

*BLM Director's Protest Resolution
Report*

**Billings & Pompeys Pillar
National Monument Greater
Sage-Grouse Resource
Management Plan / Final
Environmental Impact
Statement**

September 15, 2015



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

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

Summary

General statement summarizing the issue excerpts (optional).

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

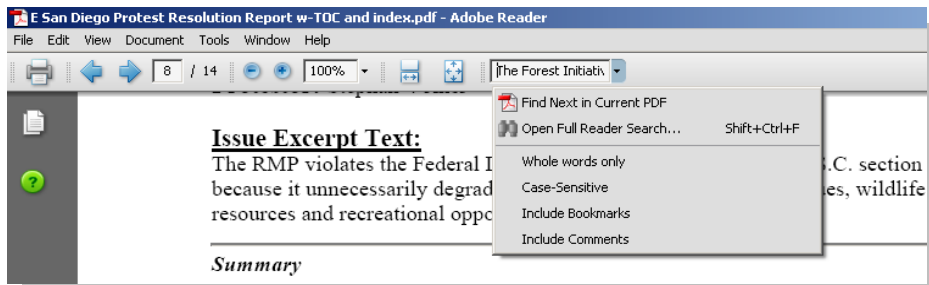
Response

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

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

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission(s) Number	Determination
Alan Joscelyn	Attorney General, State of Montana	PP-MT-BILLINGSPOMPEYS-GRSG-15-01	Denied – Issues and Comments
Charles Kerr	Great Northern Properties Limited Partnership	PP-MT-BILLINGSPOMPEYS-GRSG-15-02	Denied – Issues and Comments
Dave Galt	Montana Petroleum Association	PP-MT-BILLINGSPOMPEYS-GRSG-15-03	Denied – Issues and Comments
Bret Sumner	Beatty & Wozniak for Exxon/Mobil and XTO Energy	PP-MT-BILLINGSPOMPEYS-GRSG-15-04	Denied – Issues and Comments
Travis Bruner	Western Watersheds Project	PP-MT-BILLINGSPOMPEYS-GRSG-15-05	Denied – Issues and Comments
J. Bruce Reiersen	Montana Trail Vehicle Riders Association	PP-MT-BILLINGSPOMPEYS-GRSG-15-06	Dismissed – Comments Only
Kyle Tisdell	Western Environmental Law Center	PP-MT-BILLINGSPOMPEYS-GRSG-15-07	Denied – Issues and Comments
Laura King	Western Environmental Law Center (Montana Wilderness Association)	PP-MT-BILLINGSPOMPEYS-GRSG-15-08	Denied – Issues and Comments
Mark Salvo	Defenders of Wildlife	PP-MT-BILLINGSPOMPEYS-GRSG-15-09	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-MT-BILLINGSPOMPEYS-GRSG-15-10	Dismissed – Comments Only

Issue Topics and Responses

FLPMA-General

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-31

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The provision of the Proposed RMP requiring FWS to find that criteria related to the greater sage-grouse are met before BLM may grant an exception to an NSO stipulation is inconsistent with congressional policy regarding management of unlisted wildlife on the public and National Forest System lands. For these reasons, BLM must revise the Proposed RMP to remove the requirement that FWS consent to exceptions to NSO stipulations in PHMA.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-36

Organization: Montana Petroleum Association
Protestor: Dave Galt

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

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-6

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP confirms that a "net conservation gain" is beyond BLM's authority under FLPMA. BLM does not assert that a "net conservation gain" is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the "net conservation gain strategy is in response to the overall landscape goal which is to enhance, conserve, and restore [greater sage-grouse] and its habitat." Proposed RMP at 2-10. BLM's stated goal of "enhance, conserve, and restore" is beyond BLM's authority under FLPMA.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-6

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the RMP's imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as

threatened or endangered under the Endangered Species Act (ESA).

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-7

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-19

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The BLM does not propose to seek withdrawal of important

Summary:

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

- Uses a non-legislated standard of “net conservation gain”, creating a de facto recovery plan that exceeds the “unnecessary and undue degradation standard;
- abrogates the BLM’s authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species;
- asserts ESA-like authority for the BLM by mandating measures to ensure species recovery.

The BLM has failed to uphold its authority and legislated mandate under FLPMA to avoid unnecessary or undue degradation of GRSG habitat by failing to recommend withdrawal of more hard rock minerals from development.

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

Response:

GRSG habitats from locatable mineral entry in PHMAs. Given that the Wyoming BLM’s position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

The Federal Land Policy and Management Act (FLPMA) details the BLM's broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Billings and Pompeys Pillar National Monument PRMP/FEIS specifically addresses the goals, objectives, and conservation measures needed to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM developed the Billings and Pompeys Pillar National Monument PRMP/FEIS with involvement from cooperating agencies, including Federal agencies (USFS, BOR, USFWS, EPA, others), state agencies (Governor's Office, Department of Agriculture, Department of Environmental Quality, Fish, Wildlife and Parks, others), and tribal governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

The introduction to the Range of Alternatives for GRSG in the Billings and Pompeys Pillar National Monument PRMP/FEIS, Section 2.3.10.2, states that the action alternatives seek to "maintain or increase GRSG abundance and distribution of GRSG by conserving, enhancing, or restoring the sagebrush ecosystem upon which GRSG populations depend in collaboration with other conservation partners."

The net conservation mitigation standard is fully consistent with the BLM's authority under FLPMA. The proposed plan provides that in undertaking the BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. This is consistent with BLM Manual 6840 mentioned above, because it reduces or eliminates threats to the GRSG and its habitat. For more discussion about the mitigation requirements, please see Section 5.10 of this protest report.

The proposed RMP does not improperly delegate BLM authority. The Proposed Action, Table 2.10 (pages 2-128 through 2-129) details the process the BLM, State of Montana, and USFWS will use to approve exceptions to lease stipulations such as No Surface Occupancy (NSO) for new leases in PHMAs. The lease stipulations outlined in Table 2.10 (and the process for getting exemptions from them, if any) will be incorporated into any new lease at the time the leases are issued. Section XI of Onshore Order #1 details the process for seeking exceptions, modifications, and waivers from stipulations included in a Federal oil and gas lease. Rather than a delegation,

the BLM will appropriately seek input from the state wildlife agency and USFWS in an area of their expertise (biological impacts on a sensitive species). There is a reasonable connection between BLM's determination as to whether to grant a waiver and the biological input of those agencies. Moreover, neither this determination nor any other part of the proposed plan usurps the State's authority over wildlife; rather, it lawfully implements the BLM's authority to manage the public lands for multiple uses, including wildlife values.

The proposed plan does not allow unnecessary or undue degradation of the public lands. Section 302(b) of FLPMA requires that "in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." The Billings and Pompeys Pillar National Monument PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the Billings and Pompeys Pillar National Monument PRMP/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Billings and Pompeys Pillar National Monument PRMP/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

In Section 2.3, the Billings and Pompeys Pillar National Monument PRMP/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 291,000 acres from mineral entry. The BLM's decision to tailor the recommended withdrawal to 63,000 acres is detailed on pages 2-160 through 2-161.

For the development of fluid minerals under existing leases, the Billings and Pompeys Pillar National Monument PRMP/FEIS states on page 2-3 that "[m]itigation measures and BMPs identified in this RMP/EIS would be applied to the APDs for new leases and could be applied to APDs from existing leases through subsequent implementation-level planning processes." Any conditions of approval for permits to drill on existing leases – including measures necessary to prevent unnecessary or undue degradation -- will be evaluated at the project level.

The Billings and Pompeys Pillar National Monument PRMP/FEIS will not result in "unnecessary or undue degradation" of public lands.

The BLM is not violating FLPMA's reporting requirements. The requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning. Specifically, Section 202(e)(2) states "[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate." Upon approval of the plan, the BLM will comply with the applicable reporting requirements set forth in FLPMA Section 202 as necessary and appropriate.

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

Valid Existing Rights

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-21

Organization: Montana Petroleum Association

Protestor: Dave Galt

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-22

Organization: Montana Petroleum Association

Protestor: Dave Galt

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

federal law, the BLM cannot terminate, modify, or alter any valid or existing rights.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-23

Organization: Montana Petroleum Association

Protestor: Dave Galt

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-24

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: With respect to the Proposed RMP, the BLM’s attempt to impose new conditions and measures on existing leases is inconsistent with valid existing rights. In particular, the Proposed RMP’s provisions requiring application of lek buffer distances and evaluation of

impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances “only if” a lek buffer distance other than the distance identified in the Proposed RMP offers the same or greater level of conservation (Proposed RMP, app. AA at AA-85). In GHMA, the BLM may approve actions within the lek buffer distances under a broader set of circumstances, but “only if” those circumstances apply. See Proposed RMP, app. AA at AA-84 – AA-85. The Proposed RMP does not leave the BLM room to consider valid existing rights granted under a lease if development cannot occur under the circumstances identified in the Proposed RMP. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection GRSG and its habitat than the distance identified in the Proposed RMP, the Proposed RMP does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-25

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” Thus, judicial and administrative authorities recognize that a

federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-26

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Section 3101.1-2, 43 CFR states that BLM may impose “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted.” The BLM, however, has expressly recognized that this regulation does not allow it to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 CFR § 3101.1- 2, the BLM unequivocally stated that this regulation “will not be used to increase the level of protection of resource values that are addressed in lease stipulations.” (53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988)). The BLM further explained that “the intent of the proposed rulemaking” was not to impose measures that, for example, “might result in an unstipulated additional buffer around an area already stipulated to have a buffer.” *Id.* (emphasis added). Any attempt by the BLM to impose measures that expand express stipulations attached to leases are inconsistent with the leases’ contractual terms.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-28

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Moreover, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a “net conservation

gain” is not contemplated anywhere within a federal oil and gas lease. Because compensatory mitigation that yields a net conservation gain is inconsistent with the terms of existing oil and gas leases, BLM cannot require such mitigation without breaching or repudiating its oil and gas leases.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-30

Organization: Montana Petroleum Association
Protestor: Dave Galt

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-2

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The Billings RMP proposes to impose new lease stipulations through permit COAs on valid existing leases, an action that vastly exceeds XTO’s original lease contract terms. For example, the RMP proposes requiring NSO requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a net conservation gain standard; and imposing disturbance and

Summary:

The Billings and Pompeys Pillar National Monument LUP/FEIS violates valid, existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

Response:

density caps on development. These management prescriptions would unduly and unreasonably restrict XTO’s right and ability to develop its leases.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-3

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-4

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

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

The Billings and Pompeys Pillar National Monument PRMP/FEIS is subject to valid existing rights (FLPMA, Section 701(h)). Indeed part of the purpose and need for the RMP Revision is "...to ensure that public lands are managed according to the principles of multiple use identified in FLPMA while maintaining valid existing rights..." (p. ES-4).

Additionally the following direction would be applied regarding the application of the disturbance cap (p. 2-33), "If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of landownership) within GRSG PHMAs in any given Biologically Significant Unit, then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 hard rock mining law, valid existing rights, etc.) would be permitted by BLM within GRSG PHMAs in any given Biologically Significant Unit until the disturbance has been reduced to less than the cap."

With respect to oil and gas leasing specifically, the BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, the BLM has the authority to impose reasonable measures [e.g. COA] to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify "general/typical conditions of approval and best management practices" that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Billings and Pompeys Pillar National Monument PRMP/FEIS provides management direction for conditions of approval on valid existing leases it does so only consistent with lessees' valid existing rights. For example, on p. 2-157 of the PRMP/FEIS it states that "the BLM would work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources".

Multiple Use Mandate

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-9

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Billings RMP could be interpreted as imposing a "no significant impact" standard for oil and gas operations. This de facto insignificance standard violates the BLM's statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a "major use" of public lands. It also is contrary to the basic

tenets of NEPA and long established legal precedent.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-08-1

Organization: Western Environmental Law Center for the Montana Wilderness Association

Protestor: Laura King

Issue Excerpt Text: We protest the Proposed RMP/FEIS insofar as it fails to manage for "multiple uses," particularly for wildlife and bird habitat, wilderness values, and non-motorized or quiet recreational activities. As described in more detail in our previous comments (see MWA Comments at 4-5), under the Federal Land Policy

Management Act (FLPMA), managing for “multiple use” means providing and maintaining opportunities for a variety of uses. 43 USC § 1702(c). Thus, while some areas may be set aside for oil and gas development and motorized use, other areas should be managed for other resources, including habitat, wilderness, and quiet recreation.

Specifically with respect to motorized use, pursuant to Executive Order (E.O.) 11644,

the BLM is to provide for designation of areas and trails on which off-road vehicles may be permitted, and designation of areas and trails on which off-road vehicles may not be permitted. E.O. 11644 at § 3 (emphasis added). We protest the BLM’s failure to set aside large blocks of natural quiet for non-motorized use (as well as wildlife and bird habitat, including GRSG habitat) and ensure such areas are off-limits to oil and gas development.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates the multiple use provisions of FLPMA by:

- Imposing a “no significant impact” standard for oil and gas operations; and
- Failing to manage areas specifically for natural quiet and non-motorized use, as well as for wildlife and bird habitat.

Response:

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

FLPMA’s multiple use mandate does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, including conservation values, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation.

All alternatives considered in the Billings and Pompeys Pillar National Monument PRMP/FEIS, as described in Chapter 2 (Vol. 1, p. 2-1 through 2-261), 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 Billings and Pompeys Pillar National Monument PRMP/FEIS complies with FLPMA’s multiple use mandate.

Consistency with State and Local Plans

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-01-1

Organization: State of Montana Attorney General

Protestor: Alan Joscelyn

Issue Excerpt Text: The State Director's Decision on the three protested plans is believed to be wrong because the plans fail to take proper and legally required cognizance of Montana's interests, including the right to federal deference to the Management Plan and Conservation Strategies For GRSG in Montana, and therefore impose unnecessarily onerous restrictions upon uses of public lands in the planning areas, including mineral development, agricultural and grazing operations, recreation and other uses.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-1

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The PRMP/EIS GRSG habitat conservation program is inconsistent with the corresponding program developed by the State of Montana in violation of FLPMA and BLM's planning regulations.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-2

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The PRMP/EIS does not adhere to these requirements because its GRSG habitat conservation program is egregiously inconsistent with the Montana Program and it neither acknowledges nor justifies those inconsistencies. Asserting that

the PRMP/EIS complements the Montana Program simply because they share a focus on sage-grouse conservation measures (PRMP/EIS at ES-10) is a far cry from ensuring that the PRMP/EIS is consistent with the state program to the maximum extent possible. In fact, the BLM admits that the PRMP/EIS is inconsistent with the Montana Program where it concedes that amendment of the PRMP/EIS would be necessary to achieve the consistency required by the FLPMA and its implementing regulations.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-3

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The BLM's approach to the calculation of the amount of actual disturbance is inconsistent with the Montana Program.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-4

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: As with the disturbance cap, the BLM has failed to demonstrate that adopting the Montana Program's approach to lek buffers and exceptions would be contrary to FLPMA or other federal law.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-1

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the significant inconsistencies between the Proposed RMP and the Montana GRSG Habitat

Conservation Strategy. See Montana Executive Order 10- 2014 (“Montana Plan”). These inconsistencies are the result of the BLM’s choice to impose a national, one-size-fits-all approach to GRSG conservation in violation of the Federal Land Policy and Management Act’s (FLPMA) requirement for BLM to coordinate land use planning with state and local governments. The Proposed RMP diverges from the Montana Plan in many important respects. For example, the Montana Plan imposes a five percent disturbance cap within core areas (Montana Plan at 14, 17). The Proposed RMP, on the other hand, requires a 3% disturbance cap (Proposed RMP at 2-127). The Montana Plan imposes a 0.25 mile buffer around active leks in general habitat and 0.6 miles around leks in core habitat (Montana Plan at 14, 19), while the Proposed RMP imposes total No Surface Occupancy (NSO) stipulations in priority habitat management areas (PHMAs) and NSO restrictions within 0.6 miles around leks in general habitat management areas (GHMAs) and restoration areas (RAs), Proposed RMP at 2-86, 2-87.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-37

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The BLM has not adequately explained or justified the proposal to designate nearly all PHMA as

Summary:

The BLM is in violation of FLPMA because the Billings and Pompeys National Monument RMP/EIS is inconsistent with the Montana GRSG Habitat Conservation Strategy, “Montana Plan” (Montana Executive Order 10-2014). The Montana Plan is similar to the Wyoming Plan, which was mirrored in three BLM Wyoming land use plans.

Response:

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-1

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Importantly, the Billings RMP is inconsistent with the Montana GRSG Habitat Conservation Strategy despite its similarities to and consistency with the Wyoming Plan, which the BLM mirrored in three Wyoming land use plans. See Montana Executive Order 10-2014.

purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Billings and Pompeys National Monument PRMP/FEIS, including the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014). The BLM has worked closely with state, local, and Tribal governments during preparation of the Billings and Pompeys National Monument PRMP/FEIS. Chapter 5 describes coordination that has occurred throughout the development of the Billings and Pompeys National Monument PRMP/FEIS. Chapters 2 and 5 discuss how inconsistencies with state, local, and Tribal plans are handled. A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Sections 1.5.1-1.5.4.

The BLM acknowledges some similarities between the Montana GRSG Habitat Conservation Strategy and the Wyoming Plan, but there are several reasons why the BLM was not able to achieve complete consistency with the Montana Strategy (see Chapter 2, page 2-33). If the BLM determines that the State of Montana has adopted a GRSG Habitat Conservation Program that contains comparable components to those found in the State of Wyoming's Core Area Strategy including an all lands approach for calculating anthropogenic disturbances, a clear methodology for measuring the density of operations, and a fully operational Density Disturbance Calculation Tool, then the potential for further consistency would increase.

The agency will discuss why any remaining inconsistencies between the Billings and Pompeys National Monument PRMP/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. The BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Range of Alternatives

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-12

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed RMP. First, the Final EIS does not analyze an alternative to the Proposed RMP's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed RMP's monitoring framework, including alternatives that the BLM has the resources to implement. Third, the Final EIS does not

analyze alternatives to the adaptive management triggers and responses. Fourth, the Final EIS did not analyze alternatives to the lek buffer distances. Finally, the Final EIS did not analyze the alternative of the Montana Plan.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-20

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, BLM cannot implement the "responses" to the soft triggers because it did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS

accompanying the Proposed RMP. See Proposed RMP at 2-46 – 2-49, 4-276 – 4-278. FLPMA and NEPA require BLM to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 40 CFR §§ 1502.14, 1502.16; 43 CFR §§ 1610.4- 5, 1610.4-6. Therefore, the BLM must consider alternatives to the soft trigger responses and analyze their potential environmental impacts before it may implement them. Because BLM has neither analyzed alternatives to the soft trigger responses nor analyzed their potential impacts, BLM may not implement the soft trigger responses without amending the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-16

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The Plan dismisses without analysis any alternative to eliminate grazing from BLM public lands (PRMP/FEIS at 2-54). But the plan fails to analyze any alternatives that would have eliminated livestock grazing from GRSG habitats, or truly restricting livestock grazing use by season, or that would mandate strict grazing management on GRSG allotments. Thus the plan lacks a true analysis of the beneficial impacts of removing livestock grazing from sage-grouse habitat entirely, or seasonally in accordance with the best available science.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-7

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The need for seasonal restrictions has been affirmed by leading GRSG scientists and the courts. Dr. Clait Braun identified the need for the seasonal

restrictions in 2006: “Grazing should not be allowed until after June 20, and all livestock should be removed by August 1 with a goal of leaving at least 70% of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1)” (WWP v. Salazar, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012)). The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve GRSG habitats.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-1

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdell

Issue Excerpt Text: The Billings RMP continues to ignore any alternative that would meaningfully reduce climate impacts and protect the environment, such as an alternative with less coal production, an alternative with stipulations to limit oil and gas development, or an alternative that permanently protects critical areas.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-5

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdell

Issue Excerpt Text: As explained above, perhaps the biggest flaw in BLM’s Billings

RMP revision process has been the agency's unbending refusal to consider any alternative that would reduce climate impacts and greenhouse gas emissions by limiting fossil fuel development within the planning area.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-6

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdel

Issue Excerpt Text: However, BLM's refusal to even consider the reasonable alternatives put forward by the Conservation Groups prevents the BLM from engaging in the reasoned consideration of alternatives that is the very core of NEPA's procedural mandate and renders BLM's FEIS invalid.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-7

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed to consider an alternative that would meaningfully reduce coal development.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS failed to analyze an adequate range of alternatives as required by NEPA by not considering alternatives:

- to soft trigger responses,
- to the "net conservation gain" or the monitoring framework,
- to eliminate grazing in Greater sage-grouse habitats or apply seasonal restrictions on grazing,
- to reduce climate impacts, greenhouse gas emissions, and limiting fossil fuel development, including coal development,
- provided by Conservation Groups.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate 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)) (Billings and Pompeys Pillar National Monument PRMP/FEIS, Section 2.4 Alternatives Considered But Not Analyzed in Detail). When there are potentially a very large number of alternatives, the BLM

In its FEIS, the BLM violated NEPA by failing to consider an alternative that would meaningfully reduce coal development and by underestimating foreseeable coal development. Under all alternatives, the FEIS estimates that 2.8 million tons of coal would be produced each year (See FEIS at 4-592).

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-8

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdel

Issue Excerpt Text: Here, the BLM rejected consideration of any alternative that would result in reduced coal production in the project area. As explained by the Ninth Circuit, "[t]he existence of reasonable but unexamined alternatives renders a [NEPA analysis] inadequate" (Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1065 (9th Cir. 1998)). By failing to consider alternatives, the BLM is disregarding its multiple-use mandate and foreclosing consideration of more environmentally protective options.

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 developed a range of reasonable alternatives that meet the purpose and need (Billings and Pompeys Pillar National Monument PRMP/FEIS, Section 1.2 Purpose and Need for the Resource Management Plan Revision and that address resource issues identified during the scoping period. The Billings and Pompeys Pillar National Monument PRMP/FEIS analyzed four distinct alternatives in detail, which are described in Section 2.6 Alternatives Considered in Detail. The alternatives cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

Soft Triggers

The identification of soft triggers is a strategy to address localized GRSG population and habitat changes by providing the framework in which management would change if monitoring identifies negative population and habitat anomalies. These triggers are essential for identifying when potential management changes are needed in order to continue meeting GRSG conservation objectives (Billings and Pompeys Pillar National Monument PRMP/FEIS, p. 2-46). These adaptive management strategies would be developed in partnership with the State of Montana, project proponents, partners, and stakeholders, incorporating the best available science. Being a strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require soft triggers to be varied between the action alternatives in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Net Conservation Gain - Monitoring Framework

Net Conservation Gain is described in the Billings and Pompeys Pillar National Monument PRMP/FEIS glossary (p. 26) as “The actual benefit or gain above baseline conditions.” and is addressed in Sections 2.3 Key Components of the Alternatives and Section 2.6 Alternatives Considered in Detail. The Net Conservation Gain strategy responds to the landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The action alternatives provide management direction to meet this landscape-scale goal (Detailed Table of Alternatives, p. 2-99 through 2-238). In addition, net conservation gain is derived from the purpose and need which calls for the BLM to incorporate measures to “conserve, enhance, and restore GRSG habitat” and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework is described in Appendix AA, Section B of the Billings and Pompeys Pillar National Monument PRMP/FEIS and describes a methodology to ensure the BLM is able to make consistent assessments about GRSG habitats across the species range. This framework describes the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of actions to conserve the species and its habitat. Being a methodology for monitoring implementation of the PRMP/FEIS does not require it to be varied between the action alternatives.

Grazing – Eliminate in GRSG Habitats/Seasonal Restrictions

Section 2.4.1 Eliminate Livestock Grazing from Public Lands provides a detailed discussion as to why an alternative to make the entire area unavailable to livestock grazing would not meet the purpose and need for the proposed action. NEPA requires agencies to study, develop and describe appropriate alternatives that involve unresolved conflicts concerning resource uses. The range of management actions (Section 2.3.10.2) Range of Alternatives for GRSG Management for managing GRSG habitat analyzed in the Billings and Pompeys Pillar National Monument PRMP/FEIS are directed toward responding to the threats identified by the USFWS in its 2010 warranted but precluded finding on listing the GRSG.

As identified in 2.3 Key Components of the Alternatives, each alternative (A through D) describes a different approach for managing GRSG habitat which will conserve, protect, and enhance GRSG habitat to varying degrees. Approaches as to how this is accomplished depends upon the nature of each particular alternative. For Alternative B, the BLM and Forest Service used GRSG conservation measures in A Report on National GRSG Conservation Measures (GRSG National Technical Team 2011, also referred as to the NTT Report) to form management direction.

Alternative C would emphasize commodity production (e.g., forage and minerals), motorized recreational access, and services. Constraints on commodity production for the protection of sensitive resources would be the least restrictive within the limits defined by law, regulation, and BLM policy and implemented in specified geographic areas rather than across the entire planning area.

Alternative D incorporates elements from each of the other alternatives to strike a balance between long-term conservation of public land and resources with commodity production, recreational access, and services. It represents an approach to land management that address the issues, management concerns, and purpose and need while balancing resources and resource uses.

Livestock grazing direction specific for GRSG (Detailed Table of Alternatives (p.2-173 through 2-177) addresses the identified threat as well as those public lands available and unavailable for livestock grazing. This provides for a range of reasonable alternatives analyzed in the Billings and Pompeys Pillar National Monument PRMP/FEIS with regards to livestock grazing.

Climate Impacts, Greenhouse Gas Emissions, Limiting Fossil Fuel Development

Alternatives developed to be analyzed in the Billings and Pompeys Pillar National Monument PRMP/FEIS resulted from issues identified through the public scoping process and are described in the Section 1.4.1.2 “Issues to be Addressed in the Billings and Pompeys Pillar National Monument PRMP/FEIS” (p. 1-17 through 1-20). Reducing climate impacts and greenhouse gas emissions by limiting fossil fuel development was not identified as an issue through the scoping process and in the development of the range of alternatives.

The Detailed Table of Alternatives (p. 2-99 and 2-100) provides direction to address climate change. The goals are to reduce GHG emissions and through adaptive management provide for

new information to be evaluated and incorporated into project level management decisions, BMPs, mitigation and the decision-making process.

Reduce Coal Development

The BLM Land Use Planning Handbook (H-1601-1), Appendix C, Section F. Coal identifies the types of land use decisions to be made with regards to coal leasing. The PRMP/FEIS identifies the acres unsuitable (26,131 to 290,048 acres) for leasing (Table 2.5, p. 2-61) which varies by alternative (AltA-26,131 acres; Alt B-290,048 acres). Item 5 (Appendix C, p. 22) identifies estimating the amount of coal recoverable by either surface or underground operations which the PRMP/FEIS estimates as averaging 2.8 million tons annually (Table 2.15, p. 2-258). This is consistent with the land use plan decisions to be made during the RMP planning process as identified in Appendix C, Section F.

Conservation Groups Alternatives

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). The Billings and Pompeys Pillar National Monument PRMP/FEIS acknowledged the conservation groups alternatives that were submitted and considered (Section 2.4.5, p. 2-57). As stated, “These proposed actions and alternatives submitted by these organizations were determined to be substantially similar to those actions and habitat areas considered within the range of alternatives in the DRMP/EIS. Specific to the organization’s proposed alternative to designate GRSG ACECs and ‘restoration’ areas, this DRMP/EIS does include, within the range of alternatives for detailed study, a GRSG ACEC (Alternative B) and restoration areas for GRSG. The alternatives and actions proposed through the Conservation Groups Alternative were considered but eliminated from detailed study from this RMP revision because the range of alternatives adequately addresses conservation measures for GRSG.”

The BLM considered a reasonable range of alternatives in the Billings and Pompeys Pillar National Monument PRMP/FEIS in full compliance with NEPA

Cumulative Effects

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-10

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The release of the Montana Plan constitutes significant new information that BLM must consider in a Draft RMP because it affects the analysis of the cumulative impacts of BLM’s management strategy on GRSG habitat and populations.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-16

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the Proposed RMP/FEIS does not adequately analyze the cumulative impacts of the Proposed RMP because it does not consider the impacts of the Proposed RMP together with the impacts of the at least 13 other greater sage-grouse RMPs. See 80 Fed. Reg. 30,676 (May 29, 2015). The CEQ regulations require agencies to analyze the “incremental impact of the action” together with “other past,

present, and reasonably foreseeable future actions.” 40 C.F.R.

§ 1508.7. In this case, BLM should have analyzed the cumulative impacts of the Proposed RMP with the other 13 RMPs. Clearly, development of the EISs was a coordinated national effort by BLM and the Forest Service. BLM and the Forest Service announced the RMPs and made them available on the same day. See 80 Fed. Reg. 30,718 (May 29, 2015); 80 Fed. Reg. 30,716 (May 29, 2015); 80 Fed. Reg. 30,714 (May 29, 2015); 80 Fed. Reg. 30,711 (May 29, 2015); 80 Fed. Reg. 30,709 (May 29, 2015); 80 Fed. Reg. 30,707 (May 29, 2015); 80 Fed. Reg. 30,705 (May 29, 2015); 80 Fed. Reg. 30,703 (May 29, 2015); see also Dep’t of the Interior Press Release, BLM, USFS Plans for Western Public Lands Provide for Greater Sage-Grouse Protection, Balanced Development (May 28, 2015). Moreover, many of the Proposed RMPs contain consistent—if not standardized—provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of the RMPs propose to impose NSO stipulations with limited waiver and modification on new leases in PHMA. All of them require that compensatory mitigation yield a “net conservation gain.”

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-17

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM must analyze the cumulative impacts of these nation-wide

Summary:

The BLM is in violation of the CEQ regulations because it has not adequately analyzed cumulative impacts related to:

- New information from the Montana Plan;
- Climate change (due to coal, oil, and gas development);

management actions on the greater sage-grouse and, in particular, the cumulative impacts on mineral leasing and development. In the planning area for the Proposed RMP alone, 372,348 acres are designated for leasing subject to NSO and 17,704 acres are closed to mineral leasing entirely. See Proposed RMP, Table 2.2 at 2-22.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-16

Organization: Western Environmental Law Center for Montana Environmental Information

Protestor: Kyle Tisdell

Issue Excerpt Text: BLM has failed to take a hard look at the impacts of climate change—perpetuating a disconnect between the agency’s recognition of the effects of climate change and the agency’s decisionmaking that allows for the continued leasing and development of massive quantities of coal, oil and gas. BLM failed to analyze cumulative and incremental effects of coal, oil, and gas development on climate change, and failed to consider the Conservation Groups detailed Comments and Supplemental Comments on the Draft EIS addressing climate change and GHG emissions, especially our Draft Comments at 6-23 and our Supplemental Comments, attached herein as Exhibits 1 and 2 (40 CFR § 1506.6).

- Additive impacts of all RMPs;
- Impacts to mineral leasing and development.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts.

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. Because the analysis tends to be broad and generalized, the cumulative effects assessment is primarily qualitative for most resources because of lack of detailed information that would result from project-level decisions and other activities or projects. Quantitative information is used whenever available and as appropriate to portray the magnitude of an impact. The analysis assesses the magnitude of cumulative impacts by comparing the environment in its baseline condition with the expected impacts of the alternatives and other actions in the same geographic area. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Chapter 4, the PRMP/FEIS provides analysis of impact to GRSG from climate change, oil and gas, and coal, as well as how the other resource will be impacted from implementing GRSG conservation measures. The cumulative impacts section (Chapter 4, Section 4.6) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

Section 4.6 of the PRMP/FEIS describes the geographic scope for the cumulative impacts analysis. Spatial boundaries vary and are larger for resources that are mobile or migrate (e.g., migratory birds) compared with stationary resources. Occasionally, spatial boundaries could be contained within the planning area boundaries or an area within the planning area. Spatial boundaries were developed to facilitate the analysis and are included under the appropriate resource section heading. The cumulative effects analysis for all topics included an analysis of cumulative effects at the planning area level. For Biological Resources – Greater Sage-Grouse, cumulative effects analysis included an analysis at the WAFWA Management Zones I and II/VII levels, in addition to the planning-level analysis. This delineation of the impact area is the reason why the other Greater Sage-Grouse plan amendments were not included in this analysis.

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 Billings and Pompeys Pillar National Monument PRMP/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Supplemental EIS

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-11

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM does not appear to have analyzed the cumulative impacts of the Montana Plan at all. Instead, the BLM merely noted that the Montana Plan was complimentary to the Proposed RMP (Proposed RMP at ES-10). Additionally, the management proposed under the Montana Plan presents another management alternative that BLM should consider adopting. Because the Montana Plan constitutes “significant new circumstances,” the BLM must prepare a Supplemental Draft EIS.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-18

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the inclusion of new components in the Proposed RMP not only as a violation of NEPA but also as a violation of FLPMA. BLM’s introduction of new components in the Proposed RMP (including the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses) deprived the public of a meaningful opportunity to comment on these components as required by BLM’s planning regulations. 43 CFR § 1610.2. BLM’s own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when “substantial changes to the proposed action, or

significant new information/circumstances collected during the comment period” are presented (BLM Land Use Planning Handbook H- 1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05)). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses unquestionably are a “substantial change” when compared to the alternatives included in the Draft RMP, BLM should have prepared and released for comment a supplement to the Draft RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-8

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the revised mitigation and plans, the lek buffer distances, and the adaptive management triggers and responses. BLM first presented the public with these components when it released the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-9

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, revised mitigation and monitoring plans, lek buffer distances, and adaptive management triggers and responses were not incorporated into the Proposed RMP and Final EIS in response to public comment on the Draft RMP/Draft EIS or in

response to environmental impacts disclosed in the Draft EIS. See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, BLM appears to have incorporated the net conservation gain requirement and revised the mitigation and monitoring plans to respond to national policies by BLM and FWS that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Service GRSG Mitigation Framework (2014); BLM, The GRSG Monitoring Framework (2014). Similarly, the lek buffer distances and adaptive management triggers and responses appear to have been added to make the Proposed RMP consistent with the GRSG provisions in other land use plans. See Fact Sheet: BLM/USFS GRSG Conservation Effort (noting that land use plans to conserve the GRSG are based on three objectives for conserving and protecting habitat). The public never had the opportunity to review and comment on these new components.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-8

Summary:

The BLM must provide a supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations.

- None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the revised mitigation and plans, the lek buffer distances, and the adaptive management triggers and responses. The BLM first presented the public with these components when it released the Proposed RMP.
- The BLM did not analyze the cumulative impacts of the Montana Plan. The BLM only noted that the Montana Plan was complimentary to the Proposed RMP. Because the Montana Plan constitutes “significant new information,” the BLM should prepare a Supplemental EIS.

Response:

Considering the new components of the Proposed Action and the Montana Plan were not specifically described in the Draft EIS, the agencies must provide a supplemental analysis to the

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: NEPA imposes on federal agencies a continuing duty to supplement draft or final environmental impact statements in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action. Idaho Sporting Cong., Inc. v. Alexander, 222 F.3d 562, 566 n.2 (9th Cir. 2000); 40 C.F.R. § 1502.9(c)(1)(i). Here, EPA’s proposal to revise ozone standards, as well as the science supporting the revision, constitutes new circumstances and information, which BLM must take account of in its final EIS. The FEIS’s conclusions regarding ozone are based on comparison to the existing NAAQS for ozone. EPA’s proposed revision of the ozone NAAQS and the abundant science supporting the proposal plainly demonstrate that the current NAAQS are not sufficient to protect public health. Accordingly, the ozone analysis must be revised. Further, the FEIS’s analysis of ozone neglects to address and consider that the impacts of climate change will worsen ozone pollution.

public.

NEPA Handbook 1790-1, 5.3, page 29

“Supplementation” has a particular meaning in the NEPA context. The Supreme Court has explained that supplementation of an EIS is necessary only if there remains major Federal action to occur (See *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004)). In the case of a land use plan, implementation of the Federal action is the signing of a Record of Decision. A supplement to a draft or final EIS must be prepared if, after circulation of a draft or final EIS, but prior to implementation of the Federal action:

- “you make substantial changes to the proposed action that are relevant to environmental concerns” (40 CFR 1502.9(c)(1)(i));
 - “you add a new alternative that is outside the spectrum of alternatives already analyzed” (see Question 29b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, March 23, 1981); or
 - “there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects” (40 CFR 1502.9(c)(1)(ii)).
- 5.3.1 When Supplementation is Appropriate, (page 30).

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

5.3.2 When Supplementation is Not Appropriate, page 30

Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the draft or final EIS).

If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS.

When new circumstances or information arise prior to the implementation of the Federal action, but your evaluation concludes that they would not result in significant effects outside the range of effects already analyzed, document your conclusion and the basis for it. If the new circumstances or information arise after publication of a draft EIS, document your conclusion in the final EIS. If the new circumstances or information arise after publication of the final EIS, document your conclusion in the ROD.

40 CFR 1502.9: Draft, Final, and Supplemental Statements

(c) Agencies:

- (1) Shall prepare supplements to either draft or final environmental impact statements if:
- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
 - (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Land Use Planning Handbook, H1601-1, page 24.

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR 1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

The changes made in the Proposed RMP/Final EIS prompted by comments do not require a supplemental EIS because they do not include or raise any issues that were outside of the range of alternatives presented and analyzed in the Draft RMP/EIS. The Proposed RMP/Final EIS is a variation of the Preferred Alternative D and is within the range of alternatives analyzed in the DRMP/EIS. Chapter 2, page 2-7

The USGS Buffer Study included in a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for GRSG – A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during the NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically Alternative B identified and analyzed allocation restrictions such as closure to fluid minerals, recommendations for locatable mineral withdrawal, and restrictions on Renewable Energy development. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. FEIS Chapter 2, page 2-9.

Chapter 2 of the Draft EIS identified that the BLM would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed Plan, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternative B in the Draft EIS. Page 2-9.

The monitoring framework was further refined in the FEIS, and further clarification as to how disturbance cap calculations would be measured were developed for the FEIS. During the public comment period, BLM received comments on how monitoring and disturbance cap calculations would occur at implementation. The Draft EIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced the two sections of Appendix AA (Sections B and C) in the FEIS. Page 2-9.

The net conservation gain strategy is in response to the overall landscape goal which is to enhance, conserve, and restore GRSG and its habitat. All of the Action Alternatives provided management actions to meet the landscape-scale goal. The intent of the Proposed Plan is to provide a net conservation gain to the species. To do so, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation within priority habitat (core population areas and core population connectivity corridors), the BLM would require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This would be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions (Page 2-10).

The Proposed RMP revision includes components of the alternatives analyzed in the Draft EIS. Taken together, these components present a suite of management decisions that present a minor variation of the preferred alternative identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM had determined that the Proposed RMP/Final EIS is a minor variation of the preferred alternative and that the impacts of the Proposed RMP/Final EIS would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed RMP/Final EIS are similar or identical to those described in the Draft RMP/EIS (Page 2-10).

The Governor of the State of Montana issued Executive Order 10-2014 which created the Montana GRSG Oversight Team (MSGOT) and the Montana GRSG Habitat Conservation Program. The executive order outlines a number of conservation strategies for state agencies to follow for land uses and activities in GRSG habitat in addition to establishing the MSGOT and habitat conservation program. The State conservation efforts are complimentary to the conservation measures proposed in the BLM land use plans and when combined will provide conservation efforts across land ownership boundaries. FEIS 1.5.2, page 1-29. The FEIS analyzes the cumulative effects of State-wide efforts in Montana. Section 4.6 Cumulative Impacts. See Montana Statewide Efforts, section 4.6.7.1.4, page 4-618.

The BLM is not required to prepare a Supplemental EIS.

Best Available Science

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-38

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed LUPA are largely based on the U.S. Fish and Wildlife Service's (FWS) GRSG (Centrocercus urophasianus) Conservation Objections: Final Report (Feb.

2013) ("COT Report") and the BLM's Report on National GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (Dec. 2011) ("NTT Report"). Reliance on these reports is arbitrary and capricious under the Administrative Procedure Act (APA). 5 USC § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency

guidelines implementing the Data Quality Act (“DQA”), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-39

Organization: Montana Petroleum Association
Protestor: Dave Galt

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-40

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases (NWMA Review at 14). For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15% (NTT

Report at 26). However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion (NWMA Review at 14). Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas (Connelly et al. 2000 at 977). Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10% to 30% depending on habitat function and quality (NWMA Review at 14). (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15 percent canopy cover standard. Misleading citations, failure to properly reference and list sources in the Literature Cited section, and similar technical errors render the NTT Report difficult to read, difficult to verify, and far less than the “best available science.”

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-41

Organization: Montana Petroleum Association
Protestor: Dave Galt

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

of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (March 18, 2015) (“NTT DQA Challenge”). Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a “viable” population of any species, much less GRSG. Curtis H. Flather, et al, Minimum Viable Populations: “Is There a “Magic Number” for Conservation Practitioners?”, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 8. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and BLM should not have relied upon these studies or the NTT Report in the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-42
Organization: Montana Petroleum Association
Protestor: Dave Galt

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

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-43
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from

vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed (Applegate & Owens at 287 – 89). In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone. *Id.* at 289. All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. The BLM should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed RMP, because the NTT Report does not represent the best available science.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-44
Organization: Montana Petroleum Association
Protestor: Dave Galt

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

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-43
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for GRSG: A Changing Paradigm for Game

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-46
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-47
Organization: Montana Petroleum Association
Protestor: Dave Galt

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

Reg. at 8459). Because the NTT and COT Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-48
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding sage-grouse leks. A recent review of this data showed that regional climatic variations, rather than anthropogenic threats such as oil and gas, accounted for 78% of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of Greater Sage-grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014), Attachment 12. Because current data demonstrates that the impacts of anthropogenic disturbances on GRSG populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-49
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by sage-grouse to industrial development contains serious flaws. D.E. Naugle, et al., Energy Development & GRSG, in GRSG: Ecology

of a Landscape Species & its Habitats, Studies in Avian Biology No. 38 (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, A Comprehensive Review of GRSG: Ecology & Conservation of a Landscape Species & its Habitat at 115 (Feb. 2012), Attachment 13. Naugle et al. 2011 also misrepresented the results of another study to support their claim that sage-grouse abandon leks due to noise and human activity (*Id.* at 116). Further, of the seven studies reviewed, four focused on impacts to GRSG in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin. *Id.* Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies’ results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-50
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, Spatial

Heterogeneity in Response of Male GRSG Lek Attendance to Energy Development, PLoS One, June 2014). This study, like many similar studies, was based on peak male lek count data. *Id.* at 2; see also D.H. Johnson, et al., Influences of Env't'l & Anthropogenic Features on Greater Sage-Grouse Populations, 1997 – 2007, in GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011). Peak male lek count data tends to bias lek attendance estimates and therefore leads to inaccurate population trend estimates. Rob R. Ramey, et al., Hierarchical Bayesian Analyses of Greater Sage-Grouse Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997 – 2012, at 2-3 (Dec. 2014). Mean average lek counts provide a more accurate picture of population trends. See, e.g., *id.*

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-51
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study's conclusions are based on well density data and lek counts from 1991 through 2011 (Gregory & Beck at 4). The period in which GRSG reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011. *Id.* However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004. *Id.* at 7. Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in

the coming years. *Id.* This prediction assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country. See, e.g., Applegate & Owens at 287. As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time period (Applegate & Owens at 287). As Applegate and Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity. *Id.* at 288. Gregory and Beck's study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across GRSG range.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-52
Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: Other papers important to the USGS Buffer Report's energy buffers (see USGS Buffer Report at 7) also relied on well density data from the height of Wyoming's CBNG boom. See, e.g., B.C. Fedy et al., Habitat Prioritization Across Large Landscapes, Multiple Seasons, & Novel Areas: An Example Using GRSG in Wyoming, 190 Wildlife Monographs 1, 12 (Mar. 2014) (relying on Wyoming well data from 1998 through 2008 to determine effects of various well densities on GRSG); D.H. Johnson, et al., Influences of Env't'l & Anthropogenic Features on GRSG Populations, 1997 – 2007, in GRSG:

Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011) (relying on data from 1997 through 2007); Kevin E. Doherty, GRSG Winter Habitat Selection & Energy Development, 72 J. of Wildlife Mgmt. 187, 187 (relying on data from CBNG development in the Powder River Basin). Current development is less intensive than the CBNG development that took place from 1998 through 2008. In effect, the USGS Buffer Report reviewed data from some of the most intensive developments in the country and extrapolated from these results range wide buffers applicable to future development with significantly different impacts. This data is a weak basis from which to regulate current and future oil and gas development. See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-8
Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Dave Galt

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

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-23
Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The record establishes that met towers can result in GRSG population declines (see Cotterel Mountain data reviewed in 'Wind Power in Wyoming,' attached to Guardians' DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied. In addition, this restriction should not be limited to PHMAs but should also extend to General Habitats, Winter Concentration Areas, and Connectivity Areas as well.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-1
Organization: Defenders of Wildlife
Protestor: Mark Salvo

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

that depend on those leks and associated nesting and brood-rearing habitat. Requiring larger lek buffers would both conserve

GRSG and preserve agency options for managing for GRSG and other values in breeding, nesting and brood-rearing habitat.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook’s guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Billings and Pompeys Pillar National Monument PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook’s guidance to use the best available science in determining lek buffer distances in the Proposed Alternative.

Response:

Before beginning the Billings and Pompeys Pillar National Monument PRMP/FEIS, data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

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

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

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

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

The Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of GRSG (also referred to as the Baseline Environmental Report [BER]; Manier et

al. 2013) then provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service’s “warranted but precluded” finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service; Montana Fish, Wildlife, and Parks; and Wyoming Fish and Game Department. The BLM relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Chapter 3) and impact analysis (PRMP/FEIS, Chapter 4). A list of information and literature used is contained in Chapter 5 of the Billings and Pompeys Pillar National Monument. As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapter 4). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/FEIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze all available data.

On November 21, 2014 the US Geological Survey (USGS) published “Conservation Buffer Distance Estimates for GRSG—A Review” (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The BLM has reviewed this information and examined how lek buffer-distances were addressed through land use allocations and other management actions in the Draft Billings and Pompeys Pillar National Monument RMP/EIS. Based on this review, in undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third party actions, the BLM will apply the lek buffer-distances in the USGS Report in both GHMA and PHMA as detailed in Appendix AA (section G) under the Proposed Alternative (p. 2-128). The impacts of the lek buffer are analyzed in Section 4.2.7.6.4 of Chapter 4. As such, the BLM has considered the best available science when determining lek buffers.

Public Participation

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-7

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest substantial changes made between the Draft

RMP and Proposed RMP without notice and an opportunity for public comment. In particular, the Trades protest the unexpected adoption of the wholly new Proposed RMP rather than one of the alternatives analyzed in the Draft EIS. Although BLM maintains that components of the Proposed RMP were analyzed in other alternatives, the combination of these components in the Proposed RMP creates a dramatically different alternative that requires notice and public comment. Furthermore, the Proposed RMP contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the lek buffer distances, and the adaptive management triggers and responses, as well as extensive revisions to the monitoring and mitigation plans. These proposed changes violate NEPA because they were not included in the Draft RMP and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-5
Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The RMP reflects a significant new alternative and proposed management structure that was not previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised RMP

developed with the benefit of supplemental NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration's policy on transparent and open government.

Under NEPA, BLM is required to supplement existing NEPA documents when, as it has done for the RMP, it makes substantial changes to the proposed action. 40 CFR § 1502.9(c)(1)(i); *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the RMP reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the RMP, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by BLM is a plain violation of NEPA. Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation, competitiveness and job creation." The BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different RMP which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Summary:

The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.

The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed RMP or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses.

The BLM has not complied with Executive Order of 1/18/2011 directing agencies toward an open exchange of information with the public.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) make diligent efforts to involve the public in preparing and implementing their NEPA procedures, and (b) provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings . . . or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

NEPA Handbook H-1790-1, page 101

If you make major changes to the draft EIS, the final EIS should be a complete full text document. The content of a full text document is substantially the same as the corresponding draft EIS except that it includes copies of substantive comments on the draft EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4). A full text final EIS may incorporate by reference some of the text or appendices of the draft EIS.

43 CFR 1610.2 Public Participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

- (1) General notice at the outset of the process inviting participation in the identification of issues (See 1610.2(c) and 1610.4-1);
- (2) Review of the proposed planning criteria (See 1610.4-2);
- (3) Publication of the draft resource management plan and draft environmental impact statement

(See §1610.4-7);

(4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See 1610.4-8 and 1610.5-1(b)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See 1610.5-1(b)).

Chapter 5 of the FEIS discusses the public participation process. This chapter describes the public participation opportunities and the consultation and collaborative efforts made as part of the RMP/EIS revision process. It includes a summary of the issues brought forward during the public comment period, list of the commenters, and the comments with responses (Readers Guide at 2). The Proposed RMP/Final EIS contains a number of changes made in response to comments. The changes made in the Proposed RMP/Final EIS prompted by comments do not require a supplemental EIS because they do not include or raise any issues that were outside of the range of alternatives presented and analyzed in the Draft RMP/EIS. As a result of public comments, the best science, cooperating agency coordination, and internal review of the Draft RMP/EIS, the BLM has developed the Proposed RMP/Final EIS for managing BLM-administered public lands. The Proposed RMP/Final EIS focusses on addressing public comments, while continuing to meet the BLM's legal and regulatory mandates. Chapter 2, page 2-7, Chapter 2 of the FEIS outlines the changes made between the Draft and Final and cites where the Draft EIS contained the elements of these changes. Chapter 2, 2-7.

The BLM provided adequate public involvement in the planning and NEPA process. Please see section 3.6 above for issues addressing the question of supplementation of the NEPA process.

Impacts – Greater Sage-Grouse

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-13

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMP states that there are few trailing permits issued by the BFO, and only one is typically issued on an annual basis. PRMP/FEIS at 4-469. But the PRMP/FEIS does not discuss whether this has any adverse impacts on GRSG habitat or how proximate the impacted lands are to an active lek, nor does it specify specific conditions such as seasonal exclusions that it will apply if additional permits are requested in the future in other parts of the planning area.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-17

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et al. 2013, Taylor et al. 2012).

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS fails to adequately analyze impacts to GRSG because:

- The analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of Sage-Grouse populations;
- The PRMP/FEIS does not discuss impacts of trailing permits on GRSG habitat or specify specific conditions such as seasonal exclusions.

Response:

A land 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 and land use plan-level decisions. The effectiveness of these decisions on changes GRSG populations will be evaluation based on criteria in the monitoring plan see Appendix AA of the Billings and Pompeys Pillar National Monument PRMP/FEIS.

The PRMP/FEIS in Chapter 4 address trailing impacts under the impacts to grazing section. Actually evaluation of specific conditions and or exclusions will be addressed at the implementation level, based on policy and regulations. The Proposed PRMP/LUPA in Chapter 4 analyzed general impacts to GRSG habitat that could result from surface disturbing activities, and different programs such as mineral management (See page 4-49).

Impacts – Air Quality

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-22

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a GRSG lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations” (WBEA at 131). The BLM proposes a limit of 10 dBA above ambient as measured at the lek perimeter, at sunrise only, with no ambient noise level defined in the plan (FEIS at AA). The ambient level needs to be set at 15 dBA and maximum noise allowed should not

exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-11

Organization: Western Environmental Law Center for Montana Environmental Information Center

Protestor: Kyle Tisdell

Issue Excerpt Text: There are a number of Class I air quality areas that may be directly impacted by any development authorized by the BiFO RMP. These areas include, but are not necessarily limited to the following: North Absaroka Wilderness, Northern Cheyenne Indian Reservation, U.L Bend Wilderness Area, Wind Cave National Park, and Yellowstone National Park. FEIS at 3-

14. . However, the Billings Field Office failed to consider visibility impacts to other areas subject to the non-impairment mandate. These areas include the Pryor Mountain, Twin Coulee, Big Horn Tack On, and Burnt Timber WSAs.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-13
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The BLM failed entirely to consider indirect air pollution impacts from foreseeable coal combustion. Conservation groups protest the BLM's unlawful failure to consider the indirect effects of air pollution from coal combustion.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-14
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: Here, the FEIS and PRMP estimate 2.8 million tons of federal coal produced annually, presumably to be burned for energy production (FEIS at 4-587). Nevertheless, the BLM fails entirely to assess the air pollution impacts that will result from such combustion.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-15
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The FEIS, however, failed entirely to address these insidious and

deleterious, but wholly foreseeable, impacts. There is no question that they are foreseeable. See FEIS at 4-38 ("Indirect GHG emissions in the planning area include the demand for electricity generated outside the area.") Because the combustion of the coal in the planning area is a reasonably foreseeable indirect effect of the PRMP's decision to make it available for continued leasing and strip-mining, the FEIS was required to assess the air pollution impacts that will result from combustion (40 CFR § 1502.16(b)).

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-17
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Proposed RMP failed to provide a hard look detailed analysis of impacts. See FEIS at 680; see also *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998) ("To 'consider' cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency's] decisions, can be assured that the [agency] provided the hard look that it is required to provide.")

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-18
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: In order to sufficiently understand the scope of methane emission impacts expected from the proposed action, the BLM should quantify estimated

emission rates and analyze alternatives that would mitigate these impacts. However, even without specific data from the proposed action, we can assume leakage somewhere between these two extremes and, even at the low end, emissions reductions would not be trivial. The agency's refusal to consider any mitigation measures that would reduce these emissions fails to satisfy the BLM's NEPA obligations.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-19
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Billings Proposed RMP fails to provide any detailed, hard look analysis of the proposed actions' contribution to GHG pollution. While the BIFO provides charted emissions estimates under each alternative, FEIS 4-40, this is all the agency offers. There is no discussion or analysis of how these emissions will impact specific resources in the Billings planning area, and BLM fails to identify any relationship between this data and its decision-making process for the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-2
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Billings RMP fails to appropriately assess air impacts from development authorized under the plan, including by failing to consider indirect effects from coal combustion and failing to revise its ozone analysis in light of the best science.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-3
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: The Billings RMP fails to take a hard look at the impacts of climate change, including by underreporting the climate impacts of its proposal, excluding any social cost of carbon analysis, failing to commit to mitigation measures to address the serious issue of methane emissions and waste, and failing to address the impacts of coal, oil, and gas development on human resiliency.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-9
Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdel

Issue Excerpt Text: In the FEIS, the Billings Field Office failed to consider the multiple effective and environmentally sustainable methods and practices to reduce methane waste. As noted in our Draft Comments, while the BLM has in the past claimed that it will impose methane mitigation measures at the site-specific stage, it has failed to do so. Moreover, the RMP stage is the appropriate place to address these measures to ensure consistency, put the oil and gas industry on notice of what leasing on BLM lands will look like, and meet its duties to address this issue as required by NEPA, the Federal Land Policy and Management Act ("FLPMA"), the Mineral Leasing Act, and Secretarial Order 3226.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violated NEPA by failing to:

- evaluate the effects of the Required Design Feature of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB, thus failing to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts;
- consider visibility impacts to other areas subject to the nonimpairment mandate. These areas include the Pryor Mountain, Twin Coulee, Big Horn Tack On, and Burnt Timber WSAs;
- consider impacts from air pollution due to Coal Combustion 40 C.F.R. § 1502.16(b);
- consider new ozone analysis using best available science.

In addition, the Billings and Pompeys Pillar National Monument PRMP/FEIS violated NEPA, FLPMA, the Mineral Leasing Act, and Secretarial Order 3226 by failing to consider mitigation measures reducing methane emissions; environmentally sustainable methods and practices to reduce methane waste; failed to assess air impacts from development authorized under the plan; and failed to provide analysis of how methane emissions will impact specific resources;

Response:

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

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

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 Billings and Pompeys Pillar National Monument PRMP/FEIS.

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

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific

actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

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

For each Alternative, emissions were estimated for criteria air pollutants and hazardous air pollutants (HAPs). Greenhouse gas (GHG) emissions were also estimated and are described in Section 4.2.2. Criteria air pollutants include carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter with a diameter less than or equal to 10 micrometers (PM₁₀), particulate matter with a diameter less than or equal to 2.5 micrometers (PM_{2.5}), and sulfur dioxide (SO₂). Due to a lack of lead-emitting sources, lead emissions were not estimated.

One additional pollutant type, volatile organic compounds (VOCs), was included in the emission inventory since it reacts with nitrogen oxides (NO_x) to form ozone in the atmosphere. NO_x and VOCs are known as ozone precursors. Concentrations of criteria air pollutant may not exceed NAAQS (EPA 2010c), Montana Ambient Air Quality Standards (MAAQS), or Wyoming Ambient Air Quality Standards (WAAQS). Emissions from most sources were estimated based on activity levels associated with each Alternative and emission factors provided by USEPA in “AP 42” (USEPA 2011f) or included in emission standards developed by USEPA or the Montana Department of Environmental Quality (MDEQ). Detailed emission calculations are provided in the Air Resource Technical Support Document (ARTSD) (BLM 2014). To protect air quality in oil and gas development and production areas, the BLM included a mitigation measure to require use of Tier 4 drill rig engines. These engines are currently being manufactured and have much lower exhaust emissions than many older engines currently in use. Consequently, Tier 4 emission standards were used to calculate emissions from drill rigs.

Emissions from coal combustion is discussed and considered throughout Chapter 4, for example on page 4-32, Table 4-17, for the proposed action, the table shows the estimated maximum annual criteria and hazardous air pollutant emissions, including emissions from coal mining. Air resource impacts for coal mining are similar to those for Alternative A. (Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4 (FFEIS Chapter 4))

The USEPA air quality index (AQI) shows that the Billings and Pompeys Pillar National Monument PRMP/FEIS planning area has good air quality that poses little health risk to the general public (Table 3-4). The AQI is an index used for reporting daily air quality indicating how clean or polluted an area’s air is and whether associated health effects may be a concern. The AQI focuses on potential health effects a person may experience in a few hours or days after breathing ambient air. The USEPA calculates the AQI for five criteria air pollutants: ground-level ozone, particulate matter, CO, CO₂, and NO₂. For each of these pollutants, USEPA established NAAQS to protect public health. An AQI value of 100 generally corresponds to the

national air quality standard for the pollutant, which is the level the USEPA has set to protect public health (Billings and Pompeys Pillar National Monument PRMP/FEIS, p. 3-10).

Current air quality reflects the impacts of emissions from existing sources of air pollution. Table 3-5 provides an estimate of recent emissions within the Billings Field Office based on a USEPA estimate of recent emissions based on the 2011 National Emissions Inventory (NEI). Emissions of HAPs and greenhouse gases (GHGs) are not included in Table 3-5. Due to recent implementation of a new federal air quality rule, many facilities within the planning area will begin reporting GHG emissions to USEPA in 2011 (Billings and Pompeys Pillar National Monument PRMP/FEIS, p. 3-11).

As explained in Chapter 3, GHG emissions are typically discussed in terms of individual GHG emissions and aggregate emissions. CO₂ and methane are the two GHGs with the largest quantities of emissions due to resource management activities, while much smaller quantities of N₂O would also be emitted. Fire management activities and equipment combustion sources such as engines are the primary sources of CO₂ and N₂O. In contrast, the three largest sources of methane would be emitted from livestock (54%), fire management (42%), and oil and gas activity (4%). The analysis of the impacts is discussed in Chapter 4 (Billings and Pompeys Pillar National Monument PRMP/FEIS, p. 4-39). Emissions from activities and management actions that would occur in any of the Alternatives in the RMP would have a negligible impact on global climate change. (Billings and Pompeys Pillar National Monument PRMP/FEIS, p.4-43)

Visibility Impacts

No Class I areas are located within the planning area. However, the Northern Cheyenne Indian Reservation is adjacent to the eastern boundary of the BiFO, and other Class I areas are located nearby as shown in Table 3-7. Sensitive Class II areas include the Crow Indian Reservation, the Bighorn Canyon National Recreation Area, Little Bighorn Battlefield National Monument, and several National Wildlife Refuges (NWR). Although Wilderness Study Areas were not specifically identified in the affected environment in Chapter 3, Section 3.2.1, WSAs were considered as part of the planning area (Billings and Pompeys Pillar National Monument PRMP/FEIS, p. 3-13).

Impacts to wildlife and special status species is discussed in Chapter 4, Section 4.2.7 beginning on page 4-233. The discussion considers impacts from noise levels and noise from human activities, equipment use, etc.,. The determination of the noise level limits was determined by using and considering the best available research and data as documented in the reference section of the FESI, Chapter 5, References. For example the following were used and cited: Naugle et al. (2011), and Holloran (2005), (Knick et al. 2011).

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Billings and Pompeys Pillar National Monument PRMP/FEIS planning effort. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Bighorn Basin planning effort. The Billings and Pompeys Pillar National Monument PRMP/FEIS includes a bibliography and reference section in Volume 3, which lists information considered by the BLM

in preparation of the Billings and Pompeys Pillar National Monument PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to visibility, methane, air pollution in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Impacts – Oil and Gas

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-13

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed RMP's leasing and development restrictions on oil and gas development. The Proposed RMP discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 330,796 acres of lands, and imposes new compensatory mitigation requirements, new lek buffers, and new density and disturbance caps. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA and Controlled Surface Use (CSU) stipulations in GHMA, will cumulatively stymie oil and gas development on federal lands within the planning area. The Final EIS does not adequately recognize the cumulative impacts of leasing and development restrictions on federal lands.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS fails to adequately analyze impacts on oil and gas development from the proposed protection measures for GRSG, such as ROW restrictions.

Response:

The CEQ regulations require an environmental impact statement to "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-15

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the BLM has not adequately analyzed the impacts right-of-way avoidance and exclusion areas will have upon existing oil and gas leases. The Proposed RMP would designate 330,796 acres of habitat as general right-of-way avoidance areas and 10,397 acres as general right-of-way exclusion areas (Proposed RMP, Table 2.2 at 2-22). At the same time, the Proposed RMP states that 158,544 acres of public lands in the planning area are currently under lease for oil and gas (Proposed RMP, Table 3-52 at 3-182). To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. The BLM must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area.

description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues” (40 CFR 1502.15). The BLM complied with these regulations in writing its environmental consequences section. The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The analysis of impacts provided in Chapter 4 of the Billings and Pompeys Pillar National Monument PRMP/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the PRMP/FEIS.

Table 4-40 of the PRMP/FEIS provides a qualitative representation of stipulations being proposed for new fluid mineral leases. This table includes a brief description of each stipulation and the total acreage affected by the stipulation. Also, under Section 4.3.1.2, “Impacts Common to All Alternatives”, a general discussion of the impacts of these stipulations on development is included. In addition, Section 4.6.5, cumulative impacts to mineral resources, discloses management actions within all alternatives would restrict oil and gas leasing and development to some degree, depending on the acreage managed as administratively unavailable, as identified in the proposed plan (p. 606).

The broad land use planning-level analysis presented in the Billings and Pompeys Pillar National Monument PRMP/FEIS, as referenced above, provides a basis for future actions. As specific actions come under consideration, the BLM will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as the issuance of ROWs. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts – Water

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-21

Organization: Western Environmental Law Center for Montana Environmental Information Center

Protestor: Laura King

Issue Excerpt Text: The BLM failed to take a hard look at hydraulic fracturing (or “fracking”) impacts from oil and gas leasing and development in the planning area. In

fact, the only mention of fracking in

the body of the Proposed RMP/FEIS simply describes the technology, but fails to analyze or apply it to specific impacts to resource values. FEIS at 3-189 (“Hydraulic fracturing is a technique used to create additional space and connect existing fractures and existing rock pores with newly created fractures that are located in deep underground geologic formations.”).

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates NEPA by failing to consider and take a hard look at hydraulic fracturing impacts from oil and gas leasing and

development in the planning area and fails to analyze specific impacts to resource values.

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 Billings and Pompeys Pillar National Monument PRMP/FEIS.

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

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

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

There is no fracking currently occurring in the planning area and it is unlikely to occur. Comments were received on the draft EIS concerning lack of discussion regarding hydraulic fracturing therefore language was added to Chapter 3 to address these concerns. Under Chapter 2, Section 2.3.4 Summary of Changes between Draft RMP/EIS and the Proposed RMP/Final EIS, a section title Fluid Minerals states, “Additional background information was added to the Proposed RMP regarding hydraulic fracturing (fracking). New oil and gas lease stipulations were added for Air Quality, Sensitive Soils and Rock Outcrops, and Source Water Protection. To provide consistency between Montana/Dakotas BLM land use plan revisions, many of the fluid mineral lease stipulations for wildlife have been revised (Appendix C).” Chapter 3, Section 3.17.4.6, page 3-189 describes the hydraulic fracturing process and its use in the oil and gas industry. The method of hydraulic fracturing was consider in the PRMP/FEIS and stipulations developed when the process may be used.

In Chapter 4, Section 4.3.1.1.2 Fluid Minerals Fluid Minerals Assumptions All federal mineral leases would be subject to standard lease terms. BMPs listed in Appendix B would be applied to minimize impacts, provide reclamation guidance, and improve reclamation success. BMPs would be used in conjunction with site specific analysis and subsequent stipulations. Oil and gas exploration would occur as described in the reasonably foreseeable development scenario (RFD

scenario) which predicts that as many as 80 conventional oil and gas wildcat wells or coalbed (exploratory wells drilled in an area with no existing production) might be drilled in the Billings Field Office decision area in the next 20 years. The RFD scenario further forecasts that an average of three to four Federal conventional and/or CBNG wells would be drilled per year totaling 60 to 80 wells over the life of the plan.

The Billings and Pompeys Pillar National Monument PRMP/FEIS includes a bibliography and reference section in Volume 3, which lists information considered by the BLM in preparation of the Billings and Pompeys Pillar National Monument PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to consider and take a hard look at the environmental consequences/impacts of the process of hydraulic fracturing in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Impacts – Recreation

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-08-3

Organization: Western Environmental Law Center for Montana Wilderness Association

Protestor: Laura King

Issue Excerpt Text: Here, the BLM fails to adequately assess the direct, indirect, and cumulative effects of the Proposed RMP. The proposed action may have significant direct, indirect, and cumulative impacts on the area's resources, as detailed in our previous comments. See MWA Comments at 20-23. One such impact is from the Proposed RMP's dispersed camping exemption.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-08-4

Organization: Western Environmental Law Center for Montana Wilderness Association

Protestor: Laura King

Issue Excerpt Text: The Proposed RMP has made an unacceptable change to the dispersed camping exemption. The Draft RMP provided that "Excluding WSAs and ACECs, motorized wheeled use off designated routes for the purposes of camping would be allowed only on previously disturbed areas, for a distance up

to 50 feet from the centerline of the route." See DEIS at 2-128. The FEIS changes this to: "Excluding WSAs and ACECs, OHV use off designated routes for the purposes of camping would be allowed, for a distance up to 150 feet from the centerline of the route." See FEIS at 2-188. There are two key changes. The distance is tripled from 50 to 150 feet, and the "only on previously disturbed areas" language has vanished.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-08-5

Organization: Western Environmental Law Center for Montana Wilderness Association

Protestor: Laura King

Issue Excerpt Text: ...potentially threatens 36 acres of land for every mile of road. This threat is increased by dropping the "only on previously disturbed areas" language. Beyond 50 feet, there should be considerable undisturbed area. Land managers should try to keep it undisturbed. Most of the area under consideration in the Pryors is very arid with extremely fragile soils and vegetation. It cannot withstand motor vehicle use. We have found no analysis in the FEIS of the impacts of this greatly expanded "dispersed camping" corridor.

The greatly expanded “dispersed camping” corridor also threatens the native vegetation with the introduction of noxious and invasive weeds. Weeds are a serious and increasing problem in the Pryors. We found

no mention in the FEIS of the potential impact of the proposed 300 foot wide “dispersed camping” corridor on the introduction and spread of weeds.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates NEPA by failing to adequately assess the direct, indirect, and cumulative effects of the dispersed camping exemption.

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 Billings and Pompeys Pillar National Monument PRMP/FEIS.

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

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

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

In the Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4, impacts from dispersed recreation are discussed throughout each of the resource sections. For instances, under Section 4.2.4 – Soils, Impacts to Soils from Recreation and Visitor Services is discussed (Section 4.2.4.2.10, page 4-51). In Chapter 4, Section 4.3.5, Recreation and Visitor Services (page 4-484), potential impacts on recreation resources, opportunities, and experiences from management actions for other resource programs are discussed. Recreation uses within the decision area include backpacking, recreational OHV use, hiking, camping, sightseeing/viewing nature, hunting, fishing, mountain biking, rock climbing, and horseback riding. Impacts could occur through potential changes to visitor preferences (activities, experiences, and benefits), recreation setting conditions (physical, social, administrative), recreation management (resources, signing,

facilities), recreation marketing (visitor services, information, interpretation and environmental education), recreation inventory and monitoring, and recreation administration (permits, fees, visitor limits and regulations). These recreation features are interrelated and connected to access (Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4).

The detailed impact analyses and conclusions to allow OHV use off designated routes for the purposes of camping, for a distance up to 150 feet from the centerline of the route are based on the BLM's knowledge of resources and the planning area, reviews of existing literature, and information provided by experts in the BLM, cooperating agencies, other agencies, interest groups, and concerned citizens. Impacts on resources and resource uses are analyzed and discussed in detail commensurate with resource issues and concerns identified throughout the process. Geographic information system (GIS) analyses and data from field investigations were used to quantify effects when possible. However, in the absence of quantitative data, qualitative information and best professional judgment was used (Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4).

In Chapter 4, Section 4.2.6.4 Invasive Species and Noxious Weeds, the PRMP/FEIS addresses the potential impacts to the noxious and invasive species program and includes potential impacts from dispersed recreational activities. The section also addresses potential control and treatments for impacts from invasive and noxious weeds (Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4).

The Billings and Pompeys Pillar National Monument PRMP/FEIS includes a bibliography and reference section in Volume 3, which lists information considered by the BLM in preparation of the Billings and Pompeys Pillar National Monument PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to consider and analyze the environmental consequences/impacts from recreation and visitor services in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Impacts – Grazing

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-18

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan includes language that effectively excludes custodial allotments from ever being reviewed under a range of alternatives or a full NEPA evaluation. We note that the requirement to have evaluation reports documenting that

the allotments are meeting land health standards is without a timeframe for those reports to be within. So, if the allotment has ever met land health standards, it will be exempted from further review. We protest this new authority as unnecessary and inappropriate, and the BLM should instead use the current authority to determine which allotments merit additional review rather than give itself new leeway.

Summary:

The use of a “determination of NEPA adequacy” (DNA) violates NEPA because it exempts custodial allotments (excepting GRSG PHMA) from ever being reviewed under a range of alternatives and analysis as required under NEPA.

Response:

The BLM NEPA procedures provide for the use of existing NEPA analysis documents. If a proposed action is adequately covered by an existing EIS or EA, the BLM may document a “Determination of NEPA Adequacy” (DNA) (516 DM 11.6). A Determination of NEPA Adequacy confirms that an action is adequately analyzed in existing NEPA document(s) and is in conformance with the land use plan. The Billings and Pompeys Pillar National Monument PRMP/FEIS is a landscape-scale planning document. Identifying certain actions that may be documented using a DNA is in conformance with NEPA because the process may occur provided the custodial allotment meets certain criteria, including: “(1) containing the same mandatory terms and conditions (kind of livestock, the active use previously authorized is not exceeded, and grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease); (2) having evaluation reports documenting that they are meeting land health standards. A screening criteria checklist (Appendix L) would be reviewed prior to renewal. If the answer to each of the questions is ‘NO’, the renewal is within scope and NEPA compliance can be achieved by preparing a Documentation of NEPA Adequacy (DNA) form which references this RMP/EIS. If the answer to any question is ‘YES’, the proposed action represents an exception, and site-specific analysis would be prepared. Category I and M allotments would not meet the criteria for this type of action” (Billings PRMP/FEIS, p. 2-177). Allotments not meeting these criteria would then undergo site-specific analysis. The BLM does not violate NEPA because BLM NEPA procedures allow for the use of a DNA provided certain criteria are met.

Impacts – Other

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-22

Organization: Western Environmental Law Center for Montana Environmental Information Center

Protestor: Travis Bruner

Issue Excerpt Text: The failure to address the impacts of hydraulic fracturing is particularly egregious because, in promulgating the fracturing rule, the BLM

stated that impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas development,” would be analyzed during the “land use planning” process (80 Fed. Reg. at 16,191). The BLM must follow through on that commitment here. Conversely, because the BLM failed to consider these impacts in development of the Fracking Rule, the Fracking Rule plainly cannot provide a substitute for consideration of these impacts here.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violated NEPA by failing to consider and address the impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas development,” during the land use planning process.

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 Billings and Pompeys Pillar National Monument PRMP/FEIS.

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

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

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

The Fracking Rule went into effect in June 2015 and public meetings and comment periods were held in development of the rule. The rule is used to complement existing regulations and will be in effect for site specific proposed projects.

There is no fracking currently occurring in the planning area and it is unlikely to occur. Comments were received on the draft EIS concerning lack of discussion regarding hydraulic fracturing therefore language was added to Chapter 3 to address these concerns.

Under Chapter 2, Section 2.3.4 Summary of Changes between Draft RMP/EIS and the Proposed RMP/Final EIS, a section title Fluid Minerals states, “Additional background information was added to the Proposed RMP regarding hydraulic fracturing (fracking). New oil and gas lease stipulations were added for Air Quality, Sensitive Soils and Rock Outcrops, and Source Water Protection. To provide consistency between Montana/Dakotas BLM land use plan revisions, many of the fluid mineral lease stipulations for wildlife have been revised (Appendix C).” Chapter 3, Section 3.17.4.6, page 3-189 describes the hydraulic fracturing process and its use in the oil and gas industry. The method of hydraulic fracturing was considered in the PRMP/FEIS and stipulations developed when the process may be used.

The Billings and Pompeys Pillar National Monument PRMP/FEIS includes a bibliography and

reference section in Volume 3, which lists information considered by the BLM in preparation of the Billings and Pompeys Pillar National Monument PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to consider and take a hard look at the environmental consequences/impacts of the process of hydraulic fracturing in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

GRSG - General

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-15

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The management specified in the PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. GRSG habitat needs, especially hiding cover, do not vary widely across its range, thus it is a failure on the part of the agencies not to provide consistent parameters or at minimum an explanation for the variation between plans.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Some claim that the five percent cap incorporated from the Wyoming state "core area" GRSG conservation strategy in federal GRSG plans in the state is equivalent to the three percent cap recommended in the NTT report and other references (e.g., Wyoming FEIS: 4-339) because the Wyoming strategy also counts other types of disturbance against its cap, including temporary habitat loss from fire and vegetation removal (e.g., Wyoming DEIS: 2-118, Table 2-1, Action 115; 2-181,

Table 2.5), that are not typically counted in the 3% cap. But this rationale is flawed. Where fire and vegetation removal have not affected a given core area, energy development and other land use could account for all allowable disturbance under the Wyoming cap, which, at 5%, is nearly twice the limit for anthropogenic disturbance recommended by science. Moreover, Knick et al. (2013), the basis for the NTT report recommendation, used a 3-mile buffer around GRSG leks to determine their disturbance threshold, a land area much smaller than the typical analysis area to which Wyoming's 5% cap is typically applied. A 5% cap applied to the same geography used by Knick et al. (2013) would result in significantly more disturbance in GRSG habitat.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-3

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4)-the Billings-Pompeys Pillar plan should avoid doing the same); prohibit renewable energy development, and require

managers to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/around winter range to preserve the areas by reducing future fire risk (SD FEIS: 48).

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-4

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: For example, desired habitat conditions in GRSG habitat in the Oregon FEIS includes perennial grasses >7 inches high on arid sites and >9 inches on mesic sites in GRSG breeding habitat, including lekking, pre-nesting, nesting, and early brood-rearing habitats (citing Gregg et al. 1994; Hanf et al.1994; Crawford and Cruver 2000; Hagen et al. 2007; Jon Bates, USDA ARS, pers. comm. 2/10/2015) (Oregon FEIS: 2-41, Table 2-4). Desired habitat condition in the HiLine plan includes perennial grasses at >7 inches high in GRSG breeding habitat (HiLine FEIS 42, Table 2.4; 195, Table 2.27). The Proposed Plan in the Idaho FEIS includes desired conditions for sage-grouse habitat that include perennial grasses and forbs >7 inches high during nesting and early brood-rearing season (Idaho FEIS: 2-20, Table 2-3).

While these plans also provide that desired conditions may not be met on every acre of sage-grouse habitat and that a specific site's ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (similar to the Billings-Pompeys Pillar FEIS) (and recognizing that these additional disclaimers, by themselves, further

complicate grazing management in sage-grouse range), the plans at least adopt science-based minimum standards for evaluating grazing effects and informing adaptive management of sage-grouse nesting and brood-rearing habitat.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Nevada/Northeastern California plan has adopted this desired condition for managing sage-grouse habitat (2-18, Table 2-2). This provision sets a science-based (Lockyear et al. in press) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-09-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses the BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [GRSG] habitat due to climate stress" as a threat to GRSG; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on GRSG and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species.

The Proposed RMPA in the Oregon FEIS

would designate a network of “climate change consideration areas,” generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for GRSG over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat,

general habitat, and even areas outside current GRSG range. The purpose of these areas is to benefit GRSG over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Summary:

Protests identified inconsistencies among the various Sub-regional GRSG Land use plan amendments and revisions. In the Billings and Pompeys Pillar National Monument PRMP/FEIS, there are inconsistencies regarding how the LUPA addresses grazing management, surface disturbance caps, and GRSG habitat in general. These differences may lead to arbitrary decisions in each sub-region.

Response:

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM has used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences.

Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG - Density and Disturbance Cap

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-10

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Specific and seemingly arbitrary restrictions based on disturbance thresholds are inconsistent with the BLM’s own regulations that authorize

lessees to use as much of the surface as is reasonable necessary to develop its minerals. 43 CFR § 3101.1-2.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-14

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text The plan does not recognize grazing as a surface disturbing or disruptive activity (PRMP/FEIS at 2-14). This means that mitigation measures would not be applied to this activity. *Id.* at 2-13. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and

structural range improvements that disrupt vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. It also fails to include these disturbances within the anthropogenic disturbance cap (PRMP/FEIS at 2- 32).

Summary:

Protests dispute the application of density and disturbance caps of being insufficient to protect GRSG as the calculation does not include disturbance associated with livestock grazing. The protests also express concern that disturbance and density caps will impinge on valid existing rights according to 43 C.F.R. 3101.1-2.

Response:

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8):

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

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed RMP Revision that address these impacts.

The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in this RMP Revision.

GRSG - Adaptive Management

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-19

Organization: Montana Petroleum Association

Protestor: Dave Galt

See Proposed RMP at 2-47. The planning regulations do not permit BLM to change the management prescriptions in an RMP via an open-ended placeholder.

Issue Excerpt Text: Second, the BLM cannot implement the “responses” to the soft triggers because there is nothing to implement. The Proposed RMP does not define any concrete actions that BLM will implement in response to the soft triggers.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-34

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the soft and hard adaptive management triggers and responses set forth in the Proposed RMP as arbitrary because the adaptive management strategy does not describe the

factors the BLM will consider when assessing the “causal” factors of triggers being reached.

Summary:

The Adaptive Management Plan associated with the LUP Revision is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist.

Response:

Applying specific soft-trigger responses at a Land Use Plan Level would not be appropriate as such may not address the site-specific issues or “causal factors” that initiated the tripped soft trigger. The RMP Revision provides for various implementation level responses that will more appropriately address the causal factors in these situations.

BLM is within its authority and appropriately applies an adaptive management plan to conserve GRSG habitat.

GRSG - Monitoring

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan’s implementation and monitoring plan doesn’t specifically tie back to the habitat objectives identified in Table 2.3.

Summary:

There is no clear connection between the PRMP/FEIS’ implementation and monitoring plan and the habitat objectives identified in Table 2.3. Appendix X at X-22.

Response:

Appendix X, Table 1 (p. X-22), of the Billings and Pompeys Pillar National Monument PRMP/FEIS, provides a general overview of the monitoring that would occur to evaluate the GRSG habitat objectives, described in Table 2.3 (Chapter 2, p.2-28 through 2-31), and other resources throughout the planning area. As indicated on p. 2-26, monitoring of GRSG and sagebrush habitats is described more extensively in Appendix AA, Section A, and “habitat objectives will be part of the GRSG habitat assessment to be used during land health evaluations (Monitoring Framework, Appendix AA, Section B).”

As required under 43 CFR 4180.1(d), the BLM must ensure that habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species. In Appendix M, Standards for Rangeland Health and Guidelines for Livestock Grazing, Standard 5 is used to evaluate whether “Habitats support healthy, productive and diverse populations and communities of native plants and animals (including special status species and species of local

importance) appropriate to soil, climate and landform.” Data collected using the HAF methodology would also be used in assessing this standard.

If SRH were not being met and current livestock grazing was a significant factor, 43 CFR 4180.2(c) directs that, “The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards...”

The Billings and Pompeys Pillar National Monument PRMP/FEIS clearly explains the connection between the habitat objectives identified in the plan and how those objectives will be monitored.

GRSG - Livestock Grazing

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-10

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The agencies also fail to define grazing as a surface disturbing or disruptive activity. PRMP/FEIS at 2-14. This fails to recognize the science that shows the presence of livestock does cause physiological stress to GRSG. The plan limits other types of surface disturbance and disruptive activities within PHMAs from March 1 to June 15 within four miles of a lek (PRMP/FEIS at 4-277). And yet, the best science recommends that grazing be restricted during this same period; the plan provides no limits on seasonal use by livestock. The distinction between livestock surface disturbance and disruption and other types of actions is arbitrary and capricious, and the PRMP/FEIS should be revised to limit spring season livestock impacts to leks.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS doesn’t analyze seasonal restrictions nor does it set utilization limits that conform to

the scientific recommendations for protecting GRSG habitat. Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year,49 the PRMP/FEIS has not considered limiting grazing in this way within the planning area. The PRMP/FEIS also doesn’t specify a utilization limit on grazing, but Dr. Braun recommends a 25-30% utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover GRSG, the PRMP/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-6

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: In order to conserve GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need

to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting GRSG. See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting

season is crucial for the species' survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are shortcomings of the plan.

Summary:

The BLM fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science.

Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.

Response:

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

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55).

Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8): "GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects."

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Billings and Pompeys Pillar National Monument PRMP/FEIS that address these impacts. The BLM did not fail to use the best available science in the Billings and Pompeys Pillar National Monument PRMP/FEIS.

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

In accordance with BLM's Land Use Planning Handbook and BLM IM No. 2012-169, BLM

considered a range of alternatives with respect to both areas that are available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. The analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Billings and Pompeys Pillar National Monument PRMP/FEIS and that address resource issues identified during the scoping period. The Billings and Pompeys Pillar National Monument PRMP/FEIS analyzed four alternatives, which are described in Chapter 2, Resource Management Alternatives (p. 2-1 through 2-261). A number of alternatives were also considered but not carried forward for detailed analysis (Section 2.4, p. 2-54 through 2-58).

Section 2.4.1, Eliminate Livestock Grazing from BLM Public Lands, details an alternative that proposed to make the entire Billings Field Office unavailable for livestock grazing. This alternative did not meet the purpose and need of this RMP/EIS. The NEPA requires that agencies study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. No issues or conflicts were identified during this land use planning effort that requires the complete elimination of grazing within the planning area for their resolution and, in the absence of such conflicts, such an alternative would be inconsistent with the multiple-use policy objectives of the planning area. Where appropriate, removal of livestock and adjustments to livestock use has been incorporated in this planning effort.

The BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands in an RMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in this RMP/EIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the Standards for Rangeland Health. Acres not available for permitted livestock use for the life of the plan range from 37,408 acres (Alt A), 38,373 acres (Alt B), 28,622 acres (Alt C), to 28,387 acres (Alt D).

All alternatives would allow the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA and compliance with 43 CFR SubPart 4160, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRS habitat objectives.

The BLM considered a reasonable range of alternatives and considered grazing restrictions in the Billings and Pompeys Pillar National Monument PRMP/FEIS in full compliance with NEPA; changes to individual permits is not appropriate at the land management planning scale and would occur at the implementation stage.

GRSG - Mitigation

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-14

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Additionally, the Final EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a “net conservation gain.” Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework. BLM must examine whether adequate mitigation opportunities exist in the planning area, such as through conservation easements or restoration activities. This analysis is particularly important because FWS has not endorsed any mitigation banks or exchanges in Colorado, Utah, Montana, and California; accordingly, land users may have a difficult time securing mitigation opportunities. BLM cannot condition permits on a requirement that land users cannot fulfill due to lack of mitigation.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-27

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The terms of federal leases do not authorize BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See, e.g., BLM Form 3110-11,

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

Summary:

The PRMP/FEIS violates existing regulations at 43 CFR 1600 and 3100 by requiring compensatory mitigation, including achieving a “net conservation gain” of GRSG habitat, and fails to adequately analyze:

- the requirement that land users provide compensatory mitigation to obtain a “net conservation gain”; and
- whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework.

Response:

FLPMA and other applicable laws authorize the BLM to provide for reasonable mitigation of impacts caused by development on public lands. In FLPMA, Congress declared it to be the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values....” FLPMA §102(a)(8).

FLPMA also directs the BLM to manage the public lands in accordance with the principles of multiple use and sustained yield (FLPMA § 302(a)). In defining multiple use and sustained yield, Congress called for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” and for “achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use” (FLPMA § 103(c) & (h)). The multiple use and sustained yield principles guide the BLM through its land use planning process, FLPMA § 202(c)(1), and its land use planning regulations contemplate that the BLM will monitor and evaluate the effectiveness of mitigation measures (43 CFR § 1610.4-9). Moreover, through land use planning, the BLM identifies desired outcomes in the form of goals and objectives for resource management. 43 CFR § 1601.0-5(n)(3). “Goals” are broad statements of desired outcomes that are not usually quantifiable, such as maintain ecosystem health and productivity, promote community stability, ensure sustainable development, or meet Land Health Standards. “Objectives” identify specific desired outcomes for resources, are usually quantifiable and measurable, and may have established timeframes for achievement (BLM Land Use Planning Handbook, H-1601-1 (2005) at 12). Mitigation is one tool that the BLM can use to achieve the goals and objectives it establishes in land use plans.

BLM Instruction Memorandum (IM) No. 2008-204 outlines policy for the use of offsite mitigation for BLM land use authorizations. In making decisions that are within its discretion (taking into account statutes, regulations, and contractual/property rights of the requester), the BLM has an obligation to approve only land use authorizations that are consistent with its mission and objectives. This may mean that the BLM may be unable to permit certain land use authorizations without appropriate mitigation measures. Onsite mitigation alone may not always be possible or sufficient, though often resources are present offsite that can offer suitable compensation for remaining onsite impacts. Consequently, offsite mitigation may be an effective management tool to ensure appropriate land use authorizations.

In accordance with the preceding law, regulation, and policy, the requirement for a net conservation gain derives from the Purpose and Need of the Billings and Pompeys Pillar National Monument PRMP/FEIS, which is to provide a comprehensive framework for the BLM's management of the public lands within the planning area, and to ensure these public lands are managed in accordance with FLPMA and the principles of multiple use and sustained yield. The purpose for revising the Billings and Pompeys Pillar National Monument PRMP/FEIS is to consolidate the existing land use plans and their amendments, and to reevaluate, with public involvement, existing conditions, resources, and uses and reconsider the mix of resource allocations and management decisions that are designed to balance uses with the protection of resources pursuant to FLPMA and other applicable law (p.1-9). To this end, the Billings and Pompeys Pillar National Monument PRMP/FEIS incorporates appropriate management actions and practices to conserve GRSG and its habitats on BLM-managed land (p. 1-10) and the requirement for a net conservation gain accounts for uncertainty associated with the effectiveness of mitigation.

Chapter 4, Section 4.6.3 Mitigation (Vol. 2, p. 4-604) describes the environmental consequences associated with the impacts to GRSG and its habitat from activities carried out in conformance with this plan, in addition to BLM/USFS management actions. In undertaking BLM/USFS management actions, and consistent with valid existing rights and applicable law, including 43 CFR 3100, in authorizing third party actions that result in habitat loss and degradation, the BLM/USFS would require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This would be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions.

A management action or alternative would result in a net conservation gain to GRSG if there is an actual benefit or gain above baseline conditions. Baseline conditions are defined as the pre-existing conditions of a defined area and/or resource that can be quantified by an appropriate metric(s). For purposes of a NEPA analysis, the baseline is considered the affected environment that exists at the time NEPA analysis is initiated, and is used to compare predictions of the effects of the proposed action and the effects of a reasonable range of action alternatives (p. 4-613). To this end, and given that impacts would vary by project, more detailed consideration and analysis of appropriate GRSG mitigation measures would occur on a project-specific basis.

As to the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework, land use plans (LUP) do not typically analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of an LUP does not directly result in any on-the-ground impacts. The BLM will analyze appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area.

The Billings and Pompeys Pillar National Monument PRMP/FEIS complies with FLPMA and other applicable law, including, including 43 CFR 1600 and 3100 by identifying appropriate compensatory mitigation measures, including to achieve a "net conservation gain" of GRSG habitat. The Billings and Pompeys Pillar National Monument PRMP/FEIS provides an

appropriate level of analysis for the requirement that land users provide compensatory mitigation to obtain a “net conservation gain” and the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework would be appropriately analyzed on a project-specific basis.

Administrative Procedures Act

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-2

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text BLM’s refusal to adopt the Montana Plan is arbitrary and capricious under the Administrative Procedure Act (APA).² 5 USC § 706. The Montana Plan is nearly identical in its sage-grouse restrictions to a similar plan adopted by the State of Wyoming, which the BLM in Wyoming adopted in its GRSG management plan revisions.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-3

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The APA requires that agencies explain their decisions sufficiently that “the agency’s path may reasonably be discerned” (Alaska Dep’t of Env’tl Conservation v. Env’tl Protection Agency, 540 U.S. 461, 496 – 97 (2004)). Given that the Montana Plan and the Wyoming Plan contain many identical restrictions and that the Montana Plan was available prior to release of the Proposed RMP, BLM was required to provide a reasoned explanation of its choice to adopt the plan in Wyoming but not in Montana.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-4

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM’s adoption of several elements of the Proposed RMP, specifically, the compensatory mitigation requirement, the “net conservation gain” standard, and conservation measures that include lek buffer distances, RDFs, and density and disturbance caps, because each constitutes a substantive rule that the BLM cannot apply before it completes the formal rulemaking procedures required by the APA. See 5 U.S.C. § 553. Additionally, the Trades protest the limitations on modifications and waivers of NSO stipulations in PHMA because they improperly amend a BLM regulation without completing the formal rulemaking procedures.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-5

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. First, the Proposed RMP prohibits waivers and modifications despite the regulation’s language that stipulations “shall be subject to modification or waiver.” Second, the Proposed RMP expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and the Montana Fish, Wildlife, and Parks Department. These direct contradictions reflect that BLM is attempting to alter its regulations through the RMP.

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedures Act, when it:

- failed to fully analyze and consider existing state plans to address GRSG management; and
- implemented a number of changes to management practices, including a “net conservation standard,” required design features, lek buffer distances, and density and disturbance caps, without first completing a formal rulemaking process.

Response:

The Federal Land Policy and Management Act details the BLM’s broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Billings and Pompeys Pillar National Monument PRMP/FEIS specifically addresses the goals, objectives, and conservation measures needed to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Rulemaking/Land Use Planning

The regulations concerning land use planning, 43 CFR 1610, state that “guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed...[including] national level policy which has been established through ... Director-approved documents. (Section 1610.1(a)(1)).

Section 2.3.10 of the Billings and Pompeys Pillar National Monument PRMP/FEIS details how Director-approved guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

Finally, the protestors are incorrect that the Proposed LUPA’s waiver and modification provisions are inconsistent with 43 C.F.R. § 3101.1-4. That regulation does not require BLM to provide for waivers or modifications but instead provides regulatory limits on BLM’s ability to allow waivers or modifications if BLM determines (e.g., consistent with the plan and its regulatory authority) that it wishes to grant one.

The Billings and Pompeys Pillar National Monument PRMP/FEIS does not represent an exercise

of rule-making authority, but a valid exercise of the land use planning process authorized by section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally, and the process followed for this planning effort specifically, provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA. The proposed plan describes the basis for its proposed actions and the science upon which it is based; it is not arbitrary or capricious under the APA which, regardless, is the standard of review of agency action in federal court, not the BLM's administrative protest procedures. Additional rationale will be provided in the Record of Decision.

For a discussion regarding Consistency with State and Local Plans, please see Section 1.4 of this protest report.

Energy Policy Act of 2005

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-29

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill... The Proposed RMP should clarify that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed RMP. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of the National Environmental Policy Act (NEPA) "and other applicable law" have been completed. 30 USC § 226(p)(2). Thus, the BLM can only defer decisions on permits when the requirements of NEPA "and other applicable law" have not been met. See *id* BLM's planning authority conferred through FLPMA is not "other applicable law" that allows BLM to defer development due to the density and disturbance limitations on existing federal leases because RMPs developed pursuant to FLPMA are subject to valid existing rights. See *Colo. Env'tl Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, the BLM may only defer

or deny development on new leases. The BLM should revise the Proposed RMP to clearly state that the BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-32

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The requirement that lessees mitigate impacts to GRSG to provide a "net conservation gain" is more restrictive than necessary. The BLM could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 USC § 1732(b). Though inconsistent with FLPMA, the BLM did not even consider requiring that mitigation achieve "no net loss" of GRSG habitat in PHMA and GHMA. Because the requirement that mitigation achieve a "net conservation gain" is inconsistent with EPAct, the BLM must revise the Proposed RMP to remove the "net conservation gain" requirement.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-33

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in Section X.B, *infra*. Furthermore, in the Final EIS, the BLM did not analyze whether

alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed RMP, Table 2.10 at 2-128. Because the lek buffer distances are unnecessarily restrictive, BLM must revise the Proposed RMP to identify measures that comply with the directives of EPA Act.

Summary:

The PRMP/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing by:

- Deferring APDs;
- Implementing lek buffer distances; and
- Providing for a “net conservation gain” of GRSG habitat

Response:

The Billings and Pompeys Pillar National Monument PRMP/FEIS does not propose deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6.21 of the PRMP/FEIS.

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 USC section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval, and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Billings and Pompeys Pillar National Monument PRMP/FEIS presents a set of oil and gas conditions of approval and best management practices necessary to meet the goals and objectives for each resource and resource use in the planning area.

The Billings and Pompeys Pillar National Monument PRMP/FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (Billings and Pompeys Pillar National Monument PRMP/FEIS, Chapter 4). By comparing impacts across the alternatives, the BLM determined which management actions in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Billings and Pompeys Pillar National Monument PRMP/FEIS.

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for GRSG – A Review” (USGS 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and

infrastructure on GRSG populations. The BLM has reviewed this information and examined how lek buffer-distances were addressed through land use allocations and other management actions in the Draft Billings and Pompeys Pillar National Monument RMP/EIS. Based on this review, in undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third party actions, the BLM will apply the lek buffer-distances in the USGS Report “Conservation Buffer Distance Estimates for GRSG – A Review (Open File Report 2014-1239)” in both GHMA and PHMA as detailed in Appendix AA (section G). The impacts of the lek buffers are disclosed in Section 4.2.7 of the Billings and Pompeys Pillar National Monument PRMP/FEISS. Based on the impacts analysis performed, the BLM determined that the stipulations, conditions of approval, and best management practices considered are not overly restrictive, are necessary to meet the goals and objectives of the Billings and Pompeys Pillar National Monument PRMP/FEIS, and do not violate the Energy Policy Act.

The guidance in the Billings and Pompeys Pillar National Monument PRMP/FEIS to provide for a net conservation gain is not a stipulation, condition of approval, or best management practice that will be applied to leases or Applications for Permit to Drill. Instead, it is part of the mitigation strategy in response to the overall landscape-scale goal, which is to enhance, conserve, and restore GRSG and its habitat. As it relates to mitigation, page 2-15 states:

“Consistent with the proposed plan’s goal outlined in Table 2.10 through Table 2.13, the intent of the Billings and Pompeys Pillar National Monument PRMP/FEIS is to provide a net conservation gain to the species. To do so, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM would require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. Actions which result in habitat loss and degradation” include those identified as threats which contribute to GRSG disturbance as identified by the U.S. Fish and Wildlife Service in its 2010 listing decision (75 FR 13910) and shown in Table 2 in the attached Monitoring Framework (Appendix AA, section B). This would be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840 – Special Status Species Management, Section .02B, which states ‘to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA’.”

Because it is not a stipulation, condition of approval, or best management action applied to a lease or application for permit to drill, this mitigation guidance does not violate the Energy Policy Act of 2005.

Air Quality Climate Change Noise

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-53

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA), 42 USC §§ 7401 – 7671q. Under the express terms of the CAA, EPA has the authority to

regulate air emissions. In Montana, the EPA has delegated its authority to the Montana Department of Environmental Quality (MDEQ). See 42 USC §§ 7401 - 7671q; 40 CFR pts. 50 - 99; 40 CFR § 52.1370 – 52.1397 (Montana’s State Implementation Plan); Mont. Code Ann. § 75-2-201 – 75-2-234 (2014); Mont. Admin. R. Title 17, Ch. 8. The Secretary of the Interior, through the Interior Board of Land Appeals (IBLA), has determined that, in states such as Montana, the state, and not BLM has authority over air emissions:

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-54

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The BLM should also recognize that the agency does not have the authority to implement, regulate, or enforce the PSD increment. BLM’s lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of Understanding (MOU) issued by the Department of the Interior, Department of Agriculture, and EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. See Memorandum of Understanding Among Department of Agriculture, Department of the Interior and EPA Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Montana’s PSD program currently controls Wyoming’s enforcement of the PSD program within the State of Montana. 80 Fed. Reg. 4793 (Jan. 29, 2015); 76 Fed. Reg. 40,237 (July 8, 2011); 71 Fed. Reg. 40,922 (July 19, 2006); 71 Fed. Reg. 3776 (Jan. 24, 2006); 71 Fed. Reg. 3770

(Jan. 24, 2006); 66 Fed. Reg. 42,427 (Aug. 13, 2001). There is no justifiable or legal support for BLM’s alleged authority over PSD analysis. Given the limits on BLM’s authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, BLM must revise the objectives set forth in the Proposed RMP regarding visibility and PSD consumption.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-03-55

Organization: Montana Petroleum Association
Protestor: Dave Galt

Issue Excerpt Text: The language of the statute demonstrates BLM is required to “provide for compliance,” not independently regulate air emissions. *Id.* So long as the Proposed RMP does not interfere with the enforcement of state and federal pollution laws, BLM has satisfied its obligations under FLPMA. FLPMA does not authorize BLM to independently regulate air quality control measures such as those imposed in the Proposed RMP.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-10

Organization: Western Environmental Law Center for Montana Environmental Information Center
Protestor: Kyle Tisdell

Issue Excerpt Text: The BiFO must consider foreseeable impacts to visibility and air quality degradation that will result from development, including oil and gas activities, in the planning area as authorized by the BiFO RMP. Much of air pollution from oil and gas operations, which is specifically discussed, below, also degrades visibility. Section 169A of the Clean Air Act (“CAA”), 42, U.S.C. § 7401 et seq., sets forth a national goal for visibility as the

“prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.” Congress adopted the visibility provisions in the CAA to protect visibility in “areas of great scenic importance.”

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-20

Organization: Western Environmental Law Center for Montana Environmental Information

Summary:

The BLM violated the Clean Air Act (42 USC Sections 7401 – 7671q), for the following reasons:

- The BLM does not have direct authority over air quality or air emissions nor does the agency have the authority to implement, regulate, or enforce the PSD increment;
- The BLM must consider foreseeable impacts to visibility and air quality degradation that will result from development, including oil and gas activities; and
- The BLM has not included climate mitigation measures in the PRMP/FEIS

Response:

Authority and Air Quality Impacts

The BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”.

Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2). NEPA also 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)).

Through its RMPs, the BLM establishes desired outcomes for air quality and sets “area-wide restrictions” needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2). The Billings and Pompeys Pillar National Monument PRMP/FEIS seeks to manage the public lands in a manner that appropriately protects air quality and its related values, as described in the management goals for air quality (see Table 2-10 – Air Quality). In the Billings and Pompeys Pillar National Monument PRMP/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal land management actions anticipated under the Billings and Pompeys Pillar National Monument PRMP/FEIS on air quality. The BLM developed emission control strategies and mitigation measures [i.e. "area-wide restrictions"] to address those impacts

Center

Protestor: Kyle Tisdell

Issue Excerpt Text: There is absolutely no mention, much less analysis, in the Proposed RMP/FEIS of these growing impacts or the necessity to employ climate mitigation measures to ensure landscape and human resiliency and their ability to adapt and respond to climate change impacts.

and achieve desired outcomes for air quality. Chapter 4, Section 4.2.1.1 explains the methodology used to assess impacts to air quality, including from mineral development: “Near-field modeling was performed to assess impacts close to oil and gas well pad activities associated with construction, drilling, completion, and production. Regional far-field modeling would be performed as discussed below and in the ARMP (Appendix T).”

Establishing air quality and visibility measures and conducting a PSD analysis in the Billings and Pompeys Pillar National Monument PRMP/FEIS that may be applied to future actions in the planning area does not mean that the BLM is writing new regulations, nor is the BLM establishing itself as a regulatory agency or establishing mitigation measures that are intended to supersede the agencies with regulatory authority over air quality, such as the Montana Department of Environmental Quality (MDEQ). Rather, the BLM is responding to estimated impacts from the Billings and Pompeys Pillar National Monument PRMP/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act.

The Billings and Pompeys Pillar National Monument PRMP/FEIS adequately assesses the potential impacts to air quality from minerals development and does not exceed the BLM’s statutory authority by proposing restrictions for activities that impact air quality and/or visibility.

Climate mitigation measures

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The BLM applies this requirement to the preparation of RMP revisions and amendments. Chapter 4, Section 4.2.2 – Climate, discusses potential impacts to climate as well as management actions that are being taken to reduce greenhouse gas (GHG) emissions. The BLM complied with Secretarial Order 3289 in developing the Billings and Pompeys Pillar National Monument PRMP/FEIS.

Fluid Minerals

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-04-11

Organization: Beatty and Wozniak for Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Montana Fish, Wildlife and Parks Department (MFWP) and FWS, BLM is ceding its authority over oil and gas development to the FWS; in

other words, providing FWS a de facto veto authority over the BLM. The BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency. See 43 CFR § 3101.1-4.

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-07-4

Organization: Western Environmental Law Center for Montana Environmental Information Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The Billings RMP fracturing.
fails to take a hard look at hydraulic

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates FLPMA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates NEPA by failing to take a “hard look” at hydraulic fracturing.

Response:

Approval of exceptions, modifications, and waivers

As stated in 43 CFR 3101.1-4, “a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.” While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer’s determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, “BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented,” (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

Appendix C of the Billings and Pompeys Pillar National Monument PRMP/FEIS further describes oil and gas stipulations and exception, modification, and waiver criteria, as well as the process for approval.

By applying this review method, the PRMP/FEIS provides specificity to the process of granting exceptions, modifications and waivers as directed by Washington Office Instruction Memorandum 2008-032, and therefore does not violate FLPMA, the MLA, or BLM policy and guidance for the aforementioned reasons.

Hydraulic Fracturing

The scope and nature of the specific proposed action determines the level of NEPA analysis that is performed. Because RMPs set forth management direction that guides future, site-specific projects and do not, themselves, authorize any such site-specific projects, the NEPA analysis at the plan-level is necessarily broad and often qualitative. This plan-level NEPA analysis provides an analytical foundation for subsequent project-specific NEPA documents.

Section 3.17.4.6 of the FEIS provides a discussion of hydraulic fracturing, including the application of the technique and applicable rules and regulations that provide for the protection of resources prior to utilizing hydraulic fracturing in fluid mineral development. Due to the site-specific nature of hydraulic fracturing, in addition to other recovery methods, further analysis will be done at the implementation level.

Such information is sufficient for the purposes of this document, and will serve as a basis for future NEPA analyses. The BLM will conduct subsequent NEPA analyses for any future site-specific projects and implementation-level actions that will occur, such as oil and gas development. These site-specific analyses will tier to the RMP analysis but will be able to expand the environmental analysis because more specific information should be known at the project level, including factors such as geologic formations and proximity to sole source aquifers. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for these specific implementation actions.

Solid and Non-Energy Leasable Minerals

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-5

Organization: Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: Applying a 10:1 stripping ratio cutoff is inappropriate for several reasons. First, surface mines will often mine through limited areas of high ratio (or high overburden) in order to develop areas of lower ratio and effectively maximize the available public and private coal resource. Applying an arbitrary development limit would not allow for maximum economic recovery (MER) as defined and required by the Department of the Interior’s federal coal leasing program (43 CFR §§ 3480.0-5(21) (defining MER to mean that “based on standard industry operating practices, all profitable portions of a leased Federal coal deposit must be mined”); 3484.1 (requiring the operator/lessee to conduct operations to achieve MER)).

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-02-6

Organization: Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The BLM’s statement in the PRMP/EIS that GNP has “assumed control of the mining permitting effort” in the Carpenter Creek area is inaccurate and must be revised to reflect reality. Chapter 3 of the PRMP/EIS describes the affected environment, including existing coal resources. In its discussion of the Carpenter and McCleary Coal Beds, the PRMP/EIS states:

“In 2006, Carpenter Creek, LLC began the process to permit and develop a surface mine that also considered highwall mining in the Carpenter Creek area. The company had indicated that there was sufficient resource present in the two coal beds to warrant development of a surface mine and possibly an underground mine. The company submitted a mine permit application to the MDEQ to develop a test pit in the McCleary and Carpenter coal beds on private coal within this area. The company also indicated that future development could possibly include federal

coal using both surface and underground mining methods. In 2010, Great Northern Properties (GNP) assumed control of the mine permitting effort. It was reported by the MDEQ that GNP conducted exploration drilling in that area in 2011 and 2012” (PRMP/EIS at 3-173). While GNP acquired the assets of Carpenter Creek, LLC (but did not purchase the company) and conducted exploration drilling in the area during 2011

and 2012 under a separate permit issued to GNP by the Montana Department of Environmental Quality, it did not “assume control” of or pursue any permitting actions initiated by Carpenter Creek, LLC or any other non-GNP entity. Thus, the representation regarding GNP's assumption of control of any mine permitting effort initiated by Carpenter Creek LLC is inaccurate and must be corrected.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEISS imposes an arbitrary limit on stripping ratios that could lead to violations of the federal coal leasing program to allow for Maximum Economic Recovery. Also, there are errors in the affected environment section that misstate ownership and control of particular federal coal leases.

Response:

Decisions regarding the coal leasing program have been brought forward from the last RMP revision. This approach was discussed in Section 3.17.1.1.8. As described in the subsequent section, “Decision Rationale,” the RMP states that the decision “was selected because it will enable the BLM to comply with the multiple use mandates established by FLPMA and the 43 CFR 1600 regulations governing multiple use planning. Furthermore, it will allow the BLM to comply fully with the Surface Mining Coal Reclamation Act (SMCRA) and the 43 CFR 3400 regulations established to govern the federal coal management program. Although development of federal coal resources by surface mining methods will be allowed in the Bull Mountain Coal Field, underground mining will be encouraged, because it is less environmentally disruptive. The decision to implement a 10:1 1 (overburden thickness to coal thickness) stripping ratio cutoff limit was based on the premise that it may limit the size of the surface mine.” As stated above, the decision to implement a 10:1 stripping ratio is a decision being brought forward from the previous RMP amendment. This ratio, in place since the last RMP revision, is not anticipated to violate the MER requirement cited by the protester.

The second protest point does not allege a violation of law, regulation, or policy. However, the BLM notes that GNP has not “assumed control” of any mine permitting effort initiated by Carpenter Creek, LLC. According to the protest, GNP has: (1) acquired the assets of Carpenter Creek, LLC without purchasing the company, and (2) conducted exploration drilling in the McCleary and Carpenter Coal beds in 2011 and 2012 under a separate permit issued by the MDEQ.

Special Status Species

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-05-21

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For the foregoing reasons, protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and

legally deficient in light of the Purpose and Need for this EIS as well as the BLM's responsibility to prevent undue degradation to GRSG habitats under FLPMA and the agency's duty to uphold the responsibilities outlined in its Sensitive Species policy. BLM's failure to apply adequate lek buffers

to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Summary:

The BLM failed up hold its responsibilities outlined in its Sensitive Species policy. The BLM's failure to apply adequate lek buffers to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Response:

Contrary to the protest issues raised, the the proposed Billings and Pompeys Pillar National Monument PRMP/FEIS does Special Status Species policies and the management required under FLPMA. A primary objective of the BLM's Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for the conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM'S multiple use mission as specific in the FLPMA. (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans." (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the Greater-Sage Grouse as contemplated in the policies, including

As described and analyzed in the Billings and Pompeys Pillar National Monument PRMP/FEIS, the BLM considered relevant baseline information and studies about Greater-Sage Grouse, including the NTT report and proposed conservation measures to address Greater-Sage Grouse and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of Greater-Sage Grouse and the information it relied on in such analysis (See FEIS at 2.6 page 2-83). Specifically, the BLM incorporated conservation measures identified in the NTT Report, and COT Report starting at 2.83, in Table 2.9.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the Greater-Sage Grouse and provided for conservation measures in the FEIS. For example, on page 4-250 the FEIS contains analysis and rationale for existing stipulations for oil

and gas. Holloran, 2005 show the negative impacts from active drilling on lek counts. Since, land planning-level decision is broad in scope. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. Again, the Proposed RMP/FEIS the Greater Sage-Grouse Key Habitat Areas and Greater Sage-Grouse Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Billings and Pompeys Pillar National Monument RMP/EIS, the management proposed in the Proposed RMP satisfies BLM's intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Travel Management

Issue Number: PP-MT-BILLINGSPOMPEYS-GRSG-15-08-2

Organization: WELC

Protestor: Laura King

Issue Excerpt Text

BLM is required to establish a comprehensive program for both motorized and non-motorized travel. See Executive Order 11644 at § 3 (directing BLM to develop and issue regulations to provide for the designation of the specific areas and trails on public lands where off-road vehicles may be permitted and areas where such uses are not permitted). The Proposed RMP designates a system of routes for motorized use in 11 TMAs and restricts motorized use to "existing" roads and trails outside the 11 TMA. BLM also notes in the Proposed RMP that it has initiated a new effort to inventory all transportation routes outside of the TMAs to provide a baseline. See FEIS at 5-223. This is helpful, but there

remain problems with BLM's approach in the Proposed RMP:

- (1) BLM fails to analyze the direct, indirect, and cumulative impacts of its approach on lands with wilderness characteristics, ACECs, WSA, native wildlife, soils, cultural and historic properties, and water resources.
- (2) The "existing" system is still not yet inventoried, so BLM cannot analyze the impacts of such routes.
- (3) There is no evidence that BLM considered and applied the minimization criteria (described above) in creating the 11 TMAs.
- (5) BLM should designate a system of routes for the entire planning area, not just 11 TMAs.
- (6) Until a travel plan is developed for areas outside the 11 TMAs, BLM *should* limit motorized travel to designated routes in areas where a wilderness inventory has been conducted.

Summary:

The Billings and Pompeys Pillar National Monument PRMP/FEIS violates NEPA by failing to analyze the direct, indirect, and cumulative impacts of its travel management decisions on lands with wilderness characteristics, ACECs, WSA, native wildlife, soils, cultural and historic properties, and water resources.

The Billings and Pompeys Pillar National Monument PRMP/FEIS is not consistent with Executive Order 11644 at § 3 because it fails to apply the required minimization criteria in creating the 11 TMAs.

Executive Order 11644, Sec. 3. Zones of Use:

(a) ...Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following:

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

BLM Manual 1626 implements Executive Order 11644 by establishing the following objective: “Support the agency’s mission and land use planning goals and objectives to provide for resource management, public and administrative access, transportation needs and promote sustainable landscapes for future generations (p. .01)”.

Consistent with BLM Manual 1626, the Land Use Plan Revision includes designation of OHV Management Areas which were developed and evaluated by an interdisciplinary team that considered the potential consequences of those designations.

Environmental Impacts

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

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

The Billings and Pompeys Pillar National Monument PRMP/FEIS discusses the potential effects of travel management planning in Chapter 4 on Vegetation, Wildlife Habitat, ACECs, WSA, Wilderness Characteristics, Water, Soil, and Heritage resources in each of those sections.