance with its regulations and policies. The BLM evaluated inventory and other data and information, partnering with the United States Geological Survey (USGS) and coordinating extensively with states, to help provide a basis for formulating reasonable alternatives. The BLM described this process in its Report to the Secretary in response to SO 3353 (Aug. 4, 2017). Among other things, the Report describes how the

BLM coordinated “with each state to gather information related to the [Secretary’s] Order, including state-specific issues and potential options for actions with respect to the 2015 Greater-Sage Grouse Plans and IMs to identify opportunities to promote consistency with state plans”, (Report to the Secretary at 3.) Implementing that direction, the Wyoming Greater Sage-Grouse RMP Amendment/Final EIS incorporates, as appropriate, information in a USGS report that identified and annotated Greater Sage-Grouse science published since January 2015 (Carter et al. 2018), a report that synthesized and outlined the potential management implications of this new science (Hanser et al. 2018), and other best available science.

For the reasons stated above, this protest is denied.

## **FLPMA—Locatable Minerals**

### ***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** Further, the 2015 restrictions and the proposed mitigation protocol/standard are not in compliance with the specific directive pertaining to minerals under FLPMA § 102(a)(12) and the directives in MMPDA § 1602: ... the public lands [shall] be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a... (43 U.S.C. 1701(a)(12)). ...[I]t is the continuing policy of the United States to promote an adequate and stable supply of materials ... with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resources conservation, and social needs. BLM must acknowledge that it is required to fully consider the need for minerals and achieve an appropriate balance between mineral development and conservation of other resources.

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

**Response:** 43 USC 1732 states that the BLM shall manage the public lands principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

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

All alternatives considered in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS, as described in Chapter 2 (p. 2-4 through 2-23), 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 Wyoming Proposed RMP Amendment/Final EIS is consistent with FLPMA's multiple use mandates.

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

***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** The 2015 Amendments and retained in the Proposed Plan include seasonal and year-round travel and transportation restrictions, lek buffers, disturbance caps, seasonal timing restrictions, conservation measures, among others that, if applied to locatable mineral activities, would violate rights granted by the Mining Law (30 U.S.C. § 22) and FLMPA, including rights of ingress and egress.

***American Exploration & Mining Association***

***Laura Skaer***

*See also Other Laws*

**Issue Excerpt Text:** Throughout the PRMPA/FEIS, BLM refers to "Valid Existing Rights" (hereinafter "VERs") with the implication that the impact of certain restrictions, guidelines, and objectives would be mitigated because the VER would be protected. For locatable minerals the term "valid existing right," is a specific term that is reserved for those claims after a "discovery" of a valuable mineral deposit has been made. Therefore, the proposal to honor VERs does not clearly encompass and protect the Mining Law Section 22 rights associated with claims prior to a discovery of a valuable mineral deposit. In the context of the PRMPA, VERs must clearly mean all mining claims in good standing - with or without a discovery.

***American Exploration & Mining Association***

***Laura Skaer***

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

**Summary:** The Proposed RMP Amendment/Final EIS violates the rights afforded to holders of mining claims and sites located under the General Mining Law of 1872.

**Response:** The BLM implements land use planning decisions differently with respect to authorizing uses related to, or authorized under, the General Mining Law of 1872. The difference stems from the language of Section 302(b) of FLPMA, which specifically states that it does not amend the Mining Law, except in the four ways stated, none of which is land use planning (43 USC 1732(b)). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws (43 CFR 3809.420(a)(3)).

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

Because all proposed actions considered in the Proposed RMP Amendment/Final EIS will be applied only to the extent that they are consistent with the Mining Law of 1872, as well as the associated regulations at 43 CFR 3809, the BLM denies this protest.

## FLPMA—Mitigation

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The amendment fails to prevent unnecessary and undue degradation. FLPMA further mandates that the Secretary of Interior "shall" take any action necessary to prevent "unnecessary or undue degradation" of public lands. 43 U.S.C. § 1732(b). Unnecessary and undue degradation is defined as "harm to the environment that is either unnecessary to a given project or violates specified environmental protection statutes." *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 723 (9th Cir. 2009). *WWP et al.* 2018 at 50 et seq.

**Summary:** BLM failed to explain how the Proposed RMP Amendment/Final EIS will prevent unnecessary or undue degradation.

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

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

M-37039 has been revoked by M-37046. Moreover, the Proposed Plan provides for the balanced management of the public lands in the planning area. In developing the Proposed Plan, the BLM fully complied with its planning regulations (40 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Proposed Plan identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. It does not authorize any use of the public lands, much less any that would result in unnecessary or undue degradation.

The Proposed Plan includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. The three-tier habitat approach is designed to avoid and minimize effects to sage grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non habitat thus effectively mitigating the adverse effect. These types of actions and allowable uses are forms of mitigation per 40 CFR 1508.20.

The BLM has adequately prevented unnecessary or undue degradation pursuant to FLPMA; accordingly, the BLM denies this protest.

## **Wyoming Coalition of Local Governments**

### **Kent Connelly**

**Issue Excerpt Text:** 3) Failed to eliminate the Net Conservation Gain mitigation standard in violation of the plain language of FLPMA, Secretarial Order 3360; legal opinion of the Interior Office of the Solicitor, M-37046, and the U.S. Fish and Wildlife Service policy revision;

**Summary:** BLM has failed to remove the Net Conservation Gain mitigation standard in violation of the plain language of FLPMA, Secretarial Order 3360; legal opinion of the Interior Office of the Solicitor, M-37046, and the USFWS Service policy revision.

**Response:** Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 CFR 3809 describes how the BLM regulates hardrock mining on the public lands, including to prevent unnecessary or undue degradation.

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

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

Neither the mitigation approach detailed in the plans, nor the Wyoming state mitigation plans, use a “net conservation gain” as a standard. To align this planning effort with the BLM’s compensatory mitigation policy (IM 2019-18), the Proposed RMP Amendment/Final EIS clarifies that the BLM will consider compensatory mitigation only as a component of compliance with a state mitigation plan, program, or authority, or when offered voluntarily by a project proponent. As described in IM 2019-18, the BLM will evaluate any compensatory mitigation measures required by the State in all action alternatives in its NEPA analysis and incorporate those measures as an enforceable condition of the BLM’s authorization as appropriate. When the proponent volunteers compensatory mitigation as part of the proposed action, the BLM will evaluate compensatory mitigation in all action alternatives. When the state recommends compensatory mitigation, and the proponent does not include it in the proposed action, the BLM will evaluate compensatory mitigation in at least one of the action alternatives.

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

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

The BLM continues to build on the 2015 planning effort as envisioned in Secretarial Order (SO) 3353 by collaborating with states and stakeholders to improve compatibility between federal management plans

and state plans and programs at the state level, while ensuring consistency with the BLM's multiple-use mission and obligation to protect Greater Sage-Grouse habitat. The proposed amendments are consistent with the BLM's discretionary authority to balance multiple use in a manner that remains consistent with federal law.

The BLM's mitigation standard fully complies with FLPMA and does not enforce a net gain mitigation standard. Accordingly, the BLM denies this protest.

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

#### **Kent Connelly**

**Issue Excerpt Text:** According to the FEIS, the BLM would "defer" to the State's compensatory mitigation framework and is "committed" to imposing requirements that would derive from that framework. 2018 Plan ES-7. The State of Wyoming's framework, however, "requires mitigation to benefit the species." E.O. 2018-03 at 1. The State of Wyoming, however, does not have authority to impose any standard or requirement on federal lands, let alone a standard that conflicts with federal law.

**Summary:** BLM "defers" to Wyoming's compensatory mitigation framework and is "committed" to imposing requirements that would derive from that framework; however, that framework cannot supersede federal law and sets a standard that conflicts federal law. Accordingly, BLM has unlawfully delegated authority to the state.

**Response:** The BLM is obligated to coordinate its planning processes with local government land use plans, provide the state and local governments with meaningful involvement in the development of resource management plans, and, if possible, develop resource management plans in collaboration with cooperating agencies. 43 CFR 1610.3-1(a)(3), (4), and (5). Further, the BLM Proposed RMP Amendment/Final EIS must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with federal law and regulations (43 CFR 1610.3-2(a)).

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

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

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

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

Because the BLM has not in fact delegated any authority to the state in deferring to its mitigation framework, the BLM denies this protest.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The proposed plans jettison the 2015 Required Design Features that should be applied at project and site-specific levels and punts defining their implementation to an unknown date in the future: "BLM Wyoming will develop guidance and clarification on the use of RDFs when they are applied at the implementation level. RDFs are to be used as appropriate at the site-specific level and should not be assumed to apply to all projects." Wyoming PRMP/FEIS at I-11. This will occur "outside of the planning process." Wyoming PRMP/FEIS at ES-4. Thus, the BLM is utterly neglecting to commit to any mitigation/best practices for the grouse within the very plans that are supposed to achieve grouse protection. Without analyzing what the BLM will and will not require as RDFs for implementation of authorizations under the plan, the agency's NEPA is incomplete, improperly segmented, and in violation of NEPA.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** Based on BLM's lack of commitment to enforcing compensatory mitigation, the agency cannot rely on the effectiveness of this tool to address harm to habitat, under the standards set out by NEPA and related case law. By statute and regulation, an environmental impact statement must include a discussion of possible mitigation measures to avoid adverse environmental impacts. See 40 CFR §§ 1502.14(f), 1502.16(h); see also *Robertson v. Methow Valley Citizens Council*, 490 36 U.S. 332, 351-52 (1989); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

### **The Wilderness Society**

#### **Nada Culver**

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

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

**Response:** NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the

impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

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

The BLM’s compensatory mitigation tool as outlined in the Proposed RMP Amendment/Final EIS sufficiently meets the standards set out by NEPA; accordingly, the BLM denies this protest.

## **FLPMA—Multiple Use**

### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** As described in detail in our 2015 protest, the 2015 Amendments fail to comply with FLPMA multiple-use and sustained yield requirements. The PRMPA/FEIS perpetuates many of the numerous and severe flaws in the 2015 Amendments, as BLM has failed to eliminate the problematic issues contained in the 2015 Amendments. As such, the PRMPA/FEIS unlawfully prefers conservation of sage-grouse habitat to the exclusion of other uses including grazing, agriculture and mineral development. FLPMA’s land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and Mining and Minerals Policy Act) rather than subordinate all other uses of public land and make sage-grouse conservation the dominant use of public lands. BLM must reconcile inconsistencies found in the 2015 Amendments and retained in the Proposed Plan and provide additional public review for substantial changes and/or prepare a Supplemental EIS and a Revised Proposed RMPA in order to comply with FLPMA Section 202(c)(1). R

**Summary:** The BLM fails to comply with FLPMA’s multiple-use and sustained yield requirements in the GRSG PRMPAs/FEISs.

**Response:** 43 USC 1732 states that the BLM shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under Section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of

future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output (43 USC 1702(c)).

All alternatives considered in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS, as described in Section 2.3 of the Wyoming Greater Sage-Grouse Proposed RPA/Final EIS, 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.

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

## **FLPMA—Special Status Species**

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The amendment fails to adhere to the BLM's Special Status Policy. BLM Manual 6840 “provide[s] policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands.”<sup>2</sup> Its objective for species that are not currently listed under the Endangered Species Act (ESA) 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 these species under the ESA.”

**Summary:** The amendment fails to adhere to the BLM's Special Status Policy.

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

BLM Manual 6840 describes how the BLM should address BLM sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of initiating “proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA” (6840.02(B)). The Greater Sage-Grouse Proposed RMP Amendment/Final EIS complies with BLM Manual 6840. The Proposed Plan includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. The three-tier habitat approach is designed to avoid and minimize effects to sage grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non-habitat thus effectively mitigating the adverse effect. Further, the proposed Plan Amendment would modify several aspects of the 2015 sage-grouse planning framework, but retains many protections in their full form, including eight outlined under ES 3.3.

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

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

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

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

#### ***Nada Culver***

**Issue Excerpt Text:** As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover violates FLPMA's requirement to avoid unnecessary or undue degradation (UUD). 20 43 USC § 1732(b). 21 BLM cited this the case in its determination to issue its Notice of Intent opening this rulemaking process. See Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments. 82 Fed.Reg. 47248 (October 11, 2017). Docket No.: LLWO200000/LXSGPL000000/17x/LI1100000.PH0000. 22 *Western Exploration, LLC v. U.S. Department of the Interior*, at 747. 35 Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques. TRCP, 661 F.3d at 76-77; Colo. Env. Coal, 165 IBLA at 229

**Summary:** The BLM fails to prohibit UUD through its mitigation policy.

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

Section 202 of FLPMA vests the Department with land use planning authority and provides that such planning shall “use and observe the principles of multiple use and sustained yield set forth in this and other applicable laws.” Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed under section 202 of the Act.”

All alternatives considered in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS, as described in Section 2.3 of the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS, 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 Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS provides for the balanced management of the public lands in the planning area. In developing the Wyoming Proposed RMP Amendment, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and executive orders related to environmental quality. The Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

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

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

The Proposed Plan includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas surrounding leks for such land use authorizations as rights-of-ways. The three-tier habitat approach is designed to avoid and minimize effects to sage grouse designated habitat by moving potential disturbance out of PHMA and IHMA and into non-habitat thus effectively mitigating the adverse effect. These types of actions and allowable uses are forms of mitigation per 40 CFR 1508.2.

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

## **NEPA—Best Available Science**

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

#### **Kent Connelly**

*See also NEPA - Best Available Science*

**Issue Excerpt Text:** Land use plan prescriptions derived from the National Technical Team ("NTT") Report are not supported by the best available science and contradict the CLG's plans and policies to use the best available and supported science and data to support the livestock grazing and mineral and energy industries. See e.g., Sublette County Comprehensive Plan at 14; SCCD Policies at 17; SWCCD LRUPP at 48,101; LCCD Plan and Policies at 18. Each of the following elements of the 2018 Plan came from the NTT Report and are not based on the best available science as discussed supra VII, and therefore, conflict with CLG member plans and policies: (1) noise limits; (2) 5% disturbance caps; (3) 4-mile lek buffers; (4) vegetation objectives; and (5) regulation of grazing but ignoring the more significant impacts from wild horse grazing. Despite the fact that these issues are incongruent with local government plans and policies because they are the subject of significant controversy and are not based on reliable (and repeatable) studies and science, they are arbitrary and capricious.

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

**Issue Excerpt Text:** 2) Failed to adequately address and resolve the scientific debates regarding conservation measures that were adopted in the 2015 Plans and failed to address the significant controversy regarding the science upon which those conservation measures were based;

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

**Issue Excerpt Text:** NEPA imposes an affirmative duty on federal agencies to 'insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statements.'" *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1181 (10th Cir. 2002) as modified on reh'g, 319 F.3d 1207 (10th Cir. 2003) (quoting 40 CFR § 1502.24). The BLM's blind reliance on the NTT Report and other sections in the Monograph violates the basic tenant of NEPA that BLM must perform a hard look especially when comments reveal a persistent and significant scientific controversy. The BLM's failure to use the evidence available to address these problems (e.g. adding an appendix as the Coalition suggested) means that the 2018 FEIS violates NEPA.

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

**Issue Excerpt Text:** The 2018 FEIS relies on a second USGS report, Hanser et al. 2018 to largely affirm the Monograph except for a few changes. This was never a thorough or independent review of the new science nor of the significant IQA issues raised in 2015. The Coalition's DEIS comments noted that the USGS used most of the same authors and there is no evidence that these authors reconsidered their conclusions or went behind the individual literature conclusions to evaluate which recommendations were supported by the data.

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

*See also Other Laws*

**Issue Excerpt Text:** The 2015 Plan relied heavily, if not exclusively on NTT, USFWS Conservation Objectives Team Report ("COT") and articles compiled as the USGS Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat ("Monograph").<sup>2</sup> The Coalition cited the Information Quality Act petitions filed by a consortium of western counties and the Western Energy Alliance and independent reviews of the Monograph and identified in its 2018 Draft EIS comments how the 2018 EIS must develop the analysis and disclosure of the flaws in the Monograph to ensure a durable and defensible Record of Decision. See Attach. 12, 080218 CLG DEIS Comment Letter at 4-5. The FEIS, however, does not discuss any of the problems that the Coalition and other groups have identified in the NTT Report or the Monograph and, therefore, the BLM has committed the same error it made in 2015.

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

*See also FLPMA - Consistency with State and Local Plans*

**Issue Excerpt Text:** Land use plan prescriptions derived from the National Technical Team ("NTT") Report are not supported by the best available science and contradict the CLG's plans and policies to use the best available and supported science and data to support the livestock grazing and mineral and energy industries. See e.g., Sublette County Comprehensive Plan at 14; SCCD Policies at 17; SWCCD LRUPP at 48,101; LCCD Plan and Policies at 18. Each of the following elements of the 2018 Plan came from the NTT Report and are not based on the best available science as discussed supra VII, and therefore, conflict with CLG member plans and policies: (1) noise limits; (2) 5% disturbance caps; (3) 4-mile lek buffers; (4) vegetation objectives; and (5) regulation of grazing but ignoring the more significant

impacts from wild horse grazing. Despite the fact that these issues are incongruent with local government plans and policies because they are the subject of significant controversy and are not based on reliable (and repeatable) studies and science, they are arbitrary and capricious.

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

#### **Kent Connelly**

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

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

#### **Kent Connelly**

**Issue Excerpt Text:** The 2015 Plan and now the 2018 Plan implement a five percent disturbance cap. Neither the 2015 FEIS nor the 2018 DEIS cites to any authority for a five percent disturbance cap, other than its use in the Wyoming Plan. The best available science does not support a five percent disturbance cap. Because the five percent is adopted as mitigation for energy development, BLM must reconsider this cap to determine if this cap aligns with new BLM policy and case law. See IM 2018-093; 83 Fed. Reg. 36472 (July 30, 2018). See Attach. 12, 080218 CLG DEIS Comment Letter at 14-15.3

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** the proposed plan adopts the State of Wyoming's gerrymandered "core area" map and proposes to maintain consistency with this problematic map into the future. In its initial designation of Core Areas, the State of Wyoming made some major errors that have been implicated in subsequent population declines and threats to long-term viability for sage grouse populations (see Taylor et al. 2012). These failures are adopted by the BLM in its Wyoming RMP amendment, crippling the ability of the new plan to maintain viable populations of sage grouse in this area. It is important to note that many of the most populous sage grouse leks in northeast Wyoming, the south-central part of the state lie outside Core Areas. See Attachment A. The State of Wyoming has developed current lek population density mapping based on 2014 data, which is readily available to BLM.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The proposed action uses lek buffers and a disturbance cap that are not in accordance with high quality and accurate scientific information. WWP et al. (2018: 4, 11, 17-19) has pointed out the inadequacies of the 0.25-mile lek buffers in GHMA and the 0.6-mile lek buffers in PHMA in the Wyoming ARMPA, and called upon BLM to fix this problem. The BLM's own experts called for 4-mile lek buffers (NTT 2011). Manier et al. (2014:2), the paper relied upon by BLM to generate buffer distances, themselves explain in detail why the 0.6-mile buffer distance is inappropriate

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

**Issue Excerpt Text:** An influential, telemetry-based, tracking project in central Montana indicated more than 90 percent of breeding season movements by male grouse were within 1.3 km (0.8 mi) of a lek and 76 percent were within 1 km of a lek (0.6 mi; Wallestad and Schladweiler, 1974). The 1-km (0.6-mi) buffer used in many management efforts was based upon this research. More recent analyses have indicated that 90-95 percent of habitat use at the population level is focused within approximately 8 km (5 miles [mi]) of several California and Nevada lek 5 sites (Coates and others, 2013), and 95 percent of all nests were located within approximately 5 km (3.1 mi) of leks. Holloran and Anderson (2005) found that 64 percent of nests in Wyoming occurred within 5 km (3.1 mi) of leks, suggesting considerable protection of sage-grouse within these proximate habitats. In contrast, home ranges as large as 2,975 km<sup>2</sup> (1,149 mi<sup>2</sup>) have been documented (Connelly and others 2000, 2004) in some portions of the species' range. These larger distances suggest that for some populations, the minimum distance inferred here (5 km [3.1 mi]) from leks may be insufficient to protect nesting and other seasonal habitats.

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

**Issue Excerpt Text:** The BLM has determined that using a site's potential as a mechanism will be more effective in ensuring sage-grouse habitat. This will better facilitate the use of new or better data as it becomes available." PRMP/FEIS at E-15. This is not supported by the very science the agency cites. Table 2-2 cites to Connelly et al (2000, 2003), Doherty et al 2014, Hagen et al 2007, and Stiver et al. 2015. Wyoming PRMP/FEIS at 2-25. Each of these supports the 7 inch grass height requirement: Connelly et al . (2000) recommends grass heights of greater than 18 cm. Hagen et al . (2007) affirmed Connelly and others' findings. Stiver et al . (2015) noted that although sage-grouse may occupy areas with shorter grasses, "this is not sufficient reason to assume that the suitability indicator value for grass height should be reduced... rather this condition may indeed reflect reduced habitat suitability and likely indicates a rangeland health issue that should be addressed via ... management changes." Stiver et al. (2015) recommended a minimum 18 cm. grass height for all breeding and nesting habitats, and explicitly stated that this and other established measures should not be altered unless scientific evidence definitively indicates that the 7-inch threshold is inappropriate.

**Summary:** The land use plan prescriptions are not supported by best available science.

**Response:** Section 202(c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent 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)).

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

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

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

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

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies were sorted by whether they were cited in the USGS Report, referenced in the bibliography of the USGS Report, or considered during the 2018 Proposed RMP Amendment/Final EIS development and review of comments. Articles were reviewed during comment response development and incorporated into comment responses as appropriate (Comment Response Report Appendix).

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

Any maps or studies submitted to the BLM for review in the development of the 2018 plan were thus considered and compared to information used for the 2015 Approved RMP Amendment/Record of Decision during the development of the Proposed RMP Amendment/Final EIS. It is thus not necessary to incorporate the map submitted with this protest, the BLM has already considered whether it is substantially different than the information already considered and cited in the Proposed RMP Amendment/Final EIS and determined that these maps do not provide additional information that would result in effects outside of the range of those already provided therein.

Accordingly, BLM complied with CLG's plans and policies that mandate relying on the best available science, as BLM is obligated under NEPA to rely on the best available science when developing land use planning decisions. Accordingly, BLM reviewed all information relied upon in the development of the Proposed RMP Amendment/Final EIS for changes, inconsistencies, or gaps.

The BLM relied on high quality information and the best available data in preparation of the Proposed RMP Amendment/Final EIS as required by NEPA and in turn consistent with the policies and guidelines of the CLG; thus, the BLM denies this protest.

**The Wilderness Society****Nada Culver**

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

**The Wilderness Society****Nada Culver**

**Issue Excerpt Text:** These estimates are magnitudes higher than the best available science suggests. As discussed at length in our August 2, 2018 letter on the BLM's draft plan and DEIS, a noise study commissioned by the Wyoming Game and Fish Department to resolve ongoing controversy regarding this topic measured ambient, or natural baseline, noise in several rural areas of Wyoming. <sup>34</sup> The levels of ambient noise measured by Ambrose, et al., at multiple locations averaged 15.4 dBA (L50). Sound levels recorded in the study were frequently close to the lower limit, or "noise floor" of the monitoring equipment used (13.5 dBA), such that actual background noise was lower than reported. When more sensitive microphones were used, they detected L90 and L50 levels of 7.2 and 14 dBA respectively in Wyoming sagebrush habitat, suggesting sound levels in undeveloped areas are actually lower than the study indicates.

**Summary:** The BLM's assertion that there are no impacts associated with the Proposed RMP Amendment/Final EIS is inconsistent with the Conservation Objectives Team (COT) report, which constitutes the best available science.

**Response:** 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).

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

In developing the Proposed RMP Amendment/Final EIS, the BLM specifically partnered with USGS to review the best available information and incorporate the management implications of that information into this EIS. The report from USGS is available [here](#) and referenced throughout the EIS. The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in our assumptions or conditions related to a land use planning effort. The BLM has to balance reviewing new information with determining what information is relevant to a decision in light of the BLM's purpose and need. Many commenters

highlighted information and studies to the BLM to consider, and the BLM has reviewed each source submitted. Further, the BLM asked the USGS to participate in the review, and to verify if information was included in the USGS synthesis report that was developed for the Draft EIS. Many suggested articles were already included for analysis in the USGS report and may have been missed by commenters in the initial review of the synthesis report and draft EIS.

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies were sorted by whether they were cited in the USGS Report, referenced in the bibliography of the USGS Report, considered during the 2018 Proposed RMP Amendment/Final EIS development and review of comments. Articles were reviewed during comment response development and incorporated into comment responses as appropriate (Comment Response Report Appendix).

Any maps or studies submitted to the BLM for review in the development of the Proposed RMP Amendment/Final EIS, were thus considered and compared to information used for the 2015 Approved RMP Amendment/Record of Decision during the development of the Proposed RMP Amendment/Final EIS to determine if any new or changed information would result in effects outside of the range of those already provided therein. The BLM has thus already determined that the COT report and the effects it describes are not outside the range of those already disclosed by the BLM.

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

## **NEPA—Cumulative Effects**

### **Western Watersheds Project**

#### **Greta Anderson**

WWP has raised these, and other, issues requiring a hard look throughout this process and BLM has nevertheless failed to review the impacts of its actions on a rangewide basis. See WWP et al. 2018.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** BLM cannot take the hard look NEPA requires without considering the impacts of its actions on a rangewide basis. WWP et al. 2018. Operationally, this requires BLM to prepare a Programmatic EIS looking at how the many exceptions to enforceable protections written into the PRMPs could combine to affect the health of sage-grouse rangewide. Even if BLM does not prepare a PEIS, however, it still must consider the health of sage-grouse populations on a rangewide basis to achieve the required hard look.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Moreover, the so-called "cumulative effects analysis" in the PRMP EIS is woefully inadequate. As WWP et al. (2018) explained, the analysis must meaningfully inform the public about how further weakening the already-inadequate protections in the 2015 ARMPAs will have combined impacts that could harm or otherwise affect sage-grouse. WWP et al. 2018. Rather than considering and

disclosing likely impacts in a meaningful and informative way, the analysis makes vague statements and refers to previous discussions in the 2015 RMP EISs (which did not take a rangewide hard look). For example, the Wyoming PRMP EIS (at page 4-19) states that "the nature and context of the cumulative effects scenario have not appreciably changed since 2015," even though millions of acres of sage-grouse habitat in the west have burned in wildfires since 2015 and sage-grouse populations in Wyoming, Montana, and Utah showed precipitous declines in 2018. Indeed, we were unable to locate any discussion of the status of sage-grouse populations since 2015, which would be a key piece of evidence to weigh the cumulative effects against.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** Without taking the rangewide "hard look" NEPA requires, BLM also cannot adequately assess cumulative impacts. WWP et al. 2018. How does habitat loss and degradation from oil and gas development in the eastern part of sage-grouse range combine with habitat loss and degradation from weed expansion and wildfire from unchecked livestock grazing in the western part of the range to affect the bird's persistence? How will climate change alter or exacerbate these synergistic impacts? How might the loss of connectivity between populations as GHMA is developed hurt the persistence of populations in PHMA? How will the decline of smaller populations, like the one in the Columbia Basin, or others, affect the species' persistence? How will losses and changes like these be tracked to ensure the species is not in peril? Without examining impacts on a rangewide basis, an adequate cumulative impact analysis is not possible. Nevertheless, the agency elected to examine cumulative effects only at the WAFWA management zone level.

### **Western Watersheds Project**

#### **Greta Anderson**

**Issue Excerpt Text:** The USFS is also revising the land use plan amendments for sage-grouse habitat and the implications of the proposed management in both agencies have a cumulative impact that has not yet been assessed. The failure to take a rangewide look at reasonably 10 foreseeable changes is a violation of NEPA, and also violates the agency's policy on connected actions. See IM 2018-023 ("Connected actions are those proposed Federal actions that are "closely related" and "should be discussed" in the same NEPA document (40 CFR 1508.25 (a)(1)).") E. The FEIS and PRMP fail to analyze a reasonable range of alternatives.

### **The Wilderness Society**

#### **Nada Culver**

**Issue Excerpt Text:** BLM has also failed to account for and analyze the destruction of vital sage grouse habitat due to wildfires. In 2018, 2,034,318 acres of sage grouse habitat on federal land was damaged by fire. Of these 1,057,309 acres were on BLM land.<sup>3</sup> The loss of this habitat will have a significant impact on sage grouse survival, yet BLM simply states that these losses to fire are accounted for in the 2015 FEIS. See e.g., Utah FEIS at 4-44. 2018 was one of the worst wildfire seasons on record and it is clear that wildfires will become an increasing problem in the West. BLM must sufficiently analyze the threat of rapidly increasing fire to sage grouse.

### **The Wilderness Society**

#### **Nada Culver**

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

**The Wilderness Society****Nada Culver**

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

**Summary:** The BLM failed to take a rangewide look at cumulative impacts, as required under NEPA.

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

As explained in Section 4.7.2 of the Proposed RMP Amendment/Final EIS, the WAFWA management zones are the appropriate unit of evaluating cumulative effects because they define habitat areas which share similar issues, threats, and vegetation communities. WAFWA management zones therefore provide a biologically meaningful unit against which to analyze broader impacts in a context that is analytically clear. Section 4.7 analyzes the effects of the proposed action on a zone-by-zone basis for all affected WAFWA zones.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) federal and non-federal actions. The cumulative impacts section (Section 4.7) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

The BLM adequately analyzed cumulative effects in the Wyoming Proposed RMP Amendment/Final EIS, and the BLM has therefore denied this protest.

**The Wilderness Society****Nada Culver**

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

impacts analysis that accounts for the impacts that will result from the elimination of these measures across the range.

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

#### ***Nada Culver***

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

**Summary:** The BLM erred in relying on the 2015 Proposed Land Use Plan Amendment/Final EIS cumulative impacts analysis, because it failed to account for changes in compensatory mitigation policy, and changes in mitigation requirements, between the 2015 Approved RMP Amendment/Record of Decision and Proposed RMP Amendment/Final EIS.

**Response:** The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions” (40 CFR 1508.7). The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section (Section 4.7) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

The BLM adequately analyzed cumulative effects in the Wyoming Proposed RMP Amendment/Final EIS. Accordingly, the BLM denies this protest.

## **NEPA—Impacts Analysis—Grazing**

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

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

**Issue Excerpt Text:** by deleting the requirement to include terms and conditions regarding the actions needed to meet or progress towards meeting the habitat objectives, as the BLM proposed for MD LG 4 -- the agency is undermining the decades of information that demonstrate sage-grouse life cycle requirements as they relate to 3 vegetation conditions. The proposed amendment also completely eliminates any evaluation of GHMA allotments for conformance with habitat measures. Wyoming PRMP/FEIS at 2-11. These changes to the ARMPAs effectively mean that any subsequent decisions will be entirely subjective, and thus the FEIS here cannot adequately assess the impacts of the proposed action.

**Summary:** The BLM has failed to adequately assess the impacts of the proposed action by deleting the requirement to include terms and conditions regarding the actions needed to meet or progress towards meeting the habitat objectives and eliminating any evaluation of GHMA allotments for conformance with habitat measures.

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

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

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

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

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

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

#### ***Nada Culver***

**Issue Excerpt Text:** This decision to remove SFAs marks a significant retreat from environmental protections that have been recognized as needed for sage-grouse conservation by the U.S. Fish and Wildlife Service, yet the BLM has failed to conduct any meaningful analysis of this impact. A conclusory statement suggesting the removal of this designation will not result in significant environmental impacts 16 woefully overlooks the protections, beyond withdrawing lands from mineral entry, afforded by the SFAs, and fails to meet BLM’s “hard look” obligations under NEPA.

**Summary:** BLM failed to adequately examine the environmental impacts of removing Sage-Grouse Focal Areas (SFAs) (including indirect effects from mineral development).

**Response:** NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Proposed RMP Amendment/Final EIS. The BLM began a NEPA analysis on the SFA recommendation and determined in the DEIS that less than 10,000 acres range-wide would be impacted by hard rock mining and thus determined that the withdrawal was not necessary and cancelled the application.

The 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.

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

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) federal and non-federal actions. The cumulative impacts section (Section 4.7) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

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

The BLM adequately analyzed cumulative effects in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Thus, the BLM denies this protest.

***The Wilderness Society  
Nada Culver***

**Issue Excerpt Text:** Specifically, the Final EISs should, but do not, provide and evaluate the following information: \* The number of applications operators have submitted to receive waivers, exceptions, and modifications, broken down by time and region (e.g. year and state); \* The number of waivers, exceptions, and modifications BLM has granted, broken down by time and region; \* For each instance where a waiver, exception, or modification was granted, information showing what kind of activity the operator subsequently pursued.

***The Wilderness Society  
Nada Culver***

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

**Summary:** The BLM has not provided or analyzed sufficient information regarding waivers, exceptions, and modifications to oil and gas leases.

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

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

The BLM adequately analyzed cumulative effects in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Accordingly, the BLM denies this protest.

## NEPA—Impacts Analysis—Other

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

**Issue Excerpt Text:** The 2018 Plan and FEIS like the 2015 Plan and FEIS fail to acknowledge or address the significant impacts on mineral development. As a minimum Section 7 of the NMMPRDA requires Interior to disclose the deposits adversely affected and those deposits where development might stop.

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill 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.

Chapter 4 of the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS thoroughly discusses and analyzes the impacts of various proposed management actions on minerals. Therefore, the

BLM did properly analyze the impacts of the Proposed RMP Amendment/Final EIS on mineral development.

The BLM complied with NEPA's requirement to analyze the environmental consequences and impacts on mineral development in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Thus, the BLM denies this protest.

## NEPA—Public Participation

### *The Wilderness Society*

#### *Nada Culver*

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

**Summary:** The BLM's Proposed Amendments are not clear enough for the public to understand the intended action and its effectiveness. The BLM has also failed to provide the public an opportunity to comment on changes to the Proposed RMP Amendment/Final EIS between the draft and final document.

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

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

The Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS complies with the requirements of 40 CFR 1500.2(b). Thus, the BLM denies this protest.

## NEPA—Purpose and Need

### *The Wilderness Society*

#### *Nada Culver*

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

**The Wilderness Society****Nada Culver**

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

**The Wilderness Society****Nada Culver**

**Issue Excerpt Text:** Yet, that is exactly what BLM has done here. It has developed an unreasonably narrow "purpose and need" for the FEISs that forecloses consideration of any alternative that does not align with state plans and recent DOI and BLM policies that "prioritize energy independence. . . ."

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

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

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

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

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

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

The purpose and need of the Proposed RMP Amendment/Final EIS is to adjust the planning decisions from 2015 to improve alignment with state strategy, and is not intended to reconsider the complete set of decisions made by the 2015 Approved RMP Amendments. The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The purpose and need made a range of reasonable alternatives available for consideration in this action such that any foreordained outcome was not the only one available; rather, the BLM considered a No Action Alternative as well as a Management Alignment Alternative. The BLM may choose to adopt one of these alternatives or a combination of the alternatives. Moreover, this effort builds upon the comprehensive effort BLM

completed in 2015, which considered a wide range of alternatives for conservation of Greater-Sage Grouse and its habitat. This planning effort is not intended to re-consider the entirety of BLM's 2015 decisions but rather to consider targeted changes in consideration of the state's primary role in management of wildlife.

The BLM properly established the purpose and need for the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS; accordingly, the BLM denies this protest.

## NEPA—Response to Public Comments

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

**Kent Connelly**

**Issue Excerpt Text:** IX. BLM FAILED TO RESPOND TO THE COALITION'S COMMENTS TO THE DEIS

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

**Kent Connelly**

**Issue Excerpt Text:** (4) Failed to adequately respond to the Coalition's Comments in Appendix E of the FEIS, which violates NEPA.

### **The Wilderness Society**

**Nada Culver**

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

**Summary:** The BLM failed to respond to the comments submitted.

**Response:** The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24). In compliance with NEPA, the BLM considered all public comments submitted on the Draft Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix E of the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS presents the BLM's responses to all substantive comments.

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

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

The BLM adequately responded to public comments on the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. Thus, the BLM denies this protest.

## **NEPA—Supplemental EIS**

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

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

**Issue Excerpt Text:** The FEIS introduces a new alternative that has not been analyzed or subject to public comment. Contrary to BLM's representation, the changes introduced between the Wyoming DEIS and FEIS are highly significant. Major changes since the DEIS include BLM's (unsubstantiated and unlawful) disclaimer of its authority to require compensatory mitigation for unavoidable environmental harm, as well as the previously-undisclosed delegation of lease stipulation exemption and modification determinations to counties. Under NEPA, the agency cannot delay providing information on such significant changes to the FEIS stage.

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

#### ***Nada Culver***

**Issue Excerpt Text:** BLM's 23 new legal interpretation and guidance (set out in Instruction Memorandum 2019-018) represents the very sort of "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" that demand further analysis.

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

#### ***Nada Culver***

**Issue Excerpt Text:** We have seen the effects of this change in policy through about 1.5 million acres of sage-grouse habitat offered for lease since 2017, with more than 700,00 sold, and more than 2 million acres of habitat up for lease in February and March 2018. The effects of this change on sage-grouse habitat significant and certainly should be analyzed as part of these EISs.

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

#### ***Nada Culver***

**Issue Excerpt Text:** In addition, the change in circumstances due to ongoing fires in sage-grouse habitat over the last three years, burning millions of acres, should be evaluated in supplemental analysis. See, Information Bulletin No. FAIB 2017-009, Greater Sage-grouse Habitat Data for Wildland Fire Management Decision Making and Reporting of Acres Burned (updated October 23, 2018), attached as Exhibit 3.

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

#### ***Nada Culver***

**Issue Excerpt Text:** See Appendix C at C-10 (emphasis added). BLM proposes to change "no declines to core populations" to "no undue harm." Revealed for the first time in the Wyoming Errata Sheet, the change proposed by BLM substantially alters the standard for determining whether activities would be considered consistent with the habitat management strategy. The effects of the proposed change are not discussed or analyzed in the EIS, nor is the term, "undue harm" defined. The absence of both a definition of undue harm and an analysis of the effects of the proposed revision precludes lawful adoption of this amendment.

**The Wilderness Society**  
**Nada Culver**

**Issue Excerpt Text:** the BLM should analyze as part of this plan amendment process the environmental effects of the massive recent explosion of oil and gas 26 Statement of Michael Madrid, WY BLM oil and gas specialist, at a meeting of the Wyoming Sage Grouse Implementation Team in Lander, WY on June 13, 2018. Mr. Madrid's statement concerning prioritization begins 43:34 into the meeting. The video is available on Youtube: <https://www.youtube.com/watch?v=076hOzUmeBQ> 27 The IM is being challenged in two lawsuits. *Montana Wildlife Fed. v. Zinke*, Case No. CF-18-69-GF-BMM (D. Mont.) and *Western Watersheds Project v. Zinke*, Case No. 1:18-cv-00187-REB (D. Idaho). Under IM 2018-026, "the BLM does not need to lease and develop outside GRS habitat management areas before considering any leasing and development within GRS habitat", in contrast to the much clearer and specific provisions to prioritize that had been in IM 2016-143. 40 leasing in core habitat which appears likely to continue under the administration's energy dominance mandate. The 2015 Sage-grouse Plans commit to prioritizing leasing and development outside sage-grouse habitat (both GHMA and PHMA), and the disclosure of effects in the EISs supporting those plans was based on the assumption that the prioritization requirement would be faithfully implemented. But we now know not only that this requirement is not being implemented-it is in fact being flaunted. The BLM should be honest with the American people and tell the truth about what it is doing on -and to-- the public lands. The RMP is the place to do that.

**The Wilderness Society**  
**Nada Culver**

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

**Summary:** Changes in mitigation direction between the Draft and Proposed Plan Amendment warrant preparation of a Supplemental EIS.

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

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

mitigation in the same way it will include other state requirements as part of a proposed action in the BLM's NEPA analysis.

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

### [NEPA—Tiering/Incorporation by Reference](#)

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

##### ***Nada Culver***

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

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

##### ***Nada Culver***

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

**Summary:** The BLM erred in relying on the analysis and alternative in the 2015 Proposed Land Use Plan Amendment/Final EIS in the analysis of the Proposed RMP Amendment/Final EIS because there are major differences in plan components between the plans.

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

BLM is using incorporation by reference, not tiering, to streamline our analysis consistent with administrative priorities. Incorporation of the 2015 Proposed Land Use Plan/Final EIS by reference is allowable under BLM regulations and is appropriate in this circumstance, because the purpose of this action builds upon the goals and objectives of the 2015 Proposed Land Use Plan/Final EIS. The BLM has summarized and referenced applicable aspects of the 2015 Proposed Land Use Plan/Final EIS throughout the 2018 Proposed RMP Amendment/Final EIS, but especially in Chapters 2 and 4.

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

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

**The Wilderness Society**  
**Nada Culver**

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

**Summary:** The BLM failed to evaluate alternatives proposed by the Wilderness Society and co-signatories in violation of NEPA.

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

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

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

Alternatives that were suggested by the public in scoping and public comment on the draft failed to meet the purpose and need of the RMP Amendment/Final EIS, and therefore constitute unreasonable alternatives. The BLM's alternatives in the plan - the action and no-action - reflect a range of reasonable alternatives to be considered for a decision about the alignment of state and federal.

The BLM considered a range of reasonable alternatives in the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS in full compliance with NEPA. Thus, the BLM denies this protest

## Other Laws

### **American Exploration & Mining Association**

**Laura Skaer**

*See also FLPMA - Locatable Minerals*

**Issue Excerpt Text:** Throughout the PRMPA/FEIS, BLM refers to "Valid Existing Rights" (hereinafter "VERs") with the implication that the impact of certain restrictions, guidelines, and objectives would be mitigated because the VER would be protected. For locatable minerals the term "valid existing right," is a specific term that is reserved for those claims after a "discovery" of a valuable mineral deposit has been made. Therefore, the proposal to honor VERs does not clearly encompass and protect the Mining Law Section 22 rights associated with claims prior to a discovery of a valuable mineral deposit. In the context of the PRMPA, VERs must clearly mean all mining claims in good standing - with or without a discovery.

### **American Exploration & Mining Association**

**Laura Skaer**

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

### **American Exploration & Mining Association**

**Laura Skaer**

**Issue Excerpt Text:** BLM's net gain standard is in violation of the General Mining Law

### **American Exploration & Mining Association**

**Laura Skaer**

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

### **American Exploration & Mining Association**

**Laura Skaer**

*See also FLPMA - Locatable Minerals*

**Issue Excerpt Text:** The 2015 restrictions incorporated by reference and retained in the Proposed Plan that place an overly restrictive burden on locatable mineral operations conflict with the mandate that it is the continuing policy of the United States to recognize our Nation's need for domestic mineral resources. As raised in our scoping comments, Draft EIS comments, and 2015 Protest (each incorporated by reference herein), BLM must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act (30 U.S.C. §21(a)), and FLPMA (43 U.S.C. §1701(a)(12)) to recognize the Nation's need for domestic minerals.

**American Exploration & Mining Association****Laura Skaer***See also FLPMA - Locatable Minerals*

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

**American Exploration & Mining Association****Laura Skaer***See also FLPMA - Locatable Minerals*

**Issue Excerpt Text:** [comment:13-4; 193.09]The 2015 Amendments and retained in the Proposed Plan include seasonal and yearround travel and transportation restrictions, lek buffers, disturbance caps, seasonaltiming restrictions, conservation measures, among others that, if applied to locatable mineral activities, would violate rights granted by the Mining Law (30 U.S.C. § 22)and FLMPA, including rights of ingress and egress.[comment end]

**American Exploration & Mining Association****Laura Skaer***See also FLPMA - Locatable Minerals*

**Issue Excerpt Text:** Further, the 2015 restrictions and the proposed mitigation protocol/standard are not in compliance with the specific directive pertaining to minerals under FLPMA § 102(a)(12) and the directives in MMPRDA § 1602: ... the public lands [shall] be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a... (43 U.S.C. 1701(a)(12)). ... [I]t is the continuing policy of the United States to promote an adequate and stable supply of materials ... with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resources conservation, and social needs. BLM must acknowledge that it is required to fully consider the need for minerals and achieve an appropriate balance between mineral development and conservation of other resources.

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

**Issue Excerpt Text:** Imposition of land use restrictions on locatable mineral activities would be inconsistent with the NMMPRDA, the Mining Law, and the Presidents Executive Order on Critical Minerals. The restrictions on energy development also contradict presidential orders on energy independence. Ex. Order 13783. The above issues are omitted from the 2018 Plan and FEIS, even though Wyoming is a major energy and mineral producing state.

**Summary:** BLM applies excessive restrictions on valid existing rights (VERs) and other rights and, in turn, non-discretionary locatable mineral development in violation of Section 22 of the Mining Law and Mineral and Petroleum Resources Development Act (MPRDA), which reiterates the policies of FLPMA and the Mining and Mineral Policy Act.

**Response:** The BLM implements land use planning decisions differently with respect to authorizing uses related to or authorized under the Mining Law of 1872. This difference in how land use planning applies to authorizations under the Mining Law is not tied to "valid existing rights" in a particular mining claim or site, or the existence of a mining claim or site at all. Rather, it stems from the language of Section 302(b) of FLPMA, which specifically states that it does not amend the Mining Law, except in four ways

stated, none which is land use planning (see 43 USC 1732(b)). For this reason, operators are required to comply with land use planning provisions only to the extent consistent with the mining laws.

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

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

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

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

### ***American Exploration & Mining Association***

***Laura Skaer***

**Issue Excerpt Text:** Restrictions that interfere with mineral activities also violate Executive Orders (hereinafter "EOs") 13783 and 13817, and Secretarial Order (hereinafter "SO") 3359.

**Summary:** BLM has violated EO 13783, EO 13817, and SO 3359 by imposing restrictions on mineral development in the Proposed RMP Amendment/Final EIS.

**Response:** EO 13783 establishes that the national policy is to promote clean and safe development of our nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation, to that end, agencies must immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. "For purposes of this order, 'burden' means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources." EO 13817, which is

implemented by SO 3359, likewise establishes as a national policy increased reliance on domestic sources of critical minerals to reduce the nation's disruption in supply of such minerals.

The purpose and need of the Proposed RMP Amendment/Final EIS identifies a need to align with DOI and BLM policy directives that have been issued since 2015, which includes EO 13783, EO 13817, and SO 3359. The BLM squarely addresses this consideration on page 1-2, where it referenced SO 3349, American Energy Independence. This SO ordered agencies in the DOI to reexamine practices "to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families." Accordingly, the Proposed RMP Amendment/Final EIS clearly aligns with the orders identified by the protesting party.

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

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

#### **Kent Connelly**

*See also NEPA - Best Available Science*

**Issue Excerpt Text:** The 2015 Plan relied heavily, if not exclusively on NTT, USFWS Conservation Objectives Team Report ("COT") and articles compiled as the USGS Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat ("Monograph").<sup>2</sup> The Coalition cited the Information Quality Act petitions filed by a consortium of western counties and the Western Energy Alliance and independent reviews of the Monograph and identified in its 2018 Draft EIS comments how the 2018 EIS must develop the analysis and disclosure of the flaws in the Monograph to ensure a durable and defensible Record of Decision. See Attach. 12, 080218 CLG DEIS Comment Letter at 4-5. The FEIS, however, does not discuss any of the problems that the Coalition and other groups have identified in the NTT Report or the Monograph and, therefore, the BLM has committed the same error it made in 2015. The 2018 DEIS and FEIS do not discuss the following:

**Summary:** BLM failed to analyze or disclose problems with the technical reports relied on by the BLM in the 2015 Proposed Land Use Plan Amendment/Final EIS and incorporated into the Proposed RMP Amendment/Final EIS, in violation of the Information Quality Act.

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

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

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

Both known and new studies were reviewed by BLM staff, including scientists and NEPA specialists, and each BLM State Office reviewed each study specific to how it informed their planning decisions and

environmental conditions. The BLM has included, where appropriate, updates to analysis in the appropriate EISs. Overall, submitted studies did not offer information that changed the analysis of the plans/EISs and did not offer any new conditions or other information the BLM had not considered already. The BLM has reviewed all new information and suggested studies from comments received rangewide, and in specific states. Further, the BLM takes new information seriously, and identified 11 articles from the studies suggested in comments. These 11 studies are sorted by whether they were cited in the USGS Report, referenced in the bibliography of the USGS Report, or considered by the BLM during the 2018 Proposed RMP Amendment/Final EIS development and review of comments. Articles were reviewed during comment response development and incorporated into comment responses as appropriate (Comment Response Report Appendix).

Thus, any available data submitted to the BLM or a part of the 2015 planning process, including the NTT report, was reviewed for its controversies or inconsistencies. Further, the BLM relied on information submitted during the public participation period to update the information on which the Proposed RMP Amendment/Final EIS was based. Any changes to the best available science have thus been incorporated into the USGS report and relied on in the development of the Wyoming Proposed RMP Amendment/Final EIS.

The BLM has sufficiently analyzed and disclosed problems with the technical reports relied on by the BLM in the 2015 and incorporated into the Proposed Plan. Thus, the BLM denies this protest.

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

#### **Kent Connelly**

**Issue Excerpt Text:** The Property Clause of the U.S. Constitution gives Congress the right "to control their occupancy and use, to protect them from trespass and injury, and to prescribe the conditions upon which others may obtain rights in them . . ." *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917); see also *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976). And, when Congress exercises its authority vested by the Property Clause, federal law preempts conflicting state laws pursuant to the Supremacy Clause of the U.S. Constitution. Article VI, Clause 2. Thus, when the BLM states in the 2018 Plan that it will "defer" to the State's framework, the BLM assumes that it may defer to the State's framework, when it is clear that the State has no regulatory authority over federal lands and the standard that the State would impose conflicts with federal law (i.e. FLPMA). The BLM may attempt to be consistent with the State's framework, but the BLM may not contract the scope of federal law to match a state program. 43 U.S.C. §1712(c)(9). The adoption of the State's framework and standard therein is arbitrary, capricious, or otherwise not in accordance with established law. See Attach. 12, 080218 CLG DEIS Comment Letter at 17-19.

**Summary:** BLM's claim that it will defer to state frameworks is in violation of 43 USC 1712(c)(9).

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

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

In accordance with these requirements, the BLM has given consideration to state, local and tribal plans that are germane to the development of the Wyoming Greater Sage-Grouse Proposed RMP Amendment/Final EIS. The BLM has worked closely with state, local, and tribal governments during preparation of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. Chapter 5 describes the coordination that has occurred throughout the development of the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS. A list of the local, state, and tribal plans that the BLM considered can be found in Chapter 1, Section 1.7.

The agency will discuss why any remaining inconsistencies between the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment/Final EIS and relevant local, state, and tribal plans cannot be resolved in the 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).

Furthermore, as specified in the planning effort's purpose and need (page ES-2), FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and wildlife. As the sovereign entities with the lead role in managing game species, including Greater Sage-Grouse, states play a critical role in conserving the Greater Sage-Grouse and its habitat.

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

Because the BLM's action under the Proposed RMP Amendment/Final EIS does not constitute an unlawful delegation of authority as the protesting party describes, as noted above, the BLM denies this protest.

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

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

**Issue Excerpt Text:** To the extent the 2018 FEIS adopts state program conditions that burden mining or energy development, it will also violate the holding in *Granite Rock v. Calif. Coastal Comm'n*, 480 U.S. 572, 578 (1987) that a state program cannot supersede or interfere with mineral development on federal land. In *Granite Rock*, the Court held that mining on the National Forest was governed by federal law that preempted state coastal regulation. Thus, the Coastal Commission denial of a permit violated the federal preemption doctrine.

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

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

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

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