

*BLM Director's Protest Resolution
Report*

**Oregon Greater Sage-Grouse
Resource Management Plan
Amendment / 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

The diagram shows a report layout with several sections and callouts:

- Issue Topics and Responses** (NEPA) - Callout: Topic heading
- Submission number** - Callout: Submission number
- Issue Number:** PP-OR-GRSG-15 - Callout: Protest issue number
- Organization:** The Forest Initiative - Callout: Protesting organization
- Protester:** John Smith - Callout: Protester's name
- Issue Excerpt Text:** - Callout: Direct quote taken from the submission
- Summary** - Callout: General statement summarizing the issue excerpts (optional).
- Response** - Callout: BLM's response to the summary statement or issue excerpt if there is no summary.

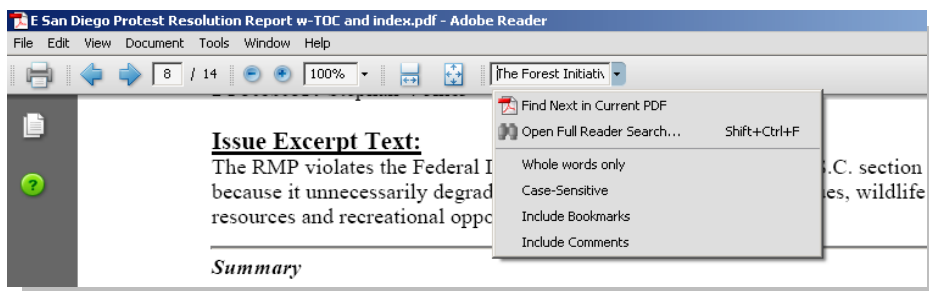
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

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

Response
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
Doug Heiken	Oregon Wild	PP-OR-GRSG-15-01	Denied-Issues Comments
Sarah Wallace	Pacificorp	PP-OR-GRSG-15-02	Denied-Issues Comments
Karen Budd-Falen	Budd-Falen Law Offices LLC obo Harney SWCD	PP-OR-GRSG-15-03	Denied-Issues Comments
Nada Culver	The Wilderness Society	PP-OR-GRSG-15-04	Denied-Issues Comments
John Cahill	Cahill Ranches, Inc.	PP-OR-GRSG-15-05	Denied-Issues Comments
Brett Dumas	Idaho Power Company	PP-OR-GRSG-15-06	Denied-Issues Comments
Jerome Rosa	Oregon Cattlemen's Association	PP-OR-GRSG-15-07	Denied-Issues Comments
Judge Steven Grasty	Harney County Court	PP-OR-GRSG-15-08	Denied-Issues Comments
Eric Molvar	WildEarth Guardians	PP-OR-GRSG-15-09	Denied-Issues Comments
Laura Skaer	American Exploration and Mining Association	PP-OR-GRSG-15-10	Denied-Issues Comments
Chris Coley	EP Minerals, LLC	PP-OR-GRSG-15-11	Denied-Issues Comments
Travis Bruner	WWP	PP-OR-GRSG-15-12	Denied-Issues Comments
No Name (unspecified)	Public Lands Council / National Cattlemen's Beef Assn / NV Cattlemen's / CA Cattlemen's	PP-OR-GRSG-15-13	Denied-Issues Comments
Mark Salvo	Defenders of Wildlife	PP-OR-GRSG-15-14	Denied-Issues Comments
Darcy Helmick	Simplot Livestock	PP-OR-GRSG-15-15	Denied-Issues Comments
Mike Best	APLIC	PP-OR-GRSG-15-16	Denied-Issues Comments
Jesse Laird	Laird Ranch	PP-OR-GRSG-15-17	Dismissed-Only Comments
Craig Kauffman	Safari Club International	PP-OR-GRSG-15-18	Dismissed-Only Comments
Chuck Chase	Individual	PP-OR-GRSG-15-19	Denied-Issues Comments
Dick Coughren	Dimari, Inc.	PP-OR-GRSG-15-20	Denied-Issues Comments

Philip Wirth	High Bar Mining LLC / Auburn Creek Ranch, LLC	PP-OR-GRSG-15-21	Denied-Issues Comments
Edward Rich	Queen Resources, LLC	PP-OR-GRSG-15-22	Denied-Issues Comments
Steven Jay	Three Valleys Ranch and Mineral Valley LLC	PP-OR-GRSG-15-23	Denied-Issues Comments
Dan Morse	Oregon National Desert Association	PP-OR-GRSG-15-24	Denied-Issues Comments
Randy Whitaker	Harney Electric Cooperative Inc.	PP-OR-GRSG-15-25	Dismissed-Only Comments
William Harvey	Baker County Commission	PP-OR-GRSG-15-26	Denied-Issues Comments
Ken Alexander	Eastern Oregon Mining Association	PP-OR-GRSG-15-27	Denied-Issues Comments
Jan Alexander	Individual	PP-OR-GRSG-15-28	Denied-Issues Comments
Ted Case	ORECA	PP-OR-GRSG-15-29	Denied-Issues Comments
Don Amador	Blue Ribbon Coalition, Inc.	PP-OR-GRSG-15-30	Denied-Issues Comments

Issue Topics and Responses

FLPMA - General

Issue Number: PP-OR-GRSG-15-09-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

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

Issue Number: PP-OR-GRSG-15-09-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM only proposes to seek withdrawal of Sagebrush Focal Areas from locatable mineral entry; other PHMA areas remain open to future mining claims. FEIS at 2-18, 2-32. Given that the BLM’s policy 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.

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

Organization: Dimari, Inc

Protestor: Dick Coughren

Issue Excerpt Text: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM- administered land and will not be applied to private, local, or state-owned lands”. Yet the FEIS states that BLM can simply make a decision to change the designation of areas from “general” to “priority”, and these areas include private land. A high degree of uncertainty has been imposed on the economic impacts of these decisions on each of our operations. The FEIS must address the impacts of these decisions on private land or the FEIS must either drop private lands from designation as GRSG habitat, or at the very least, ensure that decisions to change the priority on private lands are coordinated with the private land owner.

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

Organization: Dimari, Inc.

Protestor: Dick Coughren

Issue Excerpt Text: In priority areas, new road ROWs will be prohibited, which will make development of private minerals difficult or impossible. Even minerals development on private land may be affected where we must access private land mining sites across Public Land in priority habitat. Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. If ROWs are required to conduct the

mining operation, but will be denied by BLM because of the prohibition, then these decisions will affect private lands. The effects of this are not disclosed in the EIS. These effects must be disclosed, or ROWs for deeded minerals and private land mining operations, where access across Public Lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-21-1
Organization: Auburn Ranch and High Bar Mining, LLC
Protestor: Philip Wirth

Issue Excerpt Text: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. Yet the FEIS states that BLM can simply make a decision to change the designation of areas from “general” to “priority”, and these areas include private land. A high degree of uncertainty has been imposed on the economic impacts of these decisions on each of our operations. The FEIS must address the impacts of these decisions on private land and on mining claims with private minerals, or the FEIS must either drop private lands from designation as GRSG habitat, or at the very least, ensure that decisions to change the priority on private lands are coordinated with the private land owner or private minerals owner.

Issue Number: PP-OR-GRSG-15-21-2
Organization: Auburn Ranch and High Bar Mining, LLC
Protestor: Philip Wirth

Issue Excerpt Text: In priority areas, new road ROWs will be prohibited, which will make development of private minerals difficult or impossible. Even minerals development on private land may be affected where miners must access private

land mining sites across Public Land in priority habitat. Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition, then these decisions will affect private lands. The effects of this are not disclosed in the EIS. These effects must be disclosed, or ROWs for deeded minerals and private land mining operations where access across Public Lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-22-1
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. Yet the FEIS states that BLM can simply make a decision to change the designation of areas from “general” to “priority”, and these areas include private land. A high degree of uncertainty has been imposed on the economic impacts of these decisions on each of our operations. The FEIS must address the impacts of these decisions on private land or the FEIS must either drop private lands from designation as GRSG habitat, or at the very least, ensure that decisions to change the priority on private lands are coordinated with the private land owner.

Issue Number: PP-OR-GRSG-15-22-2
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: In priority areas, new road ROWs will be prohibited, which will make development of private minerals difficult or impossible. Even minerals

development on private land may be affected where we must access private land mining sites across public land in priority habitat. Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition, then these decisions will affect private lands. The effects of this are not disclosed in the EIS. These effects must be disclosed, or ROWs for deeded minerals and private land mining operations where access across Public Lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-23-1
Organization: Three Valleys Ranch, LLC
Protestor: Steve Jay

Issue Excerpt Text: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. Yet the FEIS states that BLM can simply make a decision to change the designation of areas from “general” to “priority”, and these areas include private land. A high degree of uncertainty has been imposed on the economic impacts of these decisions on each of our operations. The FEIS must address the impacts of these decisions on private land or the FEIS must either drop private lands from designation as GRSG habitat, or at the very least, ensure that decisions to change the priority on private lands are coordinated with the private land owner.

Issue Number: PP-OR-GRSG-15-23-2
Organization: Three Valleys Ranch, LLC
Protestor: Steve Jay

Issue Excerpt Text: Protest Point: In priority areas, new road ROWs will be

prohibited, which will make development of private minerals difficult or impossible. Even minerals development on private land may be affected where we must access private land mining sites across Public Land in priority habitat. Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition, then these decisions will affect private lands. The effects of this are not disclosed in the EIS. These effects must be disclosed, or ROWs for deeded minerals and private land mining operations where access across Public Lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-26-17
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition, then these decisions will affect private lands. The effects of this are not disclosed in the EIS. ROWs should be authorized for deeded minerals and private land mining operations where access across Public Lands is necessary.

Issue Number: PP-OR-GRSG-15-26-21
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Throughout the project area, BLM has designated general and priority habitat on private lands. Not only are these lands out of the jurisdiction of any

BLM decision document, but by “designating” these private lands, BLM has sentenced private landowners to an unwilling partnership with U.S. Fish and Wildlife Service in the event the GRSG is listed. The document is clear that “New information may lead to changes in delineated GRSG habitat” and “modifications to GRSG habitat would be updated in the data inventory through plan maintenance.” If BLM can “designate” private land as habitat, no mechanism is available to private landowners to stop BLM

from changing the habitat designation from general habitat to priority habitat. Protest Point: Page V-13 states, “land use decisions for the RMPA/EIS will only apply to BLM-administered land and will not be applied to private, local, or state-owned lands”. Yet the FEIS states that BLM can simply make a decision to change the designation of areas from “general” to “priority,” and these areas include private land. This creates a high degree of uncertainty as to the economic effects of these decisions on private lands.

Summary:

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

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that prescribes management of private lands, or limits access to valid private mineral rights.

Response:

Section 302(b) of FLPMA provides 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 Oregon GRSG PRMPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Oregon GRSG PRMPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, FLPMA, and other statutes, regulations, and Executive Orders related to environmental quality. The Oregon GRSG PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that, among other things, prevent the unnecessary or undue degradation of public lands.

In Section 2.4.2, the Oregon GRSG PRMPA/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 recommend the withdrawal of more than 4 million acres from mineral entry. BLM’s proposed plan tailors the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-18, is based on the value of the habitat to the GRSG. Actions MLM-1 and MLM-2, page 2-32, describe additional requirements for potential mining activities within the planning area.

For the development of fluid minerals under existing leases, the Oregon GRSG PRMPA/FEIS details BLMs objective MLS-2 on page 2-17: “[w]here a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, minimize, and provide compensatory mitigation to reduce adverse impacts on GRSG to the extent compatible with lessees' rights to drill and produce fluid mineral resources.” Actions MLS-5 through MLS-10 detail the BLM’s proposed approach for managing existing fluid mineral leases in GRSG habitats, including unitization, mitigation, master development plans, conditions of approval, and other tools that the agency can use to minimize impacts while respecting valid, existing rights. Any 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 Oregon GRSG PRMPA/FEIS will not result in “unnecessary or undue degradation of public lands. Moreover, whether a particular project or other implementation-level action will cause unnecessary or undue degradation – and what steps BLM will take to prevent it – will be evaluated at the implementation stage.

FLPMA only gives BLM the authority to manage public lands and minerals. Though there are some designations that the BLM uses to describe resources on a landscape scale – in this case, Priority Habitat Management Areas, or General Habitat Management Areas – the planning decisions made apply only to BLM-administered lands and minerals and those designations do not carry with them or imply an assertion of jurisdiction outside of BLM-administered land and property.

The Oregon GRSG PRMPA/FEIS does not make implementation-level decision such as travel management or specific ROW authorizations as contemplated in the protest. The LUPA commits the BLM to doing travel management planning within 5 years of a RMP revision (Action TM-5, p.2-34), and also details the ROW avoidance and exclusion determinations as subject to valid existing rights (Action LR-7, page 2-29). Section 4.10.11 details the impacts of the proposed plan on ROWs within the GRSG PHMA & GHMA: “conservation management actions would increase mitigation requirements for land use authorizations, would result in more complex project designs, could exclude infrastructure placement in the most cost-effective locations, and would result in overall greater development costs. A corresponding effect could be a reduction in the number of authorization applications received for activities in PHMA (and GHMA for major ROWs) and longer, more complicated review periods for those that are proposed in PHMA. Implementing the GRSG habitat conservation management actions listed above would also place NSO stipulations on fluid mineral development in PHMA, which would further reduce the demand for new ROW development in those areas. Less restrictive management for new minor ROWs in GHMA and all other ROW types outside GRSG habitat would allow for more ROW development, leases, and permits in those areas, compared with PHMA. However, because the Proposed Plan would still require discretionary surface-disturbing land use actions to abide by the GRSG screening criteria and would incorporate RDFs, proposed applications would incur added costs and longer, more complex project review periods. Some applicants could seek less restrictive locations outside GRSG habitat if they were not able to cost effectively meet the screening criteria requirements.”

Valid Existing Rights

Issue Number: PP-OR-GRSG-15-02-3

Organization: PacifiCorp

Protestor: Sarah Wallace

Issue Excerpt Text: The RMP identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Pacific Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights.

Issue Number: PP-OR-GRSG-15-10-12

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The widespread travel restrictions (see generally Figure 2-46), discussed in Section 2.6 of the PRMPA/FEIS conflict with the rights of locators of claims, including rights of ingress and egress. By limiting travel to existing and designated routes, prohibiting upgrades of existing routes and creation of new routes, and imposing potentially substantial seasonal constraints will substantially interfere with and likely obstruct exploration and development of existing and future mining claims. Unless claims, both existing and future, are located near or adjacent to existing or designated routes, exploration and development of these claims could be impossible.

Issue Number: PP-OR-GRSG-15-10-13

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: Further, the inability to create new roads under Sections 2.6 Action LR-7 will make exploration and

development of existing or future claims that are not adjacent to existing roads impossible. BLM's assertion to respect VERs, does not ensure access to locatable mineral exploration and development (discussed in detail below). Again, the requirement to have a VER will stifle, if not completely thwart, mineral exploration or mineral development prior to discovery of a valuable mineral deposit.

These travel restrictions substantially impair the rights of claim holders to access their claims and are thus completely inconsistent with FLPMA § 1732(b).

Issue Number: PP-OR-GRSG-15-10-15

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The Term “ Valid Existing Right s” Throughout the PRMPA Is Misleading.

Issue Number: PP-OR-GRSG-15-10-16

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PRMPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, investment in legitimate exploration will cease upon the mere recommendation of an area for withdrawal whether the withdrawal ever takes place or

not. This is already happening based on the PRMPA.

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

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: BLM's proposal to authorize new roads only for administrative access, public safety or access to VERs (see PRMPA/FEIS at 2-29), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, BLM fails to maintain access and thus, conflict with § 22 of the General Mining Law.

Issue Number: PP-OR-GRSG-15-11-1

Organization: EP Minerals, LLC

Protestor: Chris Coley

Issue Excerpt Text: That stated, most- if not all- of the proposed PHMA and GHMA management area activity is covered in detail thought the previously-approved Celatom Mine Expansion Project. As will be discussed below, the PRMPA speaks to management activity in PHMA and GHMA as being "consistent," "allowable by law," and "subject to valid existing rights," among others. Because Protestant believes that BLM does not intend to affect adversely the carefully developed Celatom Mine Expansion Project, the PRMPA should be revised to expressly say so. There will be many points of uncertainty in the future about the intent and meaning of the PRMPA and how it will interact with other conservation agreements intended to

conserve GRSG and the sagebrush ecosystem. BLM should be explicit and detailed in communicating to those officials who will implement the PRMPA that the Celatom Mine Expansion Project, no less than the PRMPA, reflects top-priority BLM policy.

Issue Number: PP-OR-GRSG-15-26-16

Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: In priority areas, new road ROWs will be prohibited, which will make development of private minerals difficult or impossible. Even minerals development on private land may be affected where the miner must access private land mining sites across Public Land in priority habitat. These ROW restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing, and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress.

Issue Number: PP-OR-GRSG-15-26-

19Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: BLM did not evaluate the substantially adverse consequences of making it impossible to explore and develop pre-discovery unpatented mining claims and lands that are currently open to location on which there are no unpatented mining claims and lands on which there are claims without a discovery that would be severely restricted or withdrawn from mineral entry and location of mining claims. BLM has the option of recognizing the rights granted in §

22 of the General Mining Law and the § 22 statutory rights associated with access to and use and occupancy of pre-discovery claims and unclaimed lands open to mineral entry. The definition of “valid existing rights” in the FEIS can be different from the definition used by the minerals industry, as long as the FEIS definition is clear. The glossary on page 8-43 must delete the word “Documented”. The Glossary definition should read “Legal rights or interests in the land, such as the rights granted to citizens under § 22 of the General Mining Law that allow a person or entity to use said land for a specific purpose “ Mining claims that have not undergone validity tests must still be considered as having “valid existing rights” under the FEIS definition.

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

Organization: Eastern Oregon Mining Association

Protestor: Ken Alexander

Issue Excerpt Text: Valid existing rights have a specific meaning in the locatable minerals industry. Only after a claim is found to be valid as a result of a validity examination is it considered a valid existing

right. The Glossary on page 8-43 contains the word “Documented” when it refers to valid existing rights. The many references to valid existing rights in the FEIS are misleading because they create the false impression that the rights of mining claimants with claims in areas subject to restrictions, prohibitions, withdrawals and de facto withdrawals from future mineral entry would be respected and that claimants could continue to explore and develop their claims. Generally speaking, some (but not all) claims at operating mines may meet the claim validity examination test and be treated as having a valid existing right. However, claims that are being actively explored almost never qualify as valid claims with a valid existing right. Protest Point: BLM did not evaluate the substantially adverse consequences of making it impossible to explore and develop pre-discovery unpatented mining claims and lands that are currently open to location on which there are no unpatented mining claims and lands on which there are claims without a discovery that would be severely restricted or withdrawn from mineral entry and location of mining claims.

Summary:

The LUPA violates valid, existing rights by imposing disturbance caps restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

The LUPA violates section 22 of the General Mining Law and the Surface Resources Act by affecting rights of ingress and egress.

Response:

The Oregon GRSG PRMPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)). Indeed, on p. 1-22, the PRMPA/FEIS states that “the RMPA will recognize valid existing rights.”

This is further supported by proposed management actions which clarify that any actions would be subject to valid existing rights. For example, on p. 2-17, the Objective for Leasable Minerals states: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to

applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights...”

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, 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).

Additionally, the following direction would be applied regarding the disturbance cap: “Action SSS 3: If the 3% anthropogenic disturbance cap, not to exceed 1% increase per decade, is exceeded on lands (regardless of landownership) within GRSG Priority Habitat Management Areas in the affected Oregon PAC, then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the General Mining Law of 1872, as amended, valid existing rights, etc.) will be permitted by BLM within GRSG Priority Habitat Management Areas in the affected Oregon PAC until the disturbance has been reduced to less than the cap” (p. 2-18). The disturbance cap would only apply to BLM-administered surface and mineral estate.

Section 22 of the General Mining Law and the Surface Resources Act

The General Mining Act of 1872 (30 USC 22) states that:

“Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.”

Surfaces Resources Act of 1955 (30 USC 612) states that:

“(b) Reservations in the United States to use of the surface and surface resources Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not

to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto”

BLM H-3809-1 States:

“Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent unnecessary or undue degradation (FLPMA, 43 CFR 3809.415). Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.”

One protest suggested that operations and maintenance activities be considered exempt from more restrictive management actions that would be implemented in response to hard and soft adaptive management triggers. According to the comment response (Oregon GRSG PRMPA/FEIS, Appx V, p.18), “soft triggers represent an intermediate threshold indicating that management changes are needed at the project/implementation level to address habitat and population losses. Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation goals and objectives as set forth in the BLM plans. The adaptive management soft and hard triggers and land use planning responses to these triggers are described and analyzed fully in this EIS (Appendix D).”

One protest suggested that provisions for valid existing rights would not protect most mining claims, which would therefore chill investment, or otherwise have “serious adverse consequences” on mining claims that don’t have a discovery. Effects of the proposed actions on locatable minerals and economics are discussed further in Chapter 4, page 4-334 of the PRMPA/FEIS, as well as in the Solid Minerals section of this protest resolution report.

The BLM has provided further clarification on valid existing rights in the ROD.

Multiple Use Mandate

Issue Number: PP-OR-GRSG-15-10-11

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: BLM is required to strike an appropriate balance between potentially competing interests and land

management objectives. Moreover, on a planning area scale, this balance is to be achieved in the RMPA process and in the project permitting process on a project-specific scale. Therefore, the PRMPA/FEIS’ mineral withdrawals, prohibitions, and restrictions are contrary to explicit statutory

language in FLPMA, and § 22 of the General Mining Law.

Issue Number: PP-OR-GRSG-15-10-5

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry under Section 2.6: Action SSS-2, Action MLM-3; and the widespread travel and transportation restrictions under Section 2.6: Action TM-1, TM-2, TM-3, TM-4, TM-6, TM-8, TM-10 are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102(a)(12)

Issue Number: PP-OR-GRSG-15-13-2

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

Protestor: Not Specified

Issue Excerpt Text: Reducing grazing for the sole benefit of the GRSG is inconsistent with the multi-use mandate of NFMA,

Summary:

The PRMPA/FEIS violates the Taylor Grazing Act (TGA) and the multiple use provisions of FLPMA by:

- recommending the withdrawal of areas from mineral entry and restricting travel and transportation [FLPMA section 102(a)(12)]; and
- prioritizing wildlife over other uses (e.g., livestock grazing).

Response:

Section 302 of FLPMA provides that the Secretary shall manage the public lands under the principles of multiple use and sustained yield. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are 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 and the balanced grazing program outlined in the Taylor Grazing Act, as it prioritizes wildlife use over other productive uses.

Issue Number: PP-OR-GRSG-15-20-4

Organization: Dimari, Inc.

Protestor: K. Dick Coughren

Issue Excerpt Text: No mineralized areas should be considered or recommended for minerals withdrawal. BLM must eliminate the proposal to withdraw lands within key/core/priority habitat from mineral entry because withdrawal is not supported by any authority under the Endangered Species Act and should not be included as part of BLM's Preferred Alternative. The FEIS must address the effects of limiting and prohibiting access, and re-designating GRSG areas or the FEIS must remove unreasonable restrictions on access and mining and provide a public process and involvement before re-designating habitat.

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

All alternatives considered in the Oregon GRSG PRMPA/FEIS, as described in Vol. 1, p. 2-1 through 2-186, provide an appropriate balance of uses on the public lands and meet the Purpose and Need of the RMP amendment. 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 Oregon GRSG PRMPA/FEIS is consistent with FLPMA's multiple use mandate.

Consistency with State and Local Plans

Issue Number: PP-OR-GRSG-15-03-6
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: The BLM also specifically excluded the existing CCA/CCAAs from their alternative analysis, and by doing so failed in the requirements to create consistency across plans or identify inconsistencies and provide reasons why they cannot be remedied. 43 CFR § 1610.3-1(d)(1).

Issue Number: PP-OR-GRSG-15-03-7
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Although that description [the FEIS] specifically states that CCA/CCAAs are agreements for land management actions, BLM does not explain the critical difference between them and "land management actions" that would otherwise be included in the analysis of

alternatives. Regardless, the statute is inclusive of "State and local plans and laws," of which the executed and pending CCA/CCAAs qualify. The BLM fails to meet the consistency requirements of the EIS analysis by relegating CCAs and CCAAs to "reasonable foreseeable future action" and not including them within any of the analyzed action alternatives.

Issue Number: PP-OR-GRSG-15-08-2
Organization: Harney County Court
Protestor: Steven Grasty

Issue Excerpt Text: Notwithstanding the above language turning the consistency review process of FLPMA on its ear, the BLM is clearly stating it has not done the consistency review. It was only after the issuance of the RMPA/Final EIS, that the BLM elected to incorporate a consistency review process for the State plans. Unfortunately, and probably as a continuation of the BLM's flawed assumption that the BLM does not have to

be consistent with State and local plans to the maximum extent, the BLM does not address how the consistency review will be addressed in the final decision documents or how any changes resulting from the review are to be incorporated into the final documents.

Issue Number: PP-OR-GRSG-15-08-3
Organization: Harney County Court
Protestor: Harney County Court

Issue Excerpt Text: Further, even if there is some inconsistency, the Secretary is still required to act consistent to the “maximum extent.” In other words if there is some inconsistency in part with the State and/or local plan the Secretary must none-the-less adopt those parts of the State and/or local plan which are consistent. A general statement of potential inconsistency and Federal supremacy is not sufficient.

Issue Number: PP-OR-GRSG-15-10-23
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: The PRMPA/FEIS Does Not Incorporate the Oregon GRSG Conservation Assessment and Strategy (State Plan). The AEMA formally protests the PRMPA/FEIS because it fails to accommodate, account for, and incorporate the Oregon State Plan, known as the “Oregon GRSG Conservation Assessment and Strategy” (the “Oregon Plan”). The Oregon Plan has been in place since 2005 and was updated in 2011 and provides a strong conservation framework for the protection and enhancement of GRSG populations and its habitat, while being equally mindful to protect the sovereign resources interests of the State of Oregon. The Oregon Plan is more than sufficient to meet the purpose and need articulated in the

FEIS, and therefore, it should have been identified as the Preferred Alternative.

Section 202(c)(9) mandates that the Secretary coordinate the land use planning process with State and local governments and that the resulting federal land use management plans must be substantially consistent with State and local land management plans.

Issue Number: PP-OR-GRSG-15-10-24
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: The PRMP/FEIS is inconsistent with the Oregon Plan, and thus does not comply with FLPMA 202(c)(9). The failure of the PRMPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the PRMPA/FEIS. BLM must address the inconsistencies identified by the State and local governments with the PRMPA and provide appropriate public notice and comment on such changes.

Issue Number: PP-OR-GRSG-15-10-25
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: FLPMA 202(c)(9) requires the Secretary to develop a federal RMPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Oregon Plan is consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the PRMPA. Consequently, the Secretary must revise the PRMPA to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the

multiple-use and sustained yield FLPMA mandates.

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

Organization: Oregon Natural Desert Association

Protestor: Dan Morse

Issue Excerpt Text: Actions LR-2 and LR-3 combine to effectively create two tiers of priority habitat within Oregon. This is inconsistent with the State of Oregon's GRSG Action Plan and its Department of Fish and Wildlife's (ODFW) Core Area and Low-Density Habitat designations, and is arbitrary because it has no scientific basis.

Issue Number: PP-OR-GRSG-15-26-4

Summary:

The PRMPA/FEIS is inconsistent with the Oregon GRSG Conservation Assessment and Strategy (State Plan), and thus does not comply with FLPMA 202(c)(9). The BLM also did not address the inconsistencies with the state and local plans in the PRMPA/FEIS. The BLM specifically excluded the existing candidate conservation agreements/candidate conservation agreements with assurances (CCA/CCAAs) from their alternative analysis, and by doing so failed in the requirements to create consistency across 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 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 Oregon GRSG PRMPA/FEIS, including the Oregon GRSG Conservation Assessment and Strategy (State Plan) and related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Oregon GRSG PRMPA/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.9. Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: BLM's failure to coordinate with Baker County has resulted in the Proposed RMPA/FEIS not addressing or being consistent with the County's land use program (State land use Goals 3, 5, 7 and 9 and the Baker County Comprehensive Land Use Plan, or "County Plan"). A substantive error occurred when the BLM lands were not reviewed for consistency with the County Comprehensive Land Use Plan, or the accompanying Oregon Revised Statutes and Oregon Administrative Rules that govern land use in the State of Oregon.

Regarding consistency between plans across states, the sub-regional planning area boundaries were generally developed based on the identified threats to the GRSG and the Western Association of Fish and Wildlife Agencies (WAFWA) Management Zones. Seven WAFWA Management Zones across the west were delineated in the WAWFA 2006 GRSG Comprehensive Strategy. These large polygons were based on similar GRSG populations and sub-populations identified within seven floristic provinces. Because of varying localized GRSG habitat threats and conditions, varying cooperating agencies, and different state conservation strategies at the sub-regional level, the management direction presented in the various BLM plans are not fully consistent. The manner in which CCAs and CCAAs are addressed is presented in Chapter 2, Section 2.8.1, Management Common to All Alternatives. All of the alternatives, including the proposed plan, consider the development and implementation of CCAs and CCAAs.

Therefore, for the reasons stated above, the BLM satisfied the consistency requirements under FLPMA in preparation of the Oregon GRSG PRMPA/FEIS.

Range of Alternatives

Issue Number: PP-OR-GRSG-15-03-1
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: The Rural Communities Alternative (RCA) was not included in any of the BLM analysis and is not addressed in the Final EIS (FEIS). Not only does the RMPA/EIS fail to “rigorously explore and objectively evaluate” the RCA, it fails to “briefly discuss the reasons” why the RCA was eliminated from detailed analysis. 40 CFR 1502.14. As stated in a BLM comment response at Appendix V, Section 4.3, the alternative was not considered “primarily because they are contained within the existing range of alternatives” (it is unclear if “primarily” means it is the only reason, or if there are secondary, undisclosed reasons.) The response states that, “section 2.11, Alternatives Eliminated from Detailed Analysis, presents the alternatives that were reviewed but not analyzed in detail for the EIS. County alternative and other groups’ alternatives were considered but not analyzed in detail in the Draft EIS primarily because they are contained within the

existing range of alternatives.” However, the RCA is not identified in section 2.11 and a number of critical components of the RCA were not included in the analyzed alternatives of the FEIS.

Issue Number: PP-OR-GRSG-15-03-2
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: By failing to consider the RCA which is both reasonable and related to the purpose of the project, the BLM has not met their procedural obligations under NEPA

Issue Number: PP-OR-GRSG-15-03-3
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Following the submission of the RCA in the February, 2014 SWCD comments, BLM indicated at a meeting held in Bend, Oregon on April 10, 2014 that the pending deadlines for the RMPA/EIS would prevent them from analyzing the RCA. However, impending deadlines do not excuse the BLM from

adequately performing their mandatory duties under NEPA.

Issue Number: PP-OR-GRSG-15-03-4
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Rigorous exploration and objective evaluation of all reasonable alternatives is a mandatory duty imposed on BLM by NEPA. 40 CFR 1502.14.

Issue Number: PP-OR-GRSG-15-08-8
Organization: Harney County Court
Protestor: Steven Grasty

Issue Excerpt Text: While Alternative A is described as continuing current RMP management direction, as superseded by BLM policies, law and regulations (2-63), it is not a true no action alternative since it includes the actions policies set forth in the instructional manuals rather than the formally adopted resource management plans. The true no action alternative should reflect the land use plans absent the overlays of the IM 2012-43. The inclusion of a true no action alternative would have informed the public as to the foundation for the USFWS conclusions that in Oregon the BLM did not have adequate regulatory mechanisms in place or that additional conservation measures were necessary to avoid listing; and, in turn how well each of the action alternatives addressed that issue.

Further, by its own terms this instructional memorandum expired September 30, 2013 – or at the latest September 30, 2014 - and

Summary:

The Oregon GRSG PRMPA/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail alternatives relating to:

- the Rural Communities Alternative (RCA);

does not appear to have been reissued. Having expired on its own terms it is not a current policy that supersedes the existing RMPs and should not be reflected in the no change alternative.

Issue Number: PP-OR-GRSG-15-12-7
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 20 June and all livestock should be removed by 1 August with a goal of leaving at least 70 percent of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.”⁴⁸ 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, protect, and enhance GRSG habitats.

- a “true no action alternative” that should reflect the land use plans absent the overlays of the IM 2012-43 which would inform the public as to the foundation for the USFWS conclusions that LUPs did not have adequate regulatory mechanisms in place; and
- seasonal restrictions on livestock grazing, including those recommended by Dr. Clait Braun

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)) (Oregon GRSG PRMPA/FEIS, 2.11 Alternatives Eliminated from Detailed Analysis (p. 2-165)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM and cooperating agencies developed a range of reasonable alternatives that meet the purpose and need (Section 1.3 Purpose and Need, p. 1-7) and addresses resource issues identified during the scoping period. The Oregon GRSG PRMPA/FEIS analyzed six distinct alternatives in detail, as described in Section 2.4.1. 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.

Rural Communities Alternative

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, the Oregon GRSG PRMPA/FEIS acknowledges that during scoping, individuals and conservation groups submitted management direction recommendations for protecting and conserving GRSG and its habitat range-wide. The recommendations, in conjunction with resource allocation opportunities and internal sub-regional BLM input, were reviewed to develop BLM management direction for GRSG under Alternatives C and F (p. 2-65). Alternative C conservation measures focus on a passive restoration approach to PHMA and GHMA and provides minimal guidance for resources, other than livestock grazing, with most management allocations applying to both PHMA and GHMA. Whereas, Alternative F conservation measures focus on PHMA and GHMA and provides for greater restrictions on allowable uses with less resource management flexibility.

In addition, as stated in Appendix V - Public Comment Report (p. V-8), County and other groups' alternatives were considered but not analyzed in detail in the Draft EIS primarily because they are contained within the existing range of alternatives (see Section 2.8, Draft RMPA/EIS Alternatives).

“True” No Action Alternative

The Oregon GRSG PRMPA/FEIS clearly identifies that the No Action Alternative (Alternative A) represents the continuation of current management direction and proposes no new plan or management actions. Alternative A provides a baseline for comparing the other alternatives as

per CEQ guidance (p. 2-63) and provides the current management direction and prevailing conditions derived from the existing RMPs. Goals and objectives for resources and resource uses are based on the most recent RMP decisions, along with associated amendments, activity and implementation level plans, and other management decision documents. The records of decision for the identified plans being amended were approved prior to issuance of IM 2012-43 and therefore represent the current existing management direction that lacks the regulatory mechanisms being analyzed in the action alternatives.

Livestock Seasonal Restrictions

As identified in 2.8 Draft LUPA/EIS Alternatives (p. 2-59), each alternative (A through F) describes a different management approach for 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.

Alternative B consists of the GRSG conservation measures in the National Technical Team (NTT) report (NTT 2011) to develop GRSG management direction. Alternative C was developed based upon individuals and conservation groups submitted management recommendations for protecting and conserving GRSG and its habitat range-wide. Alternative D emphasizes balancing resources and resource use among competing human interests and land uses and conserves natural and cultural resource values. At the same time it sustains and enhances ecological integrity across the landscape, including plant, wildlife, and fish habitat. Alternative E is State of Oregon Plan which describes the ODFW's proposed management of GRSG. It also provides guidelines designed to maintain (at a minimum) or enhance the quality (the optimum) of current habitats, and achieve population and habitat objectives. Alternative F is individuals and conservation groups that submitted a mixture of conservation measures from the NTT report and public input.

Table 2-8 describes proposed spatial GRSG buffers that would affect livestock grazing. Buffers were developed based on peer reviewed literature. Implementing the spatial buffers would move towards desired habitat conditions and conserve, protect and enhance GRSG habitat.

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

Purpose and Need

Issue Number: PP-OR-GRSG-15-09-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, many aspects of the proposed RMP amendment do not conform to the best available science or the recommendations of BLM's own experts regarding necessary measures to protect GRSG habitats and prevent population declines, and therefore do not meet the Purpose and Need to

“conserve, enhance, and/or restore GRSG habitat.”

Issue Number: PP-OR-GRSG-15-13-1

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

Protestor: Not Identified

Issue Excerpt Text: As addressed in our comments, we reiterate that the purpose and need of the Proposed LUPA/FEIS is misleading and arbitrary and capricious in the context of livestock grazing and range

management. The purpose and need given to augment grazing regulation is “Loss of habitat components due to improper livestock, wild horse and burro, and large wildlife use.” FEIS at ES.2 (emphasis added). However, neither the U.S. Fish and Wildlife Service (FWS) nor the BLM have found that the existing regulatory

mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations. Therefore, imposing regulatory change on the grazing livestock industry is arbitrary and capricious and without factual basis.

Summary:

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

- the best available science has not been used,
- protecting GRSG habitat from the effects of livestock grazing is without factual basis because neither the U.S. Fish and Wildlife Service (FWS) nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations,

Response:

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

For detailed discussion related to the need to use the Best Available Science and use of the COT and NTT reports, please refer to the response to those specific protests (Best Available Science section of this report). The management actions developed and analyzed in the alternatives for this Proposed RMP Amendment included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

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

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed RMPA that address these impacts. The livestock grazing measures are supported by the NTT and COT reports, utilize the best available science, are within the range of alternatives, and meet the Purpose and Need for this PRMP Amendment.

The BLM applied the best information available when it developed the proposed RMP Revision and alternatives as they include recommendations from the NTT and COT reports. Therefore these management actions do meet the purpose and need and are within the range of alternatives that addresses such.

Public Comments

Issue Number: PP-OR-GRSG-15-02-

Organization: PacifiCorp

Protestor: Sarah Wallace

Issue Excerpt Text: Pacific Power submits the following protest on the Final Environmental Impact Statement (FEIS) for the Oregon GRSG (GRSG) Resource Management Plan (RMP) Amendment as it adversely affects Pacific Power's ability to serve its customers and did not adequately address comments that were submitted previously on the Draft Environmental Impact Statement (DEIS)IRMP on January 20, 2014 by MidAmerican Energy Holding Company, now Berkshire Hathaway Energy.

Issue Number: PP-OR-GRSG-15-06-5

Organization: Idaho Power

Protestor: Brett Dumas

Issue Excerpt Text: GRSG studies, impacts to GRSG, and assumed buffer zones are discussed in Chapter 4 (Environmental Consequences), specifically in Sections 4.3. (Methods and Assumptions). FEIS, pp. 4-7 to 4-93. Impact analyses are largely based on the Baseline Environmental Report

Summary:

The BLM did not adequately address comments that were received on the Oregon GRSG PRMPA/FEIS. The BLM introduced SFAs that were not included in the DEIS and did not allow the public the opportunity to comment on SFAs. It appears that the BLM did not take in to account information provided during the comment period regarding key studies.

Response:

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

40 CFR 1503.4: Response to Comments(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall

(Manier et al. 2013), NTT report (NTT 2-11), and COT report (USFWS 2013). In IPC's Draft Comments, a series of issues were pointed out that problems existed with several of the key studies used that should be taken into consideration when formulating management actions. See Exhibit A, Draft Comments (Feb. 20, 2014). These included: (1) observational studies or observations based on personal communication or unpublished data; (2) inadequate descriptions of control and treatments or pre-existing habitat conditions; (3) inferences to GRSG from studies conducted on other species; (4) retrospective studies that did not quantify related environmental conditions; (5) inappropriate or misuse of citations; (6) the use of results from cumulative impact studies of other energy development to make inferences about the effects of tall structures on GRSG; and (7) small sample sizes. (Utah Wildlife-in-Need Foundation 2010). None of these comments appeared to be taken into consideration, although they raise reasonable doubt concerning the conclusions the BLM derived from these studies.

respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
 - (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
 - (3) Supplement, improve, or modify its analyses.
 - (4) Make factual corrections.
 - (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.
- (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.
- (c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (40 CFR 1502.19). The entire document with a new cover sheet shall be filed as the final statement (40 CFR 1506.9).

Application:

The BLM received written comments by mail, e-mail, and submitted at the public meetings. Using a systematic approach of labeling, reviewing, and categorizing each comment, the BLM identified and formally responded to all substantive public comments (40 CFR 1503.4). Substantive comments were categorized based on the content of the comment. Each retained the link to the commenter. Subsequently, the BLM drafted statements summarizing the issues contained in each comment category. They then developed responses to each issue statement. As part of the response statement, the BLM indicated whether the comments resulted in a change to the PLUPA/EIS. The Comment Report in Appendix V contains the issue statements and summary response for each comment category.

Of the suggested studies and references put forth by the commenters, the BLM reviewed them to determine if they presented new information that would need to be incorporated into the Final EIS, were references already included in the Draft EIS, or if the references provided the same information as already used or described in the Draft EIS. The BLM determined that several of these references contained new or relevant information regarding GRSG and its habitat, and these were cited in Chapter 3 of the Final EIS. In some cases, the additional literature was essentially the same as existing sources and was not incorporated. Appendix V-26.

Although each comment letter was diligently considered, the comment analysis process involved determining whether a comment was substantive or non-substantive in nature. In performing this analysis, BLM relied on the CEQ's regulations to determine what constituted a substantive comment (40 CFR 1503.4).

It is important for the public to understand that BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process

ensures that every comment is considered at some point when preparing the Oregon GRSG PRMPA/FEIS.

Opinions, feelings, and preferences for one element or one alternative over another, and comments of a personal and/or philosophical nature, were all read, analyzed, and considered, but because such comments are not substantive in nature, BLM did not include them in the report nor respond to them. It is also important to note that while all comments were reviewed and considered, comments were not counted as “votes.” The NEPA public comment period is neither considered an election nor does it result in a representative sampling of the population. Therefore, public comments are not appropriate to be used as a democratic decision-making tool or as a scientific sampling mechanism.

Conclusion:

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

Cooperating, Joint, and Lead Agencies

Issue Number: PP-OR-GRSG-15-03-5

Organization: Budd-Falen Law Offices

Protestor: Karen Budd-Falen

Issue Excerpt Text: The RCA and the many issues addressed by the RCA were raised by SWCD (in their capacity as a cooperating agency) at each stage of the RMPA development process, although the previous drafts do not reflect an effort on the part of the BLM to address these issues. The unresponsiveness of the BLM to input of SWCD demonstrates a failure on the part

of BLM to “cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements.” 40 CFR § 1506.2(b). BLM did not make the NEPA process meaningful. The qualitative and substantive feedback and recommendations provided to the BLM by SWCD were dismissed and disregarded based on the perceived investment of time BLM would have to make to fully consider them.

Summary:

BLM is in violation of 40 CFR 1506.2(b) because BLM did not cooperate in a meaningful way with SWCD and dismissed their input.

Response:

The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. The BLM works with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)).

The Harney County SWCD signed a Memorandum of Understanding (MOU) with the BLM outlining the roles and responsibilities of being a cooperating agency. Chapter 6 of the FEIS describes the consultation and coordination that have occurred throughout the planning process, including meetings, opportunities for document review, and consideration of cooperating agency comments.

All cooperating agencies have been given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft Oregon LUPA/EIS, and identification of issues and data during scoping and during the draft Oregon LUPA/EIS public comment period.

The BLM properly involved all cooperating agencies in the development of the Oregon GRSG PRMPA/FEIS.

Supplemental EIS

Issue Number: PP-OR-GRSG-15-06-3

Organization: Idaho Power

Protestor: Brett Dumas

Issue Excerpt Text: The BLM’s management approach and habitat maps have changed significantly since the Draft RMPA/DEIS was issued with the addition of the SFAs. The U.S. Fish and Wildlife Service’s analysis and the insertion of the analysis and conclusions into the RMPA/FEIS is significant, new information that was unavailable to the public for review in the draft documents and thus necessitates supplementation prior to issuance of a Record of Decision, especially given the change in management of these areas from the draft documents reviewed by the public. Please see Section II.A.1 above with regard to Action SSS 2 for additional information.

Issue Number: PP-OR-GRSG-15-06-4

Organization: Idaho Power

Protestor: Brett Dumas

Issue Excerpt Text: In addition to the appearance of the new SFAs, the RMPA’s imposition of lek buffer distances based on the USGS Report 5 similarly requires a supplement NEPA analysis. The lek buffer distances identified in the USGS Report were incorporated into the RMPA late and not squarely analyzed under NEPA. IPC is not asserting that the BLM cannot change their mind and reshape a preferred alternative in an FEIS. However, when two new, key and significant pieces of information come late and are not subject to

fair comment, that renders public participation meaningless and is a fatal defect in the NEPA process.

Issue Number: PP-OR-GRSG-15-08-1

Organization: Harney County Court

Protestor: Steven Grasty

Issue Excerpt Text: In the current Proposed RMPA/Final EIS, the BLM replaced the Draft RMPA/EIS Alternative D with a new alternative and presented for the first time: (a) the concepts of Sagebrush Focal Areas (“SFA”) (p. 1-1 & 2-2); (b) new information on science on buffer distances for leks (p. 1-1, 1-4); (c) new mapping on habitat connectivity; (d) incorporated a revised planning criteria; (e) incorporated additional science reports developed since November 2013; (f) changed the purpose and need statements (pp. ES-5 & 6) and, (g) changed the preferred alternative to reflect the USFWS letter of October 27, 2014 entitled “GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes.” These substantial changes were made outside the public purview and without participation from the county cooperating agencies. As a result the new alternative, and information it was based on, were not the subject of public review and comment nor was it subject to review by the cooperating agencies.

Issue Number: PP-OR-GRSG-15-08-5

Organization: Harney County Court

Protestor: Steven Grasty

Issue Excerpt Text: While the CEQ regulations allow modification of alternatives between draft and final, such revisions are to be minor. Simply mixing and matching to create a new alternative from overly broad alternatives does not provide the public with the ability to knowingly comment on the new alternative. In this event the BLM must supplement the Draft prior to issuing a final ROD.

Issue Number: PP-OR-GRSG-15-08-6

Organization: Harney County Court

Protestor: Steven Grasty

Issue Excerpt Text: Further, CEQ encouraged agencies to publish a supplement for public review and comment if the agency determines that the purposes of NEPA would be furthered thereby. (40 CFR §1502.9(2)). By the numerous changes and modifications outside the public arena – and without input from the local Cooperating Agencies, the BLM arbitrarily and capriciously assumed that the public could have reasonably anticipated the changes and that NEPA would not be served in allowing further public input.

Issue Number: PP-OR-GRSG-15-10-1

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: An SEIS is required under NEPA: 1) if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, 40 CFR § 1502.9(c)(1)(i); or 2) if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, 40 CFR § 1502.9(c)(1)(ii). The new SFA habitat category dramatically reshaped the Proposed Federal Action

(“Proposed Action”) due to its management as: 1) recommended for withdrawal from the Mining Law of 1872, “subject to valid existing rights”; 2) no surface occupancy (NSO), without waiver, exception, or modification, for fluid mineral leasing; and 3) prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases. The debut of “SFAs” in the PRMPA/FEIS constitutes a substantial change in the proposed action, 40 CFR § 1502.9(c)(1)(i), and an SEIS is required. The management articulated in the Proposed Action as a result of the SFA concept has increased withdrawals from 20,453 acres proposed in the DRMPA/DEIS to 1,929,580 acres in the Proposed Action (see PRMPA/FEIS at 2-18). Consequently, this change constitutes “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 CFR § 1502.9(c)(1)(ii).

Issue Number: PP-OR-GRSG-15-10-3

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The Proposed Action in the PRMPA/FEIS could not have been fairly anticipated from reviewing the DEIS alternatives. Because BLM has “seriously dilute[d] the relevance of public comment” on the DEIS, *California v. Block*, 690 F.2d at 758, an SEIS is warranted. See also *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (new alternative proposing new locations of activities required an SEIS because it affected “environmental concerns in a different manner than previous analyses,” even though the general nature of the alternatives impact resembled those already analyzed). This fatal error is compounded through the heavy reliance on the Ashe Memo a significant and material

post-DEIS informational source- that formed key cornerstones to the Proposed Action. Accordingly, BLM’s justification that the PRMPA is a lawful “suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/Draft EIS” FEIS at 2-7, fails as a matter of law.

Issue Number: PP-OR-GRSG-15-15-3
Organization: Simplot Livestock Company
Protestor: Darcy Helmick

Issue Excerpt Text: Rationale for Protest: The State Director's decision is wrong for the following reasons:

1. GRSG Focal Areas are a completely new concept.
2. BSUs are a completely new concept included within the PLUPA

A supplemental EIS process is required to adequately address these significant changes within the document.

Issue Number: PP-OR-GRSG-15-27-1
Organization: Eastern Oregon Mining Association
Protestor: Ken Alexander

Issue Excerpt Text: The Oregon Sub-Region GRSG Management Plan Amendment (Proposed RMPA) and Final Environmental Impact Statement (FEIS) PLUPA Requires an SEIS Under NEPA Background: New material is found in the FEIS that was not in the DEIS, and thus, no comments could be made. (1) a new

Summary:

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

- Sagebrush Focal Areas, science on lek buffer distances, new mapping for habitat connectivity, changing of the Purpose and Need, changes in the Preferred Alternative, and additional recommendations for land use allocations, are all new elements introduced without public or cooperating agency review or comment.

requirement for locatable minerals operations concerning a restriction on sound near the perimeter of a lek and (2) “Sagebrush Focal Areas” (“SFAs”), which evidently came from an October 27, 2014 memorandum from Director Dan Ashe of the USFWS.

Issue Number: PP-OR-GRSG-15-30-2
Organization: BlueRibbon Coalition, Inc.
Protestor: Don Amador

Issue Excerpt Text: MATERIAL CHANGE TO THE DRAFT LUPA/DEIS REQUIRING SUPPLEMENTATION. The Proposed LUPA/FEIS include significant components that were not previously made available to the reviewing public and were thus not available for public comment. These changes are generally discussed in the FEIS at pages 2-1 through 2-5. Of particular concern is the eleventh hour inclusion of SFAs, Oregon PACs and entirely new “lek buffer” guidance. It is unclear what the site-specific effect of these last minute changes will be, but it appears these changes will fall beyond the “meaningful” threshold for new information that would require a supplemental NEPA document to allow the public meaningful comment on the new information. Individually or collectively, these constitute new information that is significant and relevant to environmental effects. In comparable circumstances a supplemental analysis has been performed, through either the agency's own recognition or upon the order of a reviewing court.

- The Proposed Action as a result of the SFA introduction increases acreage subject to withdrawal from mineral entry and development without proper consideration and analysis.
- The BLM created a new alternative from broadly defined alternatives and did not provide the public the ability to comment on this new alternative.
- BSUs are new concepts included within the PLUPA.

Response:

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 LUPA/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.

You must prepare a supplement to a draft or final LUPA/EIS if, after circulation of a draft or final LUPA/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 LUPA/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 LUPA/EIS).

If a new alternative is added after the circulation of a draft LUPA/EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft LUPA/EIS or is a minor variation of an alternative analyzed in the draft LUPA/EIS. In such circumstances, the new alternative may be added in the final LUPA/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 LUPA/EIS, document your conclusion in the final LUPA/EIS. If the new circumstances or information arise after publication of the final LUPA/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 LUP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft LUP/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 LUPA/EIS (40 CFR1502.9(c)). The proposed LUP (amendment)/final EIS should clearly show the changes from the draft LUPA//draft EIS.

NEPA requires agencies to prepare a supplement to the draft LUP/EIS: 1) if the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or 2) if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. A supplement is not necessary if a newly formulated alternative is a minor variation of one of the alternatives is qualitatively within the spectrum of alternatives analyzed in the Draft LUP/EIS.

The Proposed LUPA/FEIS 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 alternatives identified in the Draft RMP/Draft EIS and are qualitatively within the spectrum of alternatives analyzed.

As such, the BLM has determined that the Proposed LUPA/FEIS is a minor variation and that the impacts of the Proposed LUPA/FEIS 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 LUP/Final EIS are similar or identical to those described Draft LUP/Draft EIS.

Allocations for PHMA and GHMA — Allocations in the proposed plan/FEIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat. Allocations were changed between the Preferred Alternative and the Proposed Plan. Fewer acres would be closed to grazing under the Proposed Plan than the Preferred Alternative. BLM-administered lands containing PHMA and GHMA would be retained under the Proposed Plan, while only PHMA would be retained under the Preferred Alternative. In the Proposed Plan, all PHMA would be

stipulated NSO, while PHMA within 4 miles of leks would be stipulated NSO in the Preferred Alternative.

Sagebrush Focal Areas (SFAs) — These areas have been identified in the Proposed Plan based on recommendations in a USFWS memorandum, and are proposed to be managed as PHMA with the following additional management: recommended for withdrawal; NSO without waiver, exception, or modification for fluid mineral leasing; and prioritized for management and conservation actions including, but not limited to review of livestock grazing permits/leases. SFAs are a subset of PHMA, occurring in Harney, Lake and Malheur counties. These areas and the activities or actions proposed were previously analyzed in alternatives in the DLUPA/DEIS. For example, in Alternative E, all core habitat (same as PHMA) was analyzed as new ROW exclusion areas, closed to mineral leasing and recommended for withdrawal from locatable minerals. SFAs comprise about 40 percent of PHMA. Alternatives B, C, D, and F identified recommendation for withdrawal, NSO, and or prioritization for grazing and analyzed the impacts of those decisions (see DLUPA/DEIS Table 2-6). As such, the management of these areas as SFAs and the impacts of the associated management decisions was addressed in the DLUPA/DEIS and is qualitatively within the spectrum of alternatives analyzed.

BLM will manage these areas, totaling approximately 1,929,580 acres within the Oregon sub-region, as SFAs because of the importance of this habitat to the conservation of the species range-wide. Specifically, SFAs include characteristics such as existing high-quality sagebrush habitat; highest breeding densities; have been identified as essential to conservation and persistence of the species; represent a preponderance of current federal ownership and in some cases are adjacent to protected areas that serve to anchor the conservation importance of the landscape. In light of the landscape level approach to GRSG conservation provided through this planning effort and as defined by the characteristics set forth above, as well as additional considerations, including potential for impacts from climate change, fire and invasives, these areas have been identified as SFAs. DLUPA/DEIS Table 1-5 noted that among the issues brought forward for analysis was the use of best available science to designate PPH, PGH, and non-habitat categories and accurately monitor the impact of land uses on GRSG.

The USFWS in concert with the ODFW identified key areas as Priority Areas for Conservation (PACs) in the Conservation Objectives Team Report (USFWS 2013a). In Oregon, PACs overlap ODFW Core Areas (Hagen 2011) which overlap PPH identified in the DLUPA/DEIS. The ODFW grouped the PACs into 20 individual units and gave each unit a unique name. These areas are referred to as “Oregon PACs.” See Figure 2-3. Biologically significant units (BSUs) are a geographic unit of PHMA within GRSG habitat that contains relevant and important habitats. In Oregon, BSUs are synonymous with Oregon PACs, which are used in the calculation of the anthropogenic disturbance threshold and in the adaptive management habitat trigger.

Included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, protective buffer distances were analyzed in the DEIS. Specifically, Alternatives B, C, D, E, and F and the Proposed Plan identified and analyzed allocation restrictions, such as buffer distances for

livestock grazing, fluid mineral, ROW and recreation activities in various alternatives, including Alternatives B, D, and E. Alternative A (No Action) identified and analyzed fewer restrictions on development in GRSG habitat. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. In the DLUPA/DEIS, buffers were generally identified for ROWs, fluid minerals, and recreation activities.

The adaptive management strategy was fully developed between the DLUPA/DEIS and PRMPA/FEIS, including identification of specific hard and soft triggers for both habitat and population. The hard trigger section includes a list of actions the BLM will immediately take upon identifying that a hard trigger has been reached; these immediate actions were analyzed within the range of the alternatives in the DLUPA/DEIS. Chapter 2 of the DUPLA/DEIS 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 PHMA, and PHMA would be managed as restricted to ROW authorizations in the Proposed Plan, the response would be to manage it as excluded from ROW authorizations. This exclusion was analyzed under Alternatives B, C, E, and F in the Draft EIS.

The monitoring framework was further refined in the PRMPA/FEIS, and further clarification as to how disturbance cap calculations would be measured were developed for the PRMPA/FEIS. During the public comment period, BLM received comments on how monitoring and disturbance cap calculations would occur at implementation. The DLUPA/DEIS outlined the major components of the monitoring strategy, as well as provided a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced Appendix G in the PRMPA/FEIS. The Oregon sub-region planning team developed a detailed explanation of the disturbance cap calculation methodology in Appendix I in the PRMPA/FEIS.

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. The DLUPA/DEIS Preferred Alternative analyzed if a proposed project that would disturb GRSG or its habitat is in PHMA with evidence of GRSG use, the mitigation goal would be no net loss with a net gain (DEIS Chapter 2, page 24). In the DLUPA/DEIS Alternative E, the mitigation goal for GRSG habitat outside of Core Areas would be no net loss with a net benefit. All of the action alternatives provided management actions to meet the landscape-scale goal. The overarching goal in the DLUPA/DEIS, and as stated in the Purpose and Need, was to maintain and/or increase abundance and distribution of GRSG on BLM-administered lands by conserving, enhancing, or restoring the sagebrush ecosystem upon which populations depend, in cooperation with other conservation partners (Alternatives B and D).

A quantitative cumulative effects analysis for GRSG was included in the PRMPA/FEIS. This analysis was completed to analyze the effects of management actions on GRSG at a biologically significant scale which as determined to be at the WAFWA Management Zone. The DLUPA/DEIS, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the FEIS at the WAFWA Management Zone.

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

Best Available Science

Issue Number: PP-OR-GRSG-15-14-1
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 sage-GRSG habitat. Allowing land uses and development to within minimum distances of GRSG breeding areas would have a greater negative impact on GRSG than if the agency required larger lek buffers. Managing to the minimum not only increases the risk of harming GRSG, but also maximizes the potential for land uses and development activities to inadvertently breach buffer boundaries. Offering exceptions to minimum buffers would almost certainly affect GRSG populations that depend on those leks and associated nesting and brood-rearing habitat. Requiring larger lek buffers would both conserve GRSG and preserve agency options for managing for GRSG and other values in breeding, nesting and brood-rearing habitat.

Issue Number: PP-OR-GRSG-15-15-2
Organization: Simplot Livestock
Protestor: Darcy Helmick

Issue Excerpt Text: The document does not recognize work done by Hausleitner et al 2005. The document continues to base objectives on landscape residual heights as opposed to nest-bush post-hatch residual height recordings.

Issue Number: PP-OR-GRSG-15-09-17

Organization: WildEarth Guardians, et al.
Protestor: Eric Molvar

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

Issue Number: PP-OR-GRSG-15-24-4
Organization: Oregon Natural Desert Association
Protestor: Dan Morse

Issue Excerpt Text: NTT Report is unequivocal in its direction that priority GRSG habitat areas should be designated as exclusion areas for new ROW permits (NTT 201 I). The RMPA fails to adhere to BLM's own clear recommendations based on the best available science by failing to exclude PHMA from new, large-scale transmission ROWs. This failure would leave open the possibility of development and disturbance in all PHMA outside of SFA, creating the possibility of significant areas of habitat fragmentation, habitat loss, loss of genetic connectivity, and avoidance of areas by GRSG.

Issue Number: PP-OR-GRSG-15-26-8
Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: DQA challenge A.10.5: The four-mile NSO does not have a sound scientific basis. The NTT Report portrays the cited studies as documenting the negative effects of oil and natural gas development with a great deal of scientific certainty but fails to mention any of the methodological issues with these studies (detailed in this Challenge), or the fact that none reported a population-level decline in GRSG (rather than a localized effect on rates of male lek attendance near the disturbance).

Issue Number: PP-OR-GRSG-15-26-9
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: There are no data to show that the minimum levels recommended by the NTT Report occur for extended periods of time in any of the GRSG core areas, including the Pinedale Planning Area... A scientifically defensible, alternative approach to studying the effects of noise on GRSG is outlined in laboratory and field experiments by Ramey, Brown, and Black goat (2011). Those approaches,

Summary:

The Oregon GRSG PRMPA/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 Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Oregon GRSG PRMPA/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, noise restrictions, ROW allocations, and habitat objectives.

Response:

Before beginning the Oregon GRSG PRMPA/FEIS, data were collected from best available sources, and adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level were identified.

when combined with sound modeling conducted by certified engineering firms, based on local environmental and land use conditions and professional standards, would provide a comprehensive approach to identifying and effectively mitigating noise that would adversely affect GRSG populations. These would be based upon demonstrated cause and effect mechanisms of different noise characteristics (i.e., frequencies, duration, and sound pressure levels). Until such appropriate studies and modeling are done, BLM does not have sound data to support the noise restrictions in the NTT Report. The document must emphasize importance of timing for habitat objective, as well as identify rational monitoring location for objectives, particularly relative to the ecological potential and existing vegetation types within the monitoring locations. Areas should not be held to habitat objectives at all times of the year or in locations to which the ecological potential does not exist or the existing veg types are such that the habitat objective cannot be achieved. Document should use the best available science.

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 Rangewide 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 and Oregon Department of Fish and Wildlife, and relied on numerous data sources and scientific literature to support its description of baseline conditions (Oregon GRSG PRMPA/FEIS, Chapter 3) and impact analysis (Oregon GRSG PRMPA/FEIS, Chapters 4 and 5). A list of information and literature used is contained in Chapter 7.

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Oregon GRSG PRMPA/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (Oregon GRSG PRMPA/FEIS, Chapters 4 and 5). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the Oregon GRSG PRMPA/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. Spatial and temporal buffers are used to prevent disturbance to GRSG are displayed in Table 2-8 of the Oregon GRSG PRMPA/FEIS (p. 2-15). Buffers were developed based on peer-reviewed literature (Connelly et al. 2000; Holloran 2005; Doherty et al. 2011; Johnson et al. 2011; Stevens 2012; Wisdom et al. 2011; Patricelli et al. 2012; Coates et al. 2013). Additional information and references used to establish lek buffers are found in Hagen (2011), ODFW (2012), and Manier et al. (2014). As such, the BLM has considered the best available science when determining lek buffers and has incorporated a mechanism to consider additional science as it becomes available.

The habitat objectives for GRSG in Tables 2-4 of the Oregon GRSG PRMPA/FEIS summarize the characteristics that research has found represent the seasonal habitat needs for GRSG (p. 2-40). The studies relied on for those objectives are displayed in the table. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in this subregion. Thus, the habitat objectives provide the broad vegetative conditions to be obtained across the landscape that indicate the seasonal habitats used by GRSG. As such, the BLM has considered the best available science when determining habitat objectives.

The Oregon GRSG PRMPA/FEIS includes noise controls as Required Design Features on p. C-8. These noise controls are drawn from p. 64 of the NTT report. While the PRMP/FEIS may allow for large-scale ROWs in a narrow set of circumstances, impacts to GRSG would be minimized per Action SSS-13 and subject to the “net conservation gain” mitigation standard for GRSG.

Public Participation

Issue Number: PP-OR-GRSG-15-02-2

Organization: PacifiCorp

Protestor: Sarah Wallace

Issue Excerpt Text: The Oregon RMP states: “for energy development, the proposed plan relies on protective stipulations and buffers, in SFA's the NSO stipulations would be applied without

exception, which would protect important GRSG habitat from degradation.” The BLM has already established Priority Areas of Conservation (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public

an opportunity to comment as required by NEPA.

Issue Number: PP-OR-GRSG-15-02-4

Organization: PacifiCorp

Protestor: Sarah Wallace

Issue Excerpt Text: The Oregon RMP states, “the BLM will apply the lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for GRSG- A Review (Open File Report 2014-1239) (Manier et al. 2014).” This report was not included in the DEIS released on November 2013 and was not released to the public until November 2014.

Issue Number: PP-OR-GRSG-15-06-1

Organization: PacifiCorp

Protestor: Brett Dumas

Issue Excerpt Text: The FEIS imposes a new GRSG habitat management category referred to as “Sagebrush Focal Areas” (“SFAs”) [FEIS, pp. 2-1, 2-2, 2-18], the inclusion of which has not been adequately evaluated, and thus should not be adopted. The SFA concept is based on an October 27, 2014 memorandum from U.S. Fish and Wildlife Director Dan Ashe, entitled “Greater GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes.” (“Ashe Memo”). FEIS, p. 2-36 Based on the date of issuance, the Ashe Memo was not available nor was it considered in the DEIS comment period. FEIS, pp. 1-24, 1-25 (DEIS published in Federal Register on Nov. 26, 2013 initiating 90-day comment period). It is unclear whether the Ashe Memo was peer-reviewed or otherwise scrutinized, but in any event there is no dispute that the BLM adopted the recommendations in the Ashe Memo without any input from the public.

Issue Number: PP-OR-GRSG-15-06-2

Organization: PacifiCorp

Protestor: Brett Dumas

Issue Excerpt Text: What limited information is available about the SFAs indicates that the BLM relied on broad over-generalized conclusions. The BLM cites no site-specific analysis to justify the drastic limitations being proposed for the SFAs. Further, the public has not been afforded an opportunity to provide any input on the SFAs.

Issue Number: PP-OR-GRSG-15-08-4

Organization: Harney County Court

Protestor: Steven Grasty

Issue Excerpt Text: In this case, the BLM substantially changed the proposed action between its draft and final EIS without affording public comment - nor involving the Oregon counties who served as cooperating agencies. While the BLM implies that the modifications were in part the result of cooperating agency coordination, in fact, the cooperating agencies were excluded from the revised drafting of the proposed action between draft and final.

The BLM asserts that notwithstanding the absence of public review or involvement of the cooperating agencies, it has the discretion to modify a preferred alternative between draft and final. It acknowledges however that it can only do so if (a) the final alternative’s actions were within the range of alternatives analyzed in the Draft EIS; and, (b) the reasons for mixing and matching are explained. (p. 2-8). Unfortunately, the BLM has greatly expanded and departed from the Congressional intent.

Issue Number: PP-OR-GRSG-15-10-2

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: When a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory “meaningfulness” of this NEPA process. See 40 CFR § 1506.6(b) (Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and BLM who may be interested or affected” by proposed actions of the United States.”) See also, Council on Environmental Quality, A Citizen’s Guide to the NEPA at 26 (“Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.”).

Issue Number: PP-OR-GRSG-15-16-2

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Oregon LUPA states, “the BLM will apply the lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for GRSG- A Review (Open File Report 2014-1239) (Manier et al. 2014).” This report was not included in the DEIS released on November 2013 and was not released to the public until November 2014. The agencies determined this change was within the scope of the EIS and would not require further public comment. Buffer distances will result in impacts to utility operations and maintenance and the use of the USGS report is a significant change from the DEIS which has not be properly analyzed. In accordance with NEPA, this change from the DEIS should be analyzed and open for public review and comments.

Issue Number: PP-OR-GRSG-15-26-1

Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: The management articulated in the Proposed Action as a result of the SFA concept has increased withdrawals from 20,453 acres proposed in the Draft RMPA/DEIS to 1,929,580 acres in the Proposed Action (see Proposed RMPA/FEIS at 2-18). Consequently, this change constitutes “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 CFR § 1502.9(c)(1)(ii). Courts have required an SEIS when the proposed action differs “dramatically” from the alternatives described in the DEIS so that meaningful public comment on the proposed action was precluded, see *California v. Block*, 690 F.2d 753, 758 (9th Cir. 1982). When a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory “meaningfulness” of this NEPA process. See 40 CFR § 1506.6(b) (Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and BLM who may be interested or affected” by proposed actions of the United States.”) See also, Council on Environmental Quality, A Citizen’s Guide to the NEPA at 26 (“Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.”).

Issue Number: PP-OR-GRSG-15-26-2

Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: Inaccessible documents: The document was difficult to download. Also, printed copies were not available in a timely manner, making review impossible for the many Baker County citizens who do not have access to computers. A Supplemental EIS must be

made available in paper and CD format during the entire comment period, and if necessary, during the 30-day Protest period.

Issue Number: PP-OR-GRSG-15-26-3
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Low quality maps: A lack of high-quality maps supports our request for a Supplemental EIS or, at the least, an extended protest period--once quality maps are made available. The maps

included in the FEIS are very poor resolution and are lacking details such as names of roads and waterways. The Board went to great lengths to acquire better maps from BLM, but to no avail. Without quality maps, including the number and location of lek sites, the Board has no way of determining the full impacts of the proposed action. All maps must be at a scale that would render them useful (i.e., 2.5" or greater to the mile), and maps should be available to the public free of charge.

Summary:

1. The BLM did not give the public the ability to comment on key new information in the NEPA process.
2. Sagebrush Focal Areas, science on lek buffer distances, new mapping for habitat connectivity, changing of the Purpose and Need, changes in the Preferred Alternative, and additional recommendations for land use allocations, are all new elements introduced without public or cooperating agency review or comment.
3. The Proposed Action as a result of the SFA introduction increases acreage subject to withdrawal from mineral entry and development without proper consideration and analysis.
4. The BLM created a new alternative from broadly defined alternatives and did not provide the public the ability to comment on this new alternative.
5. BSUs are new concepts included within the PLUPA.

Response:

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

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

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)).

The BLM has determined that the Proposed RMPA is a minor variation and that the impacts of the Proposed RMPA 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 Draft RMP/Draft EIS.

Allocations for PHMA and GHMA — Allocations in the proposed plan/FEIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat. Allocations were changed between the Preferred Alternative and the Proposed Plan. Fewer acres would be closed to grazing under the Proposed Plan than the Preferred Alternative. BLM-administered lands containing PHMA and GHMA would be retained under the Proposed Plan, while only PHMA would be retained under the Preferred Alternative. In the Proposed Plan, all PHMA would be stipulated NSO, while PHMA within 4 miles of leks would be stipulated NSO in the Preferred Alternative.

Sagebrush Focal Areas (SFAs) — These areas have been identified in the Proposed Plan based on recommendations in a USFWS memorandum, and are proposed to be managed as PHMA with the following additional management: recommended for withdrawal; NSO without waiver, exception, or modification for fluid mineral leasing; and prioritized for management and conservation actions including, but not limited to review of livestock grazing permits/leases. SFAs are a subset of PHMA, occurring in Harney, Lake and Malheur counties. These areas and

the activities or actions proposed were previously analyzed in alternatives in the DEIS. For example, in Alternative E, all ore habitat (same as PHMA) was analyzed as new ROW exclusion areas, closed to mineral leasing and recommended for withdrawal from locatable minerals. SFAs comprise about 40 percent of PHMA. Alternatives B, C, E, and F identified recommendation for withdrawal, NSO, and or prioritization for grazing and analyzed the impacts of those decisions (see DEIS Table 2-6). As such, the management of these areas as SFAs and the impacts of the associated management decisions was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed.

The USFWS in concert with the respective state wildlife management agencies identified key areas as Priority Areas for Conservation (PACs) in the Conservation Objectives Team Report (USFWS 2013a). In Oregon, PACs overlap ODFW Core Areas (Hagen 2011) which overlap PPH identified in the DEIS. The ODFW grouped the PACs into 20 individual units and gave each unit a unique name. These areas are referred to as “Oregon PACs.” See Figure 2-3. Biologically significant units (BSUs) are a geographic unit of PHMA within GRSG habitat that contains relevant and important habitats. In Oregon, BSUs are synonymous with Oregon PACs, which are used in the calculation of the anthropogenic disturbance threshold and in the adaptive management habitat trigger.

Included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, protective buffer distances were analyzed in the DEIS. Specifically, Alternatives B, C, D, E, and F and the Proposed Plan identified and analyzed allocation restrictions, such as buffer distances for livestock grazing, fluid mineral, ROW and recreation activities in various alternatives, including Alternatives B, D, and E. Alternative A (No Action) identified and analyzed fewer restrictions on development in GRSG habitat. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. In the DEIS, buffers were generally identified for ROWs, fluid minerals, and recreation activities.

The adaptive management strategy was fully developed between the DEIS and FEIS, including identification of specific hard and soft triggers for both habitat and population. The hard trigger section includes a list of actions the BLM will immediately take upon identifying that a hard trigger has been reached; these immediate actions were analyzed within the range of the alternatives in the DEIS. Chapter 2 of the DEIS 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 PHMA, and PHMA would be managed as restricted to ROW authorizations in the Proposed Plan, the response would be to manage it as excluded from ROW authorizations. This exclusion was analyzed under Alternatives B, C, E, and F in the Draft EIS.

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 DEIS outlined the major components of the monitoring strategy, as well as provided a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced Appendix G in the FEIS. The Oregon sub-region planning team developed a detailed explanation of the disturbance cap calculation methodology in Appendix I in the FEIS.

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. The DEIS Preferred Alternative analyzed if a proposed project that would disturb GRSG or its habitat is in PHMA with evidence of GRSG use, the mitigation goal would be no net loss with a net gain (DEIS Chapter 2, page 24). In the DEIS Alternative E, the mitigation goal for GRSG habitat outside of Core Areas would be no net loss with a net benefit. All of the action alternatives provided management actions to meet the landscape-scale goal. The overarching goal in the DEIS, and as stated in the Purpose and Need, was to maintain and/or increase abundance and distribution of GRSG on BLM-administered lands by conserving, enhancing, or restoring the sagebrush ecosystem upon which populations depend, in cooperation with other conservation partners (Alternatives B and D).

A quantitative cumulative effects analysis for GRSG was included in the FEIS. This analysis was completed to analyze the effects of management actions on GRSG at a biologically significant scale which as determined to be at the WAFWA Management Zone. The DEIS, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the FEIS at the WAFWA Management Zone.

The Proposed LUP Amendments include 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 LUP Amendments/Draft EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed LUP Amendments is a minor variation of the Preferred Alternative and that the impacts of the Proposed LUP Amendments 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 LUP Amendments/Final EIS are similar or identical to those described Draft LUP Amendments/Draft EIS.

Public involvement in the resource management planning process conforms to the requirements of the National Environmental Policy Act and associated implementing regulations.

There were changes made between the Draft and the Final EIS, and as required, the agencies provided a full text FEIS. The content of the Proposed RMPA and FEIS is substantially the same as the corresponding draft.

The agencies have fulfilled the requirements of providing opportunity for public involvement during the planning and NEPA process.

Impacts - GRSG

Issue Number: PP-OR-GRSG-15-08-11

Protestor: Steven Grasty

Organization: Harney County Court

Issue Excerpt Text: The environmental reviews discuss the impact of the various alternatives and the management measures on a variety of issues, however, there is no discussion as to whether these measures will have a quantifiable and measurable impact on the GRSG.

Issue Number: PP-OR-GRSG-15-08-12
Organization: Harney County Court
Protestor: Steven Grasty

Issue Excerpt Text: In the face of this uncertainty, there needs to be a more fuller exploration and quantification of the impact of the measures on the species and their effectiveness. In the absence of this analysis, whether the purpose and need for this project has been achieved, cannot be assessed by the public or the federal agencies.

Issue Number: PP-OR-GRSG-15-09-20
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-OR-GRSG-15-12-12
Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to analyze whether the GRSG populations in the planning area will be conserved,

Summary:

The Oregon GRSG PRMPA/FEIS fails to adequately analyze impacts to GRSG because:

enhanced, or recovered by the management actions within the plan. For example, there is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or whether the Oregon GRSG population can actually withstand the 3 percent disturbance cap and exemptions proposed in the plan. PRMPA/FEIS at 2-19–19. There is also no finding GRSG will be conserved or recovered while subject to continued status quo grazing under the delayed implementation scheme for grazing provisions that is inherent in the plan.

Issue Number: PP-OR-GRSG-15-26-13
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Predation is major issue that has yet to be addressed by BLM. Extensive documentation exists demonstrating that ravens, coyotes, and badgers are eminent threats to GRSG survival (See Coates and Delehanty 2010; Lockyer et al 2013.) BLM claims in the FEIS (V-74) that addressing predation is “outside the scope of this amendment.”

Protest point: The BLM Land Use Planning Handbook makes clear that the BLM is expected to cooperate with state wildlife agencies to achieve goals for wildlife populations on BLM- managed land by “working in close coordination with state wildlife agencies,” “drawing on state comprehensive wildlife strategies,” and identifying actions “needed to achieve desired population and habitat conditions while maintaining a thriving ecological balance and multiple- use relationships.” The FEIS/RMPS utterly fails to address any of these requirements.

- its fails to analyze whether GRSG populations will be conserved, enhanced, or recovered with current grazing or delayed implementation scheme for grazing. There is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions.
- the analysis of the alternatives do not address whether the proposed management will have a quantifiable and measurable impact on GRSG.

Response:

A land planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives in 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 G of the Oregon GRSG PRMPA/FEIS.

Chapter 4 of the Oregon GRSG PRMPA/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. Conservation measures from the NTT Report are included in alternative B, which, focus primarily on GRSG PPH and includes percent disturbance caps as a conservation measure to maintain or increase GRSG populations. The data for this report were gathered from BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making

The BLM addresses the impacts predators can have on GRSG in Chapter 4 of the PLUPA/Final EIS. The BLM have authority to manage the habitat and have provided analysis to describe how the numerous management actions across the range of alternatives could affect the habitat and indirectly the effects of predation. Altering the sagebrush habitat of the GRSG can create an influx of predators into an area and lead to a population decline. Roads, fences, power lines, trails and other disturbances may make access easier for potential predators and increase risks to the species. The Proposed LUPA/Final EIS calls for measures that will substantially reduce disturbances in the bird’s habitat, thus reducing predation risk (See page 4-61). The PLUPA/Final EIS also calls for careful monitoring of grazing allotments within GRSG nesting habitat to ensure suitable grass and forb cover is reserved so we can minimize the associated predation risks.

Impacts - Socioeconomics

Issue Number: PP-OR-GRSG-15-10-7

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The proposed withdrawals are designed to obstruct use of public lands from mineral exploration and development (and many other land uses). The proposed withdrawals will harm

members of the AEMA and other claim holders with claims in the SFAs (and other withdrawal areas), as well as government units within the State of Oregon which benefit from and rely upon tax revenues and economic activity associated with mineral activities.

Issue Number: PP-OR-GRSG-15-21-3
Organization: Auburn Ranch and High Bar Mining, LLC
Protestor: Philip Wirth

Issue Excerpt Text: Minerals production is important for our rural counties. The withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. But there is much more to these economic impacts which is not discussed in the FEIS. Companies mining now, and those looking to invest in minerals properties within designated GRSG habitat areas, could be adversely affected. Companies considering mining in general habitat areas, run the risk of having their areas re-designated as priority habitat, with a ledger entry by BLM, (i.e. “New information may lead to changes in delineated GRSG habitat”). If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition on new ROWs, then these decisions will affect both private lands and public lands where mining is proposed. Protest: The FEIS was changed on page 3-121 to include Central Oregon, but Eastern Oregon, where our mining operations are ongoing, and where there is potential for new operations, was left out. The impact from locatable minerals management in the Proposed RMPA, in areas such as access, ROWs and changes to GRSG habitat designations, will adversely affect our Eastern Oregon properties, and these effects should be a part of the FEIS. These effects must be disclosed, or problems such as limited access, prohibition on ROWs for deeded minerals and private land mining operations where access across public lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-22-5
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: Minerals production is important for our rural counties. As stated above, the withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. But there is much more to these economic impacts which is not discussed in the FEIS. Companies mining now, and those looking to invest in minerals properties within designated GRSG habitat areas, could be adversely affected. Companies considering mining in general habitat areas, run the risk of having their areas re-designated as priority habitat, with a ledger entry by BLM, (i.e. “New information may lead to changes in delineated GRSG habitat”). If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition on new ROWs, then these decisions will affect both private lands and public lands where mining is proposed. Protest: The FEIS was changed on page 3-121 to include Central Oregon, but Eastern Oregon, where our mining operations are ongoing, and where there is potential for new operations, was left out. The impact from locatable minerals management in the Proposed RMPA, in areas such as access, ROWs and changes to GRSG habitat designations, will adversely affect our Eastern Oregon properties, and these effects should be a part of the FEIS. These effects must be disclosed, or problems such as limited access, prohibition on ROWs for deeded minerals and private land mining operations where access across public lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-23-4

Organization: Three Valleys Ranch, LLC
Protestor: Steve Jay

Issue Excerpt Text: Background: Minerals production is important for our rural counties. The withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. But there is much more to these economic impacts which is not discussed in the FEIS. Companies mining now, and those looking to invest in minerals properties within designated GRSG habitat areas, could be adversely affected. Companies considering mining in general habitat areas, run the risk of having their areas redesignated as priority habitat, with a ledger entry by BLM, (i.e. “New information may lead to changes in delineated GRSG habitat”). If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition on new ROWs, then these decisions will affect both private lands and public lands where mining is proposed. Protest: The FEIS was changed on page 3-121 to include Central Oregon, but Eastern Oregon, where our mining operations are ongoing, and where there is potential for new operations, was left out. The impact from locatable minerals management in the Proposed RMPA, in areas such as access, ROWs and changes to GRSG habitat designations, will adversely affect our Eastern Oregon properties, and these effects should be a part of the FEIS. These effects must be disclosed, or problems such as limited access, prohibition on ROWs for deeded minerals and private land mining operations where access across public lands is necessary, should be authorized.

Issue Number: PP-OR-GRSG-15-26-28
Organization: Baker County Commission

Protestor: William Harvey

Issue Excerpt Text: The FEIS calls for “no livestock congregation due to trailing or turnout on occupied or 'pending' leks” during March 1- June 30 (see pp. 2-25; Appendix C, p. C-8, Livestock Grazing #2). Neither the DEIS nor the FEIS took into account the economic impacts of these restrictions.

Issue Number: PP-OR-GRSG-15-27-4
Organization: Eastern Oregon Mining Association
Protestor: Ken Alexander

Issue Excerpt Text: Minerals production is important for our rural counties. As stated above, the withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. But there is much more to these economic impacts which is not discussed in the FEIS. Companies mining now, and those looking to invest in minerals properties within designated GRSG habitat areas, could be adversely affected. Companies considering mining in general habitat areas, run the risk of having their areas re-designated as priority habitat, with a ledger entry by BLM, (i.e. “New information may lead to changes in delineated GRSG habitat”). If ROWs are required to conduct the mining operation, but will be denied by BLM because of the prohibition on new ROWs, then these decisions will affect both private lands and public lands where mining is proposed. Protest Point: The FEIS was changed on page 3-121 to include Central Oregon, but Eastern Oregon, where many mining operations are ongoing, and where there is potential for new operations, was left out. The impact from locatable minerals

management in the Proposed RMPA, in areas such as access, ROWs and changes to GRSG habitat designations, will adversely affect our members, and these effects should be a part of the FEIS. These effects must be disclosed,

Issue Number: PP-OR-GRSG-15-28-2

Organization: Individual

Protestor: Jan Alexander

Issue Excerpt Text: Even in ROW avoidance areas, ROW applications would be subject to additional requirements, such as resource surveys and reports, construction and reclamation engineering, special design features, rerouting, and long-term monitoring. These requirements could result in restrictions on location, delay availability, limit access, and certainly increase the cost. These requirements carry heavy financial burdens for private individuals, such as myself. In addition, although allowed “a reasonable degree of access” to their lands, private landowners (and I assume private minerals owners) would be required to take (meaning establish) an alternate route NOT through a PPMA to access their property. Where no such route is “feasible,” mitigation would be “considered” to either 1) keep the disturbance under 3% or, 2) return the disturbance levels to those occurring at the time the application was received. Protest Point: These requirements will have serious economic effects which were not disclosed in the EIS. These effects must be disclosed, or ROWs for deeded minerals and access across Public Lands in priority habitat, should be authorized.

Summary:

The Oregon GRSG PRMPA/FEIS violated NEPA by failing to:

- 1) consider and analyze the effects to socioeconomic from proposed withdrawals to members of the American Exploration & Mining Association (AEMA) and other claim holders in SFAs;
- 2) include eastern Oregon in the planning area and analyze the effects to mining in the area;

Issue Number: PP-OR-GRSG-15-29-1

Organization: Oregon Rural Electric Cooperative Association

Protestor: Ted Case

Issue Excerpt Text: ORECA noted in its comments on the DEIS that BLM had failed to address the impacts of burying power lines. The FEIS does address those costs, but uses incorrect data. “Burial of distribution lines would be considerably less, averaging under \$500 per mile in rural areas. (p.4-345). The FEIS references a report by the US Energy Information Administration called “Today in Energy” (EIA 2012). The EIA 2012 report, however, states that the cost of burying distribution lines in rural areas exceeds hundreds of thousands of dollars per mile. The FEIS's reference to \$500 per mile is incorrect by an order of magnitude. It is more likely \$500,000 per mile. The FEIS also references a WECC 2010 report for estimating the cost of burying transmission lines. The WECC report, however, provides an estimate of installing overhead transmission lines at approximately \$1,000,000 to \$1,500,000 per mile. A report by the Edison Electric Institute (EEL), the trade association for investor-owned utilities, concluded that underground costs for new transmission are in the range of \$1.4 million. [Out of Sight, Out of Mind, January 2013] To fully understand the magnitude of the costs of burying power lines in rural communities, the BLM must strike their erroneous data and use accurate information from widely-accepted industry experts.

- 3) consider socioeconomic impacts to grazing resulting from timing restrictions; and
- 4) consider and use the best available information to assess economic impacts to ROW holders.

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 Oregon GRSG PRMPA/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 site specific actions, the scope of the analysis was conducted at a regional, programmatic level.

The Oregon GRSG PRMPA/FEIS outlines the planning area and identifies it in Chapter 1, Figure 1-2 on page 1-9 and includes eastern Oregon. The existing Baker RMP (1989) would be amended by the proposed RMPA (Chapter 1, page 1-6). The John Day RMP and Two Rivers RMP were listed in the December 9, 2011 Notice of Availability that was published in the Federal Register. These RMPs have been removed from the Oregon Sub-region planning effort because there are no occupied GRSG habitats on BLM-administered lands in these planning areas. (Chapter 1, page 1-7) The PRMPA/FEIS discusses and analyzes the socioeconomic impacts of the PLUPA/FEIS Chapter 4, Section 4.20, pages 4-324 to 4-357.

Appendix R of the FEIS contains the Economic Impact Analysis Methodology which describes the methods and data that underlie the economic impact modeling analysis. Input-output models such as the Impact Analysis for Planning (IMPLAN) model, an economic impact analysis model, provide a quantitative representation of the production relationships between individual economic sectors. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region’s economy. The model provides estimates of how a specific economic activity translates into jobs and income for the region. Thus, the economic modeling analysis uses information about physical production quantities and the prices and costs for goods and services. The inputs required to run the IMPLAN model are described in the narrative and tables in Appendix R. The resulting estimates from the IMPLAN model, by alternative, are in Chapter 4, Environmental Consequences,

Section 4.19, Social and Economic Impacts (Including Environmental Justice). (Volume IV, Appendix R).

The best available information was used to quantify the potential economic impact of alternatives. The IMPLAN model, which captures the indirect and induced economic effects of management alternatives in the Socioeconomic Study Area, was used to estimate impacts on outcomes, employment, and earnings in the study area. This was the case of the analysis of impacts through livestock grazing, wind energy development, and geothermal development. (Volume II, Section 4.20.1, Methods and Assumptions, page 4-325)

By using IMPLAN the Oregon Sub-Regional GRSG Amendment/FEIS complied with NEPA by considering social science activities, effects to the local economy from mining development in the planning area and used the best available references and resources to support conclusions. References for the Oregon GRSG PRMPA/FEIS are found in Volume IV, Chapter 7, References.

The impacts of proposed withdrawals areas result of the Proposed RMPA is analyzed in Chapter 4. Impacts on development of locatable minerals as a result of the proposed plan would be the same as those identified for Alternative B on page 4-252. Section 4.20, Social and Economic Impacts, beginning on page 4-324, analyzes the potential economic impacts of the proposed plan and takes into account the proposed withdrawals.

In Chapter 4, page 4-345 of the PRMPA/FEIS, an error was made in the following statement, “New construction costs of underground transmission lines can be between 4 and 14 times higher (PSC 2011), depending on terrain, although burial of existing lines would be a fraction of the cost of new lines. Burial of distribution lines would be considerably less, averaging under \$500 per mile in rural areas (EIA 2012).” The average of \$500 per mile should have been \$500,000 per mile, however the cost reference is used for all the alternatives and therefore still provides an informative, comparative analysis.

In Chapter 4, Section 4.20.3, beginning on page 4-327, the PRMPA/FEIS discusses the economic impacts from management actions affecting grazing allotments and grazing operators; costs to operators resulting from the need for changes to grazing infrastructure, Impacts from management actions affecting lands and realty is in this same section beginning on page 4-343.

The BLM complied with NEPA’s requirement to consider and analyze the environmental consequences/impacts to socioeconomics use the best available information in development of the Oregon GRSG PRMPA/FEIS.

Impacts - Recreation

Issue Number: PP-OR-GRSG-15-30-1
Organization: BlueRibbon Coalition, Inc.
Protestor: Don Amador

Issue Excerpt Text: FAILURE TO DISCLOSE SITE-SPECIFIC EFFECTS OR

IMPACTS. The Proposed LUPA/FEIS does not make clear whether any existing route will be closed to continuing (or future) motorized use. Instead, the documents present a confusing mix of concepts, some new, such as “sagebrush focal areas,”

“anthropogenic disturbance” thresholds within “biologically significant units,” and general prescriptions for lek buffers. It seems likely that some of these concepts will be applied, or already have been determined, to restrict or prohibit continuing

motorized use of some route(s). The documents fail to disclose such determinations or the future prospect of such determinations.

Summary:

The Oregon GRSG PRMPA/FEIS violated NEPA by failing to disclose and analyze which routes would be closed to future motorized use in the planning area.

Response:

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

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

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

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

In Chapter 3, Section 3.10, page 3-97 to 3-104 of the PRMPA/FEIS, current travel management is discussed for the planning area. OHV use on BLM-administered and National Forest System lands in the population area is managed as either limited to designated roads and trails, or as open to cross-country travel. The BLM has not completed travel management planning efforts in the PRMPA/FEIS planning area, however is conducting on the ground route inventories, according to the BLM Handbook 8342. While route inventories on BLM-administered lands are incomplete, the number of acres managed as open, closed, or limited for OHVs in each RMP within the planning area is shown in Table 3-37, OHV Designations (Chapter 3, page 3-102). Routine maintenance is conducted on all roads, routes, and trails as needed. Before the GRSG effort began, various travel management projects were underway as part of district-wide RMPs and travel management inventory projects. The Lakeview BLM District has acquired road and

attribute data with the intent of completing a travel management plan within the Lakeview RMP. The Vale BLM District has approximately 85 percent of the required data for travel management planning, and will complete an interim travel management plan at the conclusion of the GRSG EIS. The Burns and Prineville BLM Districts are engaged in route inventory projects that will result in travel management plans in the near future. (Chapter 3, Section 3.10)

As discussed in Chapter 4, Section 4.10, of the PRMPA/FEIS, under the Proposed Plan implementation-level travel and transportation planning would be completed after completion of this LUPA in accordance with National BLM Travel Management guidance. Route designations would be made specific to travel management needs and seasonal habitat needs of GRSG. Routes considered unnecessary would be closed while other routes could be designated as limited with seasonal or daily access restrictions. Travel systems would be managed with an emphasis on improving the sustainability of the travel network in a comprehensive manner to minimize impacts on GRSG and maintain motorist safety. Travel management decisions that benefit GRSG may impact other resources and uses, such as limiting travel to existing routes, or seasonally restricting use near lek sites during GRSG breeding season. As such, impacts of travel management actions on other resources and uses are discussed in the respective resource sections of Chapter 4. Impacts from travel management planning do occur and are considered a part of implementation level planning that will be completed during site-specific analysis. (Chapter 4, Section 4.10).

The BLM complied with NEPA's requirement to consider and analyze the environmental consequences/impacts travel management and use the best available resource information in the Oregon GRSG PRMPA/FEIS planning effort. BLM will analyze additional site specific travel planning for the planning area upon approval of the FEIS.

Impacts - Grazing

Issue Number: PP-OR-GRSG-15-09-21

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Issue Number: PP-OR-GRSG-15-12-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to disclose the benefits of removing livestock grazing from the entirety of GRSG habitat, including all of the priority and important

habitats. Alternative C would remove grazing from all GRSG habitat. However, there is no true analysis of the beneficial impacts of removing livestock grazing from GRSG habitat entirely, or seasonally, in accordance with the best available science.

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

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to examine the role of grazing in causing and contributing to establishment and spread of invasive plant species and perpetuating altered fire cycles in sagebrush steppe.

According to a recent WAFWA report on invasive plants in GRSG habitat, livestock grazing has played a significant role in the establishment and spread of cheatgrass and other non- native species,⁶⁰ confirming other studies that came to the same conclusions (e.g. Reisner et al. 2013). Although the PRMPA/DEIS has language meant to “increase the resistance of Greater GRSG habitat to invasive annual grasses and the resiliency of GRSG habitat

to disturbances such as fire . . . to reduce habitat loss and fragmentation,” Goal VG 1, the lack of actions that address the role of grazing in this process reflects the failure by BLM to consider an important aspect of the problem. It is well documented in the scientific literature that grazing depletes soil crusts, allowing establishment of invasive annual grasses like cheatgrass, which lead to more frequent fires.

Summary:

BLM failed to adequately analyze the impacts of grazing and the spread of cheatgrass and failed to disclose the benefits of removing livestock from the landscape.

Response:

1. The Oregon GRSG PRMPA/FEIS fully assesses and discloses the environmental consequences of livestock grazing on upland plant communities and invasive plant species, including cheatgrass, in Section 4.3 GRSG and GRSG Habitat (p. 4-7 to 4-93), Section 4.4 Vegetation (p. 4-94 to 4-122), Section 4.7 Wildland Fire Management (p. 4-161 to 4-179) and Section 4.8 Livestock Grazing and Range Management (p. 4-179 to 4-204).

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Oregon GRSG PRMPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The BLM has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

2. The EIS planning team employed the BLM planning process to develop a reasonable range of alternatives; for a description of this process, see section 2.4, Alternative Development Process for the Oregon GRSG PRMPA/FEIS. Section 2.9 provides a summary comparison of alternatives carried forward for analysis. The Oregon GRSG PRMPA/FEIS considered a full range of alternatives for grazing levels as detailed by this summary; Alternative C considered the removal of livestock.

The Oregon GRSG PRMPA/FEIS fully analyzed and disclosed the environmental consequences of the removal of livestock from the landscape. This analysis can be found in the Vegetation Section 4.4.6 Alternative C – Impacts from Livestock Grazing and Range Management (p. 4-111 to 4-114), Wildland Fire Management Section 4.7.6 Alternative C – Impacts from Livestock Grazing and Range Management (p. 4-170 to 4-171), Livestock Grazing and Range Management Section 4.8.6 Alternative C (p. 4-193 to 4-194), Soil Resources Section 4.17.6 Alternative C – Impacts from Livestock Grazing and Range Management (p. 4-291).

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Oregon GRSG PRMPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The BLM has adequately analyzed and disclosed the effects of livestock grazing, including the removal of livestock grazing on the environment.

Impacts - Other

Issue Number: PP-OR-GRSG-15-16-1
Organization: Avian Power Line Interaction Committee
Protestor: Mike Best

Issue Excerpt Text: The impacts of removing guy wires have not been analyzed in the LUPA FEIS. Guy wires cannot simply be removed without altering the stability, integrity, and safety of the line. The removal of guy wires would result in the need for taller, more robust structures, potential replacement of structures, and potentially more surface disturbance.

Issue Number: PP-OR-GRSG-15-19-1

Organization: Chase Mining & Minerals
Protestor: Chuck Chase

Issue Excerpt Text: Many of the roads that will be closed or restricted lead to old pioneer grave sites and other sites that are part of our cultural heritage. These roads were in existence before 1976, and therefore fall under RS2477, and are under the Counties jurisdiction and control. In priority areas, new road ROWs will be prohibited, which will make development of minerals and other projects difficult or impossible. Ranchers will not be allowed to turn out cattle during the spring, and will have nowhere to go with their cattle. Off road vehicles will be prohibited from using public

lands. The effects of these restrictions and prohibitions are not disclosed in the EIS. These effects must be disclosed in a supplement to the EIS.

Issue Number: PP-OR-GRSG-15-26-15
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Balcer County commented that throughout the draft document, under “Impacts from Locatable Minerals Management”, the document stated, “exploration has been minimal and potential is unknown across all alternatives”. The County suggested that this statement be replaced by the following: “exploration in the central and eastern portion of the project area has been ongoing, and potential for new mining operations exists across all alternatives”. Protest Point: The FEIS was changed on page 3-121 to include Central Oregon, but Eastern Oregon, where mining is ongoing, and the potential for new mining operations is high, was left out. The impact from locatable minerals management and the effects on mining in Eastern Oregon should be a part of the FEIS.

Issue Number: PP-OR-GRSG-15-26-20
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: BLM decides that a proposed locatable minerals operation in priority habitat “may cause undue degradation,” an Environmental Impact Statement, rather than the ordinary Environmental Assessment (EA), would be in order. EAs are ordinarily funded by BLM, whereas an EIS would be funded by the miner. Payment of costs for an EIS is found in 43 CFR 3800.5 (Fees), which states: “...(a) An applicant for a plan of operations under this part must pay a processing fee (processing fee must cover the cost of the BLM's review of the Plan of Operations,

preparation of the EIS or review of an EIS prepared by an outside consultant) on a case-by-case basis as described in §3000.11 of this chapter whenever BLM determines that consideration of the plan of operations requires the preparation of an Environmental Impact Statement”. Protest Point: The fact that miners would be responsible for funding their own mining operation EISs in priority habitat would severely curtail locatable minerals development, since EISs are very expensive documents to produce. Small-scale operators, with small footprints on the land, who practice ongoing reclamation, could not possibly fund EISs. Even large-scale corporations would be hesitant to spend the many hundreds of thousands of dollars it would take to produce an EIS, and then risk funding the cost of defending the document in court if challenged. There is no analysis of the economic impacts on the locatable minerals industry in Eastern Oregon from operator-funded NEPA analysis in priority habitat.

Issue Number: PP-OR-GRSG-15-26-22
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Apparently in response to our comments, the FEIS was changed (pp. 3-121) to disclose that there is “locatable mineral exploration and production occurring” in Central Oregon. However, Eastern Oregon was left out of the FEIS. In Eastern Oregon, many mining operations are ongoing, and there is potential for new operations. The impact from locatable minerals management in the Proposed RMPA (from changes such as access, ROWs, and changes to GRSG habitat designations) will adversely affect our citizens. If the problems we have cited are not addressed, the effects of the Proposed Action should be disclosed in the FEIS.

Summary:

The Oregon GRSG PRMPA/FEIS violated NEPA by failing:

- 1) disclose and analyze which routes would be closed to future motorized use in the planning area;
- 2) to analyze impacts from removal of guy wires;
- 3) to analyze economic impacts on the locatable minerals industry in Eastern Oregon from operator-funded NEPA analysis in priority habitat; and
- 4) to include Eastern Oregon in the planning area.

Response:

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

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

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

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

While the discussion in the Oregon GRSG PRMPA/FEIS is general in character, impacts regarding the specific treatment of guy wires with respect to a specific proposed action would be analyzed at the time action is proposed.

In Chapter 3, Section 3.10, page 3-97 to 3-104 of the Oregon GRSG PRMPA/FEIS, current travel management is discussed for the planning area. The BLM has not completed travel management planning efforts in the Oregon GRSG PRMPA/FEIS planning area, however is conducting on the ground route inventories, according to the BLM Handbook 8342. While route inventories on BLM-administered lands are incomplete, the number of acres managed as open, closed, or limited for OHVs in each RMP within the planning area is shown in Table 3-37, OHV Designations (Chapter 3, page 3-102). Routine maintenance is conducted on all roads, routes, and trails as needed. Prior to the Oregon GRSG PRMPA/FEIS, various travel management

projects were underway as part of district-wide RMPs and travel management inventory projects. The Lakeview BLM District has acquired road and attribute data with the intent of completing a travel management plan within the Lakeview RMP. The Vale BLM District has approximately 85 percent of the required data for travel management planning, and will complete an interim travel management plan at the conclusion of the Oregon GRSG PRMPA/FEIS. The Burns and Prineville BLM Districts are engaged in route inventory projects that will result in travel management plans in the near future. (Chapter 3, Section 3.10).

As discussed in Chapter 4, Section 4.10, of the Oregon GRSG PRMPA/FEIS, under the Proposed Plan implementation-level travel and transportation planning would be completed after completion of this Oregon GRSG PRMPA/FEIS in accordance with National BLM Travel Management guidance. Route designations would be made specific to travel management needs and seasonal habitat needs of GRSG. Routes considered unnecessary would be closed while other routes could be designated as limited with seasonal or daily access restrictions. Travel systems would be managed with an emphasis on improving the sustainability of the travel network in a comprehensive manner to minimize impacts on GRSG and maintain motorist safety. Travel management decisions that benefit GRSG may impact other resources and uses, such as limiting travel to existing routes, or seasonally restricting use near lek sites during GRSG breeding season. As such, impacts of travel management actions on other resources and uses are discussed in the respective resource sections of Chapter 4. Impacts from travel management planning do occur and are considered a part of implementation level planning that will be completed during site-specific analysis. (Chapter 4, Section 4.10).

The Oregon GRSG PRMPA/FEIS outlines the planning area and identifies it in Chapter 1, Figure 1-2 on page 1-9 and includes eastern Oregon. The John Day RMP and Two Rivers RMP were listed in the December 9, 2011 Notice of Availability that was published in the Federal Register. These RMPs have been removed from the Oregon Sub-region planning effort because there are no occupied GRSG habitats on BLM-administered lands in these planning areas. (Chapter 1, page 1-7) The Oregon GRSG PRMPA/FEIS discusses and analyzes the socioeconomics of the planning area in Volume II, Chapter 4, Section 4.20, pages 4-324 to 4-357. The Oregon GRSG PRMPA/FEIS describes the methods, tools, and assumptions used to evaluate the socioeconomic resources for the planning area.

The Oregon GRSG PRMPA/FEIS states in the Social and Economic Impacts section that “mining is a relatively minor contributor to the economy of the Study Area, with approximately 0.9 percent of total private employment” (p. 4-335). Additional discussion in this section addresses the economic effects of potential withdrawal decisions in a general context.

Appendix R of the Oregon GRSG PRMPA/FEIS contains the Economic Impact Analysis Methodology which describes the methods and data that underlie the economic impact modeling analysis. Input-output models such as the Impact Analysis for Planning (IMPLAN) model, an economic impact analysis model, provide a quantitative representation of the production relationships between individual economic sectors. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region’s economy. The model provides estimates of how a specific economic activity translates into jobs and income for the region. Thus, the economic modeling analysis uses information about physical production quantities and the prices and costs for goods and services. The inputs

required to run the IMPLAN model are described in the narrative and tables in Appendix R. The resulting estimates from the IMPLAN model, by alternative, are in Chapter 4, Environmental Consequences, Section 4.19, Social and Economic Impacts (Including Environmental Justice). (Volume IV, Appendix R).

The best available information was used to quantify the potential economic impact of alternatives. The IMPLAN model, which captures the indirect and induced economic effects of management alternatives in the Socioeconomic Study Area, was used to estimate impacts on outcomes, employment, and earnings in the study area. This was the case of the analysis of impacts through livestock grazing, wind energy development, and geothermal development. (Volume II, Section 4.20.1, Methods and Assumptions, page 4-325)

By using IMPLAN the Oregon GRSG PRMPA/FEIS complied with NEPA by considering social science activities, effects to the local economy from mining development in the planning area and used the best available references and resources to support conclusions. References for the Oregon GRSG PRMPA/FEISS are found in Volume IV, Chapter 7, References.

GRSG - General

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

Organization 1: The Wilderness Society

Protestor: Nada Culver

Organization 2: National Audubon Society

Protestor: Brian Rutledge

Issue Excerpt Text: BLM recognizes that wind and solar energy development in PHMA is inappropriate and threatens the survival of GRSG by generally excluding wind and solar development from PHMA across the GRSG plans. This is consistent with the approach to oil and gas development taken in the plans, where oil and gas development can only proceed in PHMA subject to a no surface occupancy stipulation. Nonetheless, the Proposed Amendment generally excludes wind and solar development from PHMA, but makes an exception for PHMA outside of sagebrush focal areas in Lake, Harney and Malheur counties. Proposed Amendment at p. 2-28. This exception is inappropriate, is inconsistent with the rest of the BLM GRSG plans, and is a significant threat to habitat.

Issue Number: PP-OR-GRSG-15-09-16

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The National Technical Team (2011) recommended that Priority Habitats be designated as exclusion areas for wind power development, and that General Habitats be avoidance areas for wind power development. BLM proposes that wind and solar energy development be “excluded” from Priority Habitats (including SFAs), except non-SFA PHMA lands in Harney, Lake, and Malheur Counties (which contain some of the most important GRSG populations), where these types of projects would be managed for the discretionary “avoidance.” FEIS at 2-28. This is unacceptable and an arbitrary and capricious management divide across political boundaries, with no basis in the science.

Issue Number: PP-OR-GRSG-15-09-18

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM proposes to manage PHMAs as right-of-way “avoidance areas” instead of exclusion areas (FEIS at 2-28), as recommended by their own experts. This prevents certainty of implementation

by allowing new rights-of-way to be granted on a case-by-case basis. “Exclusion” is the appropriate level of management for these habitats based on the best available science, and this level of protection should apply to Winter Concentration Areas as well. In addition, the Boardman to Hemingway transmission project would be entirely exempted from GRSG protections (FEIS at 2-28). Designated utility corridors would also be exempted from most protections. FEIS at 2-30. This is arbitrary and capricious and an abuse of discretion. This project is not yet approved and therefore there are no valid existing rights associated with them. Due to the long planning lead-times of large transmission projects like these, Boardman to Hemingway is likely to be the only large-scale transmission line to be approved during the lifetime of the GRSG plan amendments; to exempt it from compliance with GRSG protections essentially renders protections for this scale of project in the proposed plan amendments null and void. Instead, new overhead lines should be excluded from PHMA and SFA, regardless of prior corridor designations, to render GRSG protections scientifically adequate and certain of implementation.

Issue Number: PP-OR-GRSG-15-09-22

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM has not made a showing through its collective NEPA analyses that GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that responses of GRSG to human-induced habitat alternations are remarkably

similar across the species’ range. Given that the science does not differ significantly across the species’ range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

Issue Number: PP-OR-GRSG-15-12-10

Organization: Western Watersheds Project

Protestor: Western Watersheds Project

Issue Excerpt Text: We protest the lack of consistent management parameters across the range of the species, or adequate explanations for variation where that exists. The management specified in the PRMPA/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-OR-GRSG-15-14-2

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: Most proposed final GRSG plans developed as part of the National GRSG Planning Strategy would exclude renewable energy development in priority habitat, including the Billings-Pompeys Pillar, HiLine, Idaho/SW Montana, Lewistown, Miles City, North Dakota, and South Dakota. Plans in Wyoming would only allow renewable energy development in priority habitat where it can be sufficiently demonstrated that the development activity would not result in declines of GRSG populations (e.g., Wyoming FEIS: 2-29, Table 2-4, Action 36). The proposed plan in the Utah FEIS would prohibit wind energy development within 5 miles of occupied leks in priority habitat (Utah FEIS: 2-21, MA-GRSG-5: C- Buffers; see also 2-33, MA-LAR-12, Wind Energy Development). Recommended improvement: manage priority habitat as exclusion areas for solar and wind energy development, consistent with the best available science and other federal sage- GRSG plans.

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

Summary:

Protests identified inconsistencies among the various Sub-regional GRSG Land use plan amendments and revisions. In the Oregon GRSG PRMPA/FEIS, there are inconsistencies regarding how wind energy projects are mitigated and how disturbances from various industries are calculated. Other differences include 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.

Additionally, the exemption provided to the Boardman to Hemingway Transmission line is arbitrary and inconsistent with management proscriptions in other Sub-regional Plans.

Response:

9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SO 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 Oregon plan should avoid doing the same); prohibit renewable energy development, and require managers to avoid granting other rights-of-way in winter habitat (SO 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 (SO 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 (SO FEIS: 48).

Issue Number: PP-OR-GRSG-15-24-2
Organization: Oregon Natural Desert Association
Protestor: Dan Morse

Issue Excerpt Text: The RMPA also is inconsistent with the recommendations for management of PHMA contained in the majority of other state plans where priority habitat is withdrawn from new entry or managed as an exclusion area.

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. Regarding the exemptions for certain Transmission Line Right-of-ways in this plan, these ROW applications are currently being analyzed and similar provisions and stipulations are proposed there as are required under this plan. Page 2-28 of the FEIS states:

“Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) are designated as avoidance areas for high voltage (100kV or greater) transmission lines and major pipelines (24” or greater in diameter) ROWs (including permits and leases). All authorizations in these areas, other than the excepted projects, must comply with the conservation measures outlined in this Proposed Plan, including the RDFs (Appendix C) and screening criteria (see SSS 13) of this document. The BLM is currently processing an application for Boardman to Hemingway Transmission Line Project and the NEPA review for this project is well underway. The BLM is analyzing GRSG mitigation measures through the Boardman to Hemingway NEPA review process. “

GRSG - Density and Disturbance Cap

Issue Number: PP-OR-GRSG-15-03-9
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Although the BLM retained use of the 3% number, they are using a very different method (digitizing development footprints, buffering linear features like roads, powerlines, etc.) and a much finer scale. See Final RMPA/EIS, Appendix I. By deviating from the methods and scale of the Knick paper, the 3% cap proposed by BLM is wholly unsupported by science.

Issue Number: PP-OR-GRSG-15-12-9

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to prescribe consistent management among types of disturbance. The plan does not include grazing as a surface disturbance subject to the disturbance cap, which applies only to anthropogenic disturbance. PRMPA/FEIS at 2-18; See WWP comments at 29. Grazing is not considered an anthropogenic disturbance. PRMPA/FEIS at 8-6–8-7. This exclusion of grazing in the disturbance cap, and elsewhere, disregards the surface-disturbing impacts of livestock concentration areas such as surround 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.

Issue Number: PP-OR-GRSG-15-26-7
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: DQA challenge
A.10.3: The 3% anthropogenic disturbance threshold is based upon biased opinion and

selective citation of information rather than data. The “professional judgment” calling for a 3% anthropogenic disturbance threshold in priority habitats does not address specific threats, nor take into account the type of disturbance, local conditions, or mitigations that are to be used. This professional judgment is not the result of an independent quantitative assessment but is the opinion of a small number of collaborators who share a similar point of view.

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.
- Not based on the best available science.

Response:

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011,p. 8):
“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed RMPA 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 LUPA/EIS.

Regarding the lack of disturbance mapping in the Oregon GRSG PRMPA/FEIS: Appendix I discusses the methods and data used in calculating disturbance in the BSUs. Per the appendix, the calculation of disturbance within a given BSU will occur during the analysis and planning of site-specific project proposals.

While the density and disturbance caps may not directly address the effects of livestock grazing, they do 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 the Oregon GRSG PRMPA/FEIS.

Mapping and calculations associated with the density and disturbance caps will occur at the project level and will therefore provide for public disclosure of the current condition of the BSUs.

GRSG - Monitoring

Issue Number: PP-OR-GRSG-15-26-26
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: The FEIS fails to adequately explain or evaluate the use of BLM's Assessment, Inventory, and Monitoring ("AIM") strategy as it relates to

livestock grazing and the SRH assessments. It is unclear how AIM (2011) will be integrated into SRH. The FEIS does not adequately explain the role of AIM or the core indicators and methods as they relate to GRSG, livestock grazing and the SRH. See p. 4-19.

Summary:

The Oregon GRSG PRMPA/FEIS fails to adequately explain how:

- BLM's Assessment, Inventory, and Monitoring (AIM) strategy relates to livestock grazing and the SRH assessments.
- AIM will be integrated into SRH.
- AIM, or the core indicators and methods, relate to GRSG, livestock grazing and the SRH.

Response:

The Oregon GRSG PRMPA/FEIS states, "Methods to assess and monitor GRSG seasonal habitats must be consistent and repeatable across the species range if they are to provide data that can be upgraded from site scale to landscape scale. The BLM's Assessment, Inventory, and Monitoring (AIM) Strategy defines a set of core indicators and methods that can be integrated across BLM field, district, and state office boundaries (MacKinnon et al. 2011). Additional GRSG habitat indicators from the GRSG Habitat Assessment Framework (Stiver et al. 2010, or as updated) can easily be added to the core indicators and methods, as pilot studies in Oregon have demonstrated" (p. 4-19).

"The condition of vegetation and the allotments meeting land health standards (as articulated in "BLM Handbook 4180-1, Rangeland Health Standards") in GRSG areas will be used to determine the LUP's effectiveness in meeting the vegetation objectives for GRSG habitat set forth in the plan. The field office/ranger district will be responsible for collecting this data. In order for this data to be consistent and comparable, common indicators, consistent methods, and an unbiased sampling framework will be implemented following the principles in the BLM's AIM strategy (Taylor et al. 2014; Toevs et al. 2011; MacKinnon et al. 2011), in the BLM's Technical Reference "Interpreting Indicators of Rangeland Health" (Pellant et al. 2005), and in the HAF (Stiver et al. in press) or other approved WAFWA MZ-consistent guidance to measure and monitor GRSG habitats" (Appendix G, p. 34).

"When conducting land health assessments, the BLM should follow, at a minimum, "Interpreting Indicators of Rangeland Health" (Pellant et. al. 2005) and the "BLM Core Terrestrial Indicators

and Methods” (MacKinnon et al. 2011). For assessments being conducted in GRSG designated management areas, the BLM should collect additional data to inform the HAF indicators that have not been collected using the above methods. Implementation of the principles outlined in the AIM strategy will allow the data to be used to generate unbiased estimates of condition across the area of interest; facilitate consistent data collection and rollup analysis among management units; help provide consistent data to inform the classification and interpretation of imagery; and provide condition and trend of the indicators describing sagebrush characteristics important to GRSG habitat” (Appendix G, p.36).

The AIM Strategy assists in answering whether BLM-administered lands are meeting Land Health Standards (LHS) by supporting the Division of Rangeland Resources to:

- Develop guidance to focus assessments on priority landscapes, watersheds, and/or special management areas;
- Revise the Allotment Categorization Process to align work in priority areas;
- Coordinate LHS assessments and proper functioning condition assessments using a full, qualified interdisciplinary team;
- Use core indicators and standard methods for quantitative data collection to validate assessments and determine trend of priority resources;
- Develop and integrate remote sensing and field-based tools to detect change in land cover composition; and
- Manage data in an enterprise architecture environment. (p. 15; Toevs et al. 2011)

To ensure that the BLM is able to make consistent assessments about GRSG habitats across the range of the species, this [monitoring] framework lays out the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of BLM and USFS actions to conserve the species and its habitat. This multiscale monitoring approach is necessary, as GRSG are a landscape species and conservation is scale-dependent to the extent that conservation actions are implemented within seasonal habitats to benefit populations (Appendix G, p. 3).

At the local level, AIM would be used in addition to site-specific monitoring data, the Indicators of Rangeland Health, and the BLM Core Terrestrial Indicators and Methods, to inform the interdisciplinary team and the authorized officer as to whether or not the SRH are being met and, if not, the possible causal factors.

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 Oregon GRSG PRMPA/FEIS did adequately explain how BLM's AIM strategy relates to livestock grazing and the SRH assessments, how AIM will be integrated into SRH, and how AIM, or the core indicators and methods, relate to GRSG, livestock grazing and the SRH.

GRSG - Data and Inventories

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

Organization: Eastern Oregon Mining Association

Protestor: Ken Alexander

Issue Excerpt Text: High Elevation Sites with No GRSG Background: EOMA commented on the draft, that BLM has erroneously included important mining areas, such as Mormon Basin, in PPMA. On page 2-64 of the FEIS, the document states, “Based on current climate models, over the long term (i.e. 30 years), changing climate conditions are expected to generally limit the area in which GRSG habitat could survive to above 5,000feet in Eastern Oregon”. The wildlife biologist who did the surveys for the Mormon Basin Mining

Operation (Vision Air Research, INC), was approved by BLM biologists to do the wildlife report and analysis for the Mormon Basin Mining EA in 2010. This biologist worked with BLM, and her report was accepted by that agency. She reported no GRSG use of this high elevation site; no leks, no nesting, no winter foraging. She did not use a model, she actually conducted her survey on the ground. BLM's model says GRSG will move into areas like Mormon Basin in 30 years. Protest Point: BLM did not delete Mormon Basin from PPMA despite the fact that there are no birds in this high elevation site, and the Wildlife biologist for the BLM EA stated in her report that there was no habitat for GRSG in the Mormon Basin Mining Project EA.

Summary:

The Oregon GRSG PRMPA/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by using climate models to predict future GRSG habitat.

Response:

While GRSG may not be currently present in a particular location, the Oregon GRSG PRMPA/FEIS cites to McKinney et al., 2007 and 2011 with regard to current climate models and their implications for the elevation of GRSG in the future. The protestor does not provide any data or literature that disputes the findings of McKinney et al. As such, the BLM has obtained the relevant information for reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives.

The Oregon GRSG PRMPA/FEIS describes the science considered and collaborative mapping process used in determining PHMA and GHMA in Section 2.8.6:

“IM 2012-044 directs the BLM to collaborate with state wildlife agencies to identify and map PPH and PGH. In Oregon, the BLM developed a PPH and PGH map based on the ODFW’s

GRSG core areas map (ODFW 2011)... Recognizing the need to capture all GRSG habitat in its PPH and PGH map, the BLM modeled occupied habitat for baseline year 2006, modified by removing habitat within fire perimeters for 2007 through 2010. The model assumed a total removal of sagebrush within the fire perimeter and did not consider the possibility of unburned interior islands; thus it likely underestimated the total amount of suitable habitat. GRSG are assumed to be present within a mapping unit at least once in the last 10 years. This currently occupied habitat (1,739,093 acres) was added to the low-density habitat to create the PGH layer. In summary, the Oregon BLM GRSG PPH and PGH map was developed by the BLM and the ODFW using the best available data. PPH is equivalent to core area habitat, and PGH is composed of low-density and currently occupied habitat. The BLM did not modify the ODFW's low-density habitat when it created PGH, and the ODFW has accepted the BLM's PPH and PGH GIS layer. In the Proposed Plan, PPH and PGH are designated as PHMA and GHMA, respectively. The map may change as new information becomes available; such changes would be coordinated with the ODFW so that the delineation of PHMA and GHMA would provide for sustainable populations. Significant changes to the boundaries of PHMA and GHMA will require a plan amendment."

Livestock Grazing

Issue Number: PP-OR-GRSG-15-03-10
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Action LG/RM 13: This action is not in conformance with current grazing regulations or the Standards for Rangeland Health and the Guidelines for Livestock Management. It was not analyzed in the draft RMPA in any alternative and should be removed from the proposed plan. It appears to alter grazing permit language for renewal and modification that would allow adjustments to the permits by BLM without any process or recourse by the grazing permittee. GRSG habitat objectives are properly placed in AMPs as described for HMPs under Action WHB6, pg. 2-27.

Issue Number: PP-OR-GRSG-15-03-11
Organization: Budd-Falen Law Offices
Protestor: Karen Budd-Falen

Issue Excerpt Text: Action LG/RM 15, 2-27: This action is contrary to existing Federal laws including: Federal Land Policy and Management Act of 1976 as amended,

sec.202(e)(2); National Environmental Policy Act of 1969; The Taylor Grazing Act of 1934 as amended. Regulations: 43CFR 4110; 43CFR 4130. Policy: Instruction Memorandum No. 2013-184 (expires 9/30/2014)}

Issue Number: PP-OR-GRSG-15-07-3
Organization 1: Oregon Cattlemen's Association
Protestor 1: Jerome Rosa
Organization 2: Oregon Farm Bureau
Protestor 2: David Dillon

Issue Excerpt Text: The USFWS does not view managed livestock grazing as a threat to GRSG in Oregon. The RMPA nonetheless indicates that grazing should cease where it occurs GRSG habitat (presumably of any type) when a permit is renewed or subject to an allotment management planning process. This is a legally and factually unfounded directive. It may also be a typographical error. In either case, the statement should be removed or clarified. The FEIS and proposed RMPA also suggest that where a permittee is not

currently making progress toward the SRH, the allotment can be made unavailable to grazing. This directive is contrary to the directives of the TGA and FLPMA, and to the BLM's grazing regulations.

Issue Number: PP-OR-GRSG-15-07-4

Organization 1: Oregon Cattlemen's Association

Protestor 1: Jerome Rosa

Organization 2: Oregon Farm Bureau

Protestor 2: David Dillon

Issue Excerpt Text: The RMPA has also removed range improvements as one of the tools and “changes” that promote progress toward the SRH. This is contrary to the grazing regulations, which direct changes to grazing management, of which range improvements are an important part. It is also contrary to direction in the SRH, which states that “Where an allotment is not meeting one or more Rangeland Health Standards and Guidelines, and the BLM has determined the causal factor is livestock grazing, changes in grazing management that will improve or restore habitat quality will be made as soon as practical but no later than the start of the next grazing year pursuant to 43 CFR 4180.2(c).

Issue Number: PP-OR-GRSG-15-07-5

Organization 1: Oregon Cattlemen's Association

Protestor 1: Jerome Rosa

Organization 2: Oregon Farm Bureau

Protestor 2: David Dillon

Issue Excerpt Text: Retirement of voluntarily relinquished grazing permits. Provisions: LG/RM 15, page 2-27; Objective LG/RM 1, p. 2-16; Action LG/RM 1, page 2-25; Table 2-6; pp. 2-44 to 2-46. Grazing permits in grazing districts should be made available for grazing by a bona fide stock owner who qualifies for preference as set out in the Taylor Grazing Act. The type of permit retirement provided

for in the proposed RMPA is contrary to law.

Issue Number: PP-OR-GRSG-15-12-6

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated. In order to conserve, protect, and enhance GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. WWP Comments at 26. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting GRSG. See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting season is crucial for the species' survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are shortcomings of the plan.

Issue Number: PP-OR-GRSG-15-12-8

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The agencies also fail to define grazing as an anthropogenic disturbance or disruptive activity that should be avoided during breeding and nesting (March 1- June 20). PRMPA/FEIS at 2- 19; 8-8-8-7; 8-15 (WWP Comments at 29). And yet, the best science recommends that grazing be restricted during this same period. However, the only seasonal restrictions on livestock grazing pertain to

vague and inadequate limits on trailing and bedding activities near occupied leks. See e.g. LG/RM 3. This limited protection is inconsistent with other perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PRMPA/FEIS should be revised to limit spring season harms to leks. The PRMPA/FEIS doesn't analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations. 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 PRMPA/FEIS has not considered limiting grazing in this way within the planning area. The PRMPA/FEIS also doesn't specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent 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 PRMPA/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria

Issue Number: PP-OR-GRSG-15-26-10
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: The decision to remove grazing from fifteen RNAs does not accord with the Taylor Grazing Act (TGA) or FLPMA and its legislative history. Congress did not anticipate that grazing would be removed from ACECs when it

Summary:

The Oregon GRSG PRMPA/FEIS 1) fails to analyze seasonal restrictions, does not set utilization limits or stocking rates, and does not mandate specific terms and conditions to grazing permits;

enacted FLPMA. Further, the designation or re-designation of an ACEC, of which RNAs are a subset, does not remove the chiefly valuable for grazing designation or remove the RNA lands from the grazing district. Grazing district lands must remain available for grazing by bona fide livestock owners and ranch operators, as required by the TGA and applicable grazing regulations.

Issue Number: PP-OR-GRSG-15-26-23
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: The language calling for relinquishment or retirement of permits is contrary to the law and should be removed. According to the TGA (43 USC § 315), in order for BLM to terminate relinquished permits on grazing districts, a reclassification analysis would first have to establish that the land in question is no longer "chiefly valuable for grazing," and should be reclassified for a purpose not necessarily inclusive of grazing. ... Grazing permits in grazing districts should be made available for grazing by a bona fide stock owner who qualifies for preference as set out in the Taylor Grazing Act.

Issue Number: PP-OR-GRSG-15-26-24
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: As stated in our previous protest point, simply making an allotment unavailable to grazing is not a legal option for the agency. The last action item in LG/RM 2 should be changed to match the language in the current SRH: "Extended livestock non-use until specific, local objectives are met as identified."

2) fails to restrict grazing from March 1 to June 15 within four miles of a lek, and provides no limits on seasonal use by livestock contrary to the best science; 3) fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity. The distinction between livestock surface disturbance and disruption and other types of actions is arbitrary and capricious; and 4) violates the Taylor Grazing Act and violates grazing regulations by altering grazing permit language for renewal and modification that would allow adjustments to permits by BLM without any process or recourse by the grazing permittee.

Response:

1 & 2. 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).

The BLM did not fail to use the best available science in the Oregon GRSG PRMPA/FEIS. For a detailed discussion see the section entitled "Best Available Science" in this protest resolution. When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives. When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

In accordance with BLM's Land Use Planning Handbook and BLM IM No. 2012-169, the Oregon GRSG PRMPA/FEIS considers a range of alternatives identifying areas available or unavailable for livestock grazing. 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, through reduction in areas available to livestock grazing. In addition, the No Action Alternative analyzes potential impacts to the landscape if no changes in grazing management are implemented.

The BLM developed a reasonable range of alternatives that meet the purpose and need (Section 1.3, p. 1-7) and addresses resource issues (Section 1.6, p. 1-18) identified during the scoping period. The Oregon GRSG PRMPA/FEIS analyzed seven alternatives for livestock grazing described in Chapter 2, Proposed Action and Alternatives. The Proposed Plan Amendment is detailed in Section 2.6 (p. 2-11 through 2-67) and 2.9 Summary Comparison of Proposed Plan Amendment and Draft Alternatives (p. 2-76 through 2-82). The alternatives for livestock grazing, alternatives A, B, C1, C2, D, E, and F, are detailed specifically in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-143 through 2-166).

The BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage uses of

the public lands. Suitable measures such as reduction or elimination of livestock grazing are provided for in the Oregon GRSG PRMPA/FEIS (e.g., Table 2-12 Description of Alternatives B through F). These measures 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 NEPA reviews. These determinations would be based on monitoring studies, current range management science, input from livestock operators/interested public, and the ability of particular allotments to meet the Standards for Rangeland Health. See the Best Available Science section of this report for more discussion on this topic.

3. The NTT report identifies livestock grazing as a diffuse disturbance, rather than a discrete disturbance as follows,

“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.”

Although grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT report and incorporated in the Oregon GRSG PRMPA/FEIS that address these impacts (Chapter 4 – Environmental Consequences). Therefore imposing regulation on livestock grazing is discussed in the best available science, is within the range of alternatives, and is not an arbitrary application.

4. Livestock grazing permit modification is done in accordance with 43 CFR Subpart 4100 – Grazing Administration. The protestor states that “the BLM cannot decrease stocking rates, adjust seasons of use, or take other negative actions against a permit without adequate monitoring data and without consulting with the grazing permittee”.

This is an accurate statement. Livestock grazing permit changes take place only after the appropriate monitoring, rangeland health assessments, and site-specific NEPA reviews are completed for respective allotments. Livestock grazing permit changes are implemented in accordance with 43 CFR 4110.3 - Changes in grazing preference, and 43 CFR 4130.3 - Terms and conditions. Administrative Remedies detailed in 43 CFR Subpart 4160 remain available to the affected parties. The Oregon GRSG PRMPA/FEIS is not pre-decisional; it is not making site-specific decisions regarding livestock grazing permits at this time. The PRMPA/FEIS identifies the types of actions to be taken and incorporated into grazing permits following the regulations at 43 CFR Subpart 4100 – Grazing Administration in the future should GRSG objectives not be met. Permit changes would be implemented only after monitoring data is collected and analyzed, followed by a Rangeland Health Assessment and Determination and subsequent NEPA analysis is completed.

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as “available” or “unavailable”

for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C).

Although lands have been identified as “chiefly-valuable-for-grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 USC § 315) this does not negate the BLM’s authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principals of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans may include making some, or all of the land within grazing districts, unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives.

The Oregon GRSG PRMPA/FEIS complies with the Taylor Grazing Act, which does not preclude the BLM from identifying some public lands not available to livestock grazing and the BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts resulting from management direction as described in the Oregon GRSG PRMPA/FEIS.

The BLM has provided further clarification on livestock grazing in the ROD.

ACECs

Issue Number: PP-OR-GRSG-15-05-1

Organization: Cahill Ranches, Inc.

Protestor: John Cahill

Issue Excerpt Text: The BLM's designation of the additional RNAs' purposes did not analyze the new GRSG conservation purpose for relevance, importance, and special management attention. BLM should have evaluated the existing RNAs for relevance and importance for the purpose of good-GRSG habitat. 43 C. F. R. §1610. 7-2(a). Further, the BLM was required to find that the RNA required special management attention in order to prevent “irreparable damage” to GRSG conservation. H-1613. 12. Moreover, special management attention, such as the permanent retirement of grazing, must be unique to the area. Finally, before removing grazing from the RNA, the BLM should have evaluated whether measures can be taken to protect RNA values without restricting other resources, and how existing

rights will affect management of the resources. H- 1613.22(a)

Issue Number: PP-OR-GRSG-15-05-2

Organization: Cahill Ranches, Inc.

Protestor: John Cahill

Issue Excerpt Text: The BLM did not satisfy the pre-requisites to add the GRSG conservation designation and remove livestock grazing from the Rahilly-Gravelly RNA. The BLM did not sufficiently analyze the relevance, importance, and effects of special management (i.e., no grazing) on existing rights and resources.

Issue Number: PP-OR-GRSG-15-05-3

Organization: Cahill Ranches, Inc.

Protestor: John Cahill

Issue Excerpt Text: The BLM also failed to properly notice the new RNA designation in the Federal Register, as required by the grazing regulations, and has not provided the requisite 60 day comment period. The Federal Register notice must list the

designated area, the modifications to its purposes, and the resource use limitations that would occur if the area was formally designated for a new purpose. 43 CFR 1610.7-2(b).

Issue Number: PP-OR-GRSG-15-07-1

Organization 1: Oregon Cattlemen's Association

Protestor 1: Jerome Rosa

Organization 2: Oregon Farm Bureau

Protestor 2: David Dillon

Issue Excerpt Text: This RNA was not supported by the local Lakeview BLM District and is dominated by juniper. This single RNA designation will remove significant spring and summer forage relied upon by a family ranch that holds the grazing permit for the affected allotment. The economic impact to permit holders that currently utilize forage in the RNAs will be significant. As stated in our comments and reiterated below, moderate grazing supports GRSG conservation. The removal of grazing is unnecessary from any GRSG habitat, including that habitat that may be found in the RNAs. The BLM's designation of the additional ACEC and RNAs' purposes did not analyze the new GRSG conservation purpose for relevance, importance, and special management attention. BLM should have evaluated the existing ACECs and RNAs for relevance and importance for the purpose of GRSG habitat. 43 CFR § 1610.7-2(a). Further, the BLM was required to find that the ACECs and RNA required special management attention in order to prevent "irreparable damage" to GRSG conservation. H-1613.12. It did not do so and would not have been able to satisfy these criteria given the prevalence of GRSG habitat and the compatibility and benefits of livestock grazing to GRSG conservation. Moreover, special management attention, such as the permanent retirement of grazing,

must be unique to the area. Id. As explained below, large no grazing areas are near to the ACECs and RNAs. Finally, before removing grazing from the RNA, the BLM should have evaluated whether measures can be taken to protect RNA values without restricting other resource uses, and how existing rights will affect management of the resources. H-1613.22(A). It did not do so. For the reasons set forth here and in our Comments, the BLM either failed to make the required analysis or would have been unable to factually support a decision to add GRSG conservation as a purpose for the RNAs and to remove livestock grazing.

Issue Number: PP-OR-GRSG-15-07-2

Organization 1: Oregon Cattlemen's Association

Protestor 1: Jerome Rosa

Organization 2: Oregon Farm Bureau

Protestor 2: David Dillon

Issue Excerpt Text: The BLM did not follow the process for amending the purposes of the RNAs and ACECs. It did not publish a notice in the Federal Register listing each designated area, the modifications to their purposes, and the resource use limitations that would occur if they were formally designated for a new purpose. 43 CFR 1610.7-2(b). The decision to remove grazing from fifteen RNAs does not accord with the TGA or FLPMA and its legislative history. Congress did not anticipate that grazing would be removed from ACECs (of which RNAs are a subset) when it enacted the Federal Land Policy Management Act ("FLPMA"). Further, the designation of an ACEC, of which RNAs are a subset, does not remove the chiefly valuable for grazing designation or remove the lands from a grazing district. Grazing district lands must remain available for grazing by bona fide livestock owners and ranch operators, as required by the Taylor

Grazing Act (“TGA”) and applicable grazing regulations. Finally, contrary to the FEIS, the BLM would implement its decision to remove grazing from the RNAs via the RMPA. This decision is an implementation decision subject to judicial review.

Issue Number: PP-OR-GRSG-15-09-23

Organization: WildEarth Guardians.

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC

designation would best protect their relevant and important values, BLM determined not to designate them. Instead, BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs—yet has instead developed a new, less-restrictive designation for them— BLM has failed to put designation of ACECs first, in violation of FLPMA.

Summary:

The Oregon GRSG PRMPA/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs to protect relevant and importance values. BLM created Sagebrush Focal Areas, which are less restrictive than an ACEC designation and failed to provide an explanation as to how such a designation would protect the identified resource values.

Additionally, the decision to reduce future grazing AUMs in the Rahilly-Gravelly RNA was not properly analyzed and was not properly noticed to the public as required in federal regulation.

Response:

BLM policy does not require that a potential ACEC’s relevant and important values be protected to the same level or degree of protection in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual Section 1613.22.B). The Manual also states that “[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes” (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The Oregon GRSG PRMPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Oregon GRSG PRMPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Additionally, Section 2.6.1, Development of Proposed RMPA, describes how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat. So while Alternative C analyzed the designation of all PHMAs as ACECs, the proposed plan maintains the 17 ACECs

already designated within the planning area that benefit GRSG habitat and implements conservation measures on a broader scale (GHMAs, etc.) than Alternative C. The BLM adequately considered the protection of relevant and important values in the Oregon GRSG PRMPA/FEIS. Thus, the BLM complied with its obligations under FLPMA and its ACEC policy.

Notice Procedures for ACECs under 43 CFR 1610.7-2(b).

BLM's planning regulations require in section 43 CFR 1610.7-2(b) that the BLM "publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated." The notice must also provide a 60-day public comment period on the proposed ACEC designation. For the Oregon GRSG PRMPA/FEIS, the BLM satisfied the requirement of this section when it published a Federal Register notice on Tuesday, November 26, 2013, announcing the availability of the Draft Oregon GRSG Draft LUP Amendments and Draft EIS. This Federal Register notice listed each ACEC proposed, specified the resource use limitations which would occur if the proposed ACEC were formally designated and provided a 60-day public comment period for the proposed ACEC designations. Specifically, the Draft Amendment/Draft EIS included alternatives that evaluated designating approximately 4.6 million acres of ACECs to protect Greater-GRSG habitat. This analysis can be found in section 4.16 of the document; Table 2-10 has a side-by-side comparison of the alternatives analyzed. In addition, Table 2-6 provides information regarding ACECs and RNAs.

The November 26, 2013, Federal Register notice also indicated that existing land use plans – including the Lakeview RMP, which designated the Rahilly-Gravelly RNA – were analyzed in the Draft LUPA/EIS specifically for the purposes of GRSG habitat conservation and address resource concerns related to livestock grazing. This analysis is contained in Sections 3.8, 4.8, and 5.10; the existing ACECs are discussed in Table 2.6, Section 3.16.5, and 4.16. Finally, the public comments the BLM received on the Draft LUPA/EIS indicate that parties interested in the livestock grazing use of the Rahilly-Gravelly RNA received proper notice of the changes to the RNA's AUM allocation.

Land Chiefly Available for Grazing

FLPMA grants the Interior Secretary the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as "available" or "unavailable" for livestock grazing through the land use planning process (H-1601, Land Use Planning Handbook, Appendix C).

A "chiefly-valuable-for-grazing" determination is required only when the Secretary is considering creating or changing grazing district boundaries. Such a determination is neither required nor appropriate when establishing grazing levels within a district. This RMP is not

considering creating or changing grazing district boundaries. Although lands have been identified as “chiefly-valuable-for grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 USC § 315), this does not negate the BLM’s authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principals of multiple use and sustained yield as required by FLPMA and its implementing regulations.

Fire

Issue Number: PP-OR-GRSG-15-03-8

Organization: Budd-Falen Law Offices

Protestor: Karen Budd-Falen

Issue Excerpt Text: Appendix H addresses the science used in developing the Fire and Invasive Tool. The first step was to develop the model and assessment tool and provide how it could be applied at the broad scale. The preferred alternative only includes the first step in the Fire and Invasive Assessment Team's recommended plan to manage wildfire and invasive annual grass threats. The BLM does not propose a plan to deal with these threats, just concepts. Hundreds of thousands of acres and potentially millions of acres of primary and general GRSG habitat could be lost under BLM's current suppression, fuel breaks and invasive annual grass management strategy. By failing to follow through with the recommendations, establish a schedule to assess the threats at the appropriate scales, and to include the public in the assessment based determinations and planning, the BLM has failed to meet its science and collaborative obligations under NEPA.

Issue Number: PP-OR-GRSG-15-07-6

Organization: Oregon Cattlemen's Association

Protestor: Jerome Rosa

Organization: Oregon Farm Bureau

Protestor: David Dillon

Issue Excerpt Text: Concise Statement: The Secretary of Interior has directed the BLM to coordinate with and utilize Rangeland Fire Protection Associations

(RFPA) and Rural Fire Protection Districts (RFPD). The BLM has no statutory authority to require personal protective equipment (“PPE”) for members of RFPA and RFPD. Further, the requirement for PPE does not affect the effectiveness or safety of fire fighters. Joint training and development is not necessary. The RFPAs and RFPDs operate under state law and are in compliance with those laws. Further, it is an unnecessary use of federal resources that could be put toward rangeland management.

Issue Number: PP-OR-GRSG-15-09-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Comment Excerpt Text: BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

Issue Number: PP-OR-GRSG-15-09-24

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

Issue Number: PP-OR-GRSG-15-26-29

Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Action TM 7: page 2-34: “Eliminate parallel roads...” As addressed in Baker County's Comments dated 2/14, even though two (or more) roads end up in the same place, each road accesses other areas along the way. Common uses include access to allotments, mines, favorite scenic vistas and recreation areas. Further, the document does not adequately address the effects of limitations on road use and

road construction on fire prevention. Wildfire is a primary threat to GRSG. Protest Points:

1. The FEIS should state that parallel roads will be analyzed on a case-by-case basis, considering all existing rights.
2. Road elimination proposals should be coordinated with Baker County.
3. The ability to fight fire should be a top consideration when discussing road closures.

Summary:

The Oregon GRSG PRMPA/FEIS violates NEPA by:

- failing to evaluate the effects of cheatgrass invasion on proposed mitigation measures,
- failing to evaluate the effects of road closures to be completed during implementation planning on fire suppression effectiveness,
- failing to identify limits on the use of prescribed fire, and
- failing to provide public participation during FIAT assessments.

The BLM does not have authority to apply requirements to RFPA operations on BLM Administered Lands.

Response:

Effects of Cheatgrass

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 Oregon GRSG PRMPA/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.

Chapter four of the Oregon GRSG PRMPA/FEIS (P. 4-120 thru 4-121) discusses the effects of vegetation and wildland fire management on cheatgrass (invasive annuals), and vice versa.

As described in Section 4.4 Vegetation on page 4-120, under the Proposed Plan, “The BLM would implement over two times more sagebrush and juniper treatments and 14 percent more invasive plant species treatments compared with Alternative A... In addition, the Proposed Plan includes management and vegetation treatment objectives and prescriptions that would increase

the resistance of GRSG habitat to invasive annual grasses and the resiliency of GRSG habitat to disturbances”.

Further, at the bottom of p. 4-120 through the top of p. 4-121 “A comprehensive strategy for wildland fire management would be implemented under the Proposed Plan, including recommendations from the GRSG Wildfire, Invasive Annual Grasses, and Conifer Expansion Assessment. The assessment would identify priority habitat areas and management strategies to reduce the threats to GRSG from invasive annual grasses, wildfires, and conifer expansion. It would incorporate recent scientific research on resistance and resilience of Great Basin ecosystems as well as interdisciplinary team knowledge. Potential management strategies include proactive measures, such as fuels management and habitat restoration and recovery, and reactive measures, such as wildfire response and post-fire rehabilitation. Together, these actions would improve wildland fire management, given the limited resources available, and would target those areas that need the most protection. As a result, the likelihood for adverse wildfire effects on GRSG habitat, untargeted vegetation, and special status plants, as described under Section 4.4.2, would be reduced when compared with Alternatives A through F.” As noted by the Protestor, “Appendix H addresses the science used in developing the Fire and Invasives Assessment Tool” As discussed below, proposed fire management actions would be subject to specific analysis - including NEPA analysis - at the time they are proposed or on an implementation specific basis.

Effects of Road Closures

The RMP does not make any road closure decisions – it only identifies areas as open, limited, and closed (Oregon GRSG PRMPA/FEIS p.2-17) “Objective TM 1: Manage OHV/ORV designations (open, limited, and closed) to conserve GRSG habitat and populations by taking actions that create neutral or positive responses. Objective TM 2: Reduce disturbance to GRSG by evaluating or modifying OHV/ORV designations and route selection in accordance with minimization criteria.” As such, effects on fire suppression effectiveness from road closures would be evaluated in subsequent implementation level travel management planning.

NEPA – Limits on Prescribed Fire

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 the response to comments appendix for the Oregon GRSG PRMPA/FEIS it is noted that “Before using prescribed fire, the BLM assesses local conditions for potential invasive plant invasion. Section 4.7.2, Nature and Type of Effects, notes that “while prescribed fire does have beneficial uses, the presence of invasive plants and the potential for invasive plants to spread after a prescribed fire would need to be evaluated on a site-specific basis. Alternatives B and E specifically note that prescribed burns should occur at higher elevations in the absence of cheatgrass. If the BLM were to use prescribed fire, the area would be evaluated on a site-specific

basis with the intention of meeting the objectives of the prescribed fire project while preventing expansion of invasive annual grasses” (p. V-35).

Additionally, Action WFM 18 requires that:

“If prescribed fire is used in GRSG habitat, the NEPA analysis for the Burn Plan will address:

- why alternative techniques were not selected as a viable options;
- how GRSG goals and objectives would be met by its use;
- how the COT Report objectives would be addressed and met;
- a risk assessment to address how potential threats to GRSG habitat would be minimized”

Public Participation in FIAT

BLM NEPA Handbook H-1790-1 (p. 13) states that “The NEPA process is initiated when a proposal has been developed by, or submitted to the BLM. Identification of existing conditions and of possible actions does not trigger the NEPA.”

The FIAT assessment process as described in Appx. H would establish a consistent, area-wide context for future project-level NEPA documents.

Authority to apply requirements to RFPA operations on BLM Administered Lands ORS 477.100:

- (1) The State Forester, or any agency or organization with responsibility under this chapter to suppress fires, may not prohibit an owner or the owner’s agent from suppressing a fire occurring on the owner’s property or that poses a threat to the owner’s property.
- (2) Notwithstanding subsection (1) of this section, the forester, agency or organization may prohibit an owner or the owner’s agent from suppressing a fire if the owner or agent conducts the action in a manner that the forester, agency or organization reasonably determines is likely to increase the risk of injury or damage to the personnel or equipment of the forester, agency or organization.

Interagency Standards for Fire and Fire Aviation Operations (Hereafter referred to as the “Red Book”) of the Interagency Standards for Fire and Fire Aviation Operations provides additional details regarding Qualifications and minimum requirements (Chapter 8, p.12): “During initial action, all agencies (federal, state, local and tribal) accept each other’s standards. Once jurisdiction is clearly established, then the standards of the agency(s) with jurisdiction prevail. 3) BLM- During initial attack, all agencies accept each other’s standards. When an incident exceeds initial attack and jurisdiction has been established, the standards of the jurisdictional agency(s) prevail.”

Further Chapter 13, p. 2 of the Red Book states: “Personnel from agencies that do not subscribe to the NWCG qualification standards may be used on agency managed fires. Agency fire managers must ensure these individuals are only assigned to duties commensurate with their competencies, agency qualifications, and equipment capabilities.”

While Subsection one of ORS 477.100 and the Interagency Standards for Fire and Fire Aviation Operations allow for RFPA response on BLM-managed land where the fire poses a threat to

private property – regardless of qualifications, Section 2 of ORS 477.100 allows BLM to prohibit that suppression activity if BLM “reasonably determines it is likely to increase the risk of injury or damage to the personnel or equipment of the [BLM]”

Additionally, while chapter 13 of the Interagency Standards for Fire and Fire Aviation Operations provides an allowance for the BLM to utilize personnel that do not subscribe to the NWCG qualification standards the use of the word “may” implies that it is up to the agency to decide whether or not to utilize those personnel.

Solid Minerals, including Mining Law of 1872

Issue Number: PP-OR-GRSG-15-10-10
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: The proposed restrictions, limitations, and withdrawals from mineral entry in the PRMPA/FEIS directly conflict with FLPMA’s requirement that the Secretary must manage public lands to respond to the Nation’s needs for minerals. Specifically, Section 2.6: Action SSS-2, Action MLM-3, Action TM-1, TM-2, TM-3, TM-4, TM-6, TM-8, TM-10, and Action LR-7.

Issue Number: PP-OR-GRSG-15-10-14
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: These illegal travel restrictions constitute a de facto withdrawal from mineral entry of more than 11 million acres of land in the planning area.

Issue Number: PP-OR-GRSG-15-10-17
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: The Travel Management Restrictions Violate the General Mining Law.

Issue Number: PP-OR-GRSG-15-10-19
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress.

Issue Number: PP-OR-GRSG-15-10-22
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: Mining and Minerals Policy Act of 1970: BLM must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act of 1970 (“MMPA”) (30 USC §21(a)), and FLPMA (43 USC §1701(a)(12)) to recognize the Nation’s need for domestic minerals. The PRMPA/FEIS omits reference to MMPA’s declaration that it “is the continuing policy of the Federal government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, mineral, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs,” 30 USC §

21a. BLM has not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto (associated with disturbance caps, buffers, ROW restrictions and travel management restrictions) withdrawals recommended in the PRMPA/FEIS comply with the mandate under § 21(a) to recognize the Nation's need for domestic sources of minerals.

Issue Number: PP-OR-GRSG-15-10-6

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text:

The PRMPA Is Fatally Defective Due to Unlawful Land Withdrawals Under FLPMA
The proposed wholesale withdrawal of millions of acres of lands from mineral entry within SFAs is inconsistent with the General Mining Law. AEMA objects to Section 2.6: Action SSS-2, Action MLM-3, withdrawals of the magnitude proposed under the Proposed Action-1,929,580 acres (see PRMPA/FEIS at 2-18) conflict with § 22 of the General Mining Law, and the MMPA and cannot be implemented through the land use planning process. Withdrawals of this magnitude can only be made by an Act of Congress or by the Secretary of the Interior pursuant to the requirements and procedures of FLPMA § 204(c) for a period not to exceed 20 years, discussed in detail below.

The maximum number of acres subject to disturbance within Notices and Plan of Operations boundaries in the entire state of Oregon is only 21,589, some of which are not co-located within GRSG habitat.

Issue Number: PP-OR-GRSG-15-10-8

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: BLM has not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and de facto withdrawals (associated with disturbance caps, buffers, ROW restrictions and travel management restrictions) recommended in the PRMPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PRMPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7), which is one of the criteria needed to uphold a protest.

Issue Number: PP-OR-GRSG-15-10-9

Organization: American Exploration & Mining

Protestor: Laura Skaer

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Section 2.6: Action SSS-2, Action MLM-3), and the widespread travel and transportation restrictions (Section 2.6: Action TM-1, TM-2, TM-3, TM-4, TM-6, TM-8, TM-10) are not in compliance with the specific directive pertaining to minerals in FLPMA § 102(a)(12):

Issue Number: PP-OR-GRSG-15-11-2

Organization: EP Minerals, LLC

Protestor: Chris Coley

Issue Excerpt Text: Prohibiting or restricting mineral exploration and development on lands co-located with GRSG habitat, by way of limits placed upon surface disturbance, travel and transportation management (roads), right-of-way (hereinafter “ROW”) avoidance and exclusion areas, and mineral withdrawals is contrary to the rights granted by Section 22 of the General Mining Law, and therefore the PRMPA Plan is in violation of the

General Mining Law, and cannot be implemented.

Issue Number: PP-OR-GRSG-15-11-3

Organization: EP Minerals, LLC

Protestor: Chris Coley

Issue Excerpt Text: The Mining Laws guarantee the right to use and occupy Federal lands that are open to mineral entry-with or without a mining claim or “valid existing right”-for prospecting, mining, and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights associated with ingress and egress. Apart from existing withdrawals and recommended withdrawals associated with SFAs, GRSG habitat in Oregon remains open to mineral entry, and the PRMPA should be so clarified.

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

Organization: Dimari, Inc.

Protestor: K. Dick Coughren

Issue Excerpt Text: Background: A change was made to the FEIS, and instead of stating that there would be negligible to no effect on mining of split estate lands, the document now says on page 4-336 that it is not possible to assess the extent to which development of locatable minerals on split estate lands would be impacted. Protest Point: This change in the FEIS is not at all satisfactory. The document must reflect the huge adverse effects on mineral split estate land owners, or BLM must revise the document so there would be negligible to no effect.

Issue Number: PP-OR-GRSG-15-21-4

Organization: Auburn Ranch and High Bar Mining, LLC

Protestor: Philip Wirth

Issue Excerpt Text: A change was made to the FEIS, and instead of stating that there would be negligible to no effect on mining of split estate lands, the document now says on page 4-336 that it is not possible to assess the extent to which development of locatable minerals on split estate lands would be impacted. Protest Point: This change in the FEIS is not at all satisfactory. The document must reflect the huge adverse effects on mineral split estate land owners, or BLM must revise the document so there would be negligible to no effect.

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

Organization: Auburn Ranch and High Bar Mining, LLC

Protestor: Philip Wirth

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. Minerals production is important for our rural counties. Auburn Ranch and High Bar Mining pay their mining crews a fair wage. The withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. Withdrawals from mineral entry should not be considered or recommended for areas with important mineral potential.

Issue Number: PP-OR-GRSG-15-21-7

Organization: Auburn Ranch and High Bar Mining, LLC

Protestor: Philip Wirth

Issue Excerpt Text: No mineralized areas should be considered or recommended for minerals withdrawal. The FEIS must address the effects of limiting and prohibiting access, and re-designating GRSG areas or the FEIS must remove unreasonable restrictions on access and mining and provide a public process and involvement before re-designating habitat.

Issue Number: PP-OR-GRSG-15-22-3
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: Background: A change was made to the FEIS, and instead of stating that there would be negligible to no effect on mining of split estate lands, the document now says on page 4-336 that it is not possible to assess the extent to which development of locatable minerals on split estate lands would be impacted. Protest Point: This change in the FEIS is not at all satisfactory. The document must reflect the huge adverse effects on mineral split estate land owners, or BLM must revise the document so there would be negligible to no effect.

Issue Number: PP-OR-GRSG-15-22-4
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. Minerals production is important for our rural counties. Queen Resources pays its mining crews a fair wage. The withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the

counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. Withdrawals from mineral entry should not be considered or recommended for areas with important mineral potential.

Issue Number: PP-OR-GRSG-15-22-7
Organization: Queen Resources LLC
Protestor: Edward Rich

Issue Excerpt Text: No mineralized areas should be considered or recommended for minerals withdrawal. The FEIS must address the effects of limiting and prohibiting access, and re-designating GRSG areas or the FEIS must remove unreasonable restrictions on access and mining and provide a public process and involvement before re-designating habitat.

Issue Number: PP-OR-GRSG-15-23-3
Organization: Three Valleys Ranch, LLC
Protestor: Steve Jay

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. Minerals production is important for our rural counties. Three Valleys Ranch pays its mining crews a fair wage. The withdrawal of mineral areas within GRSG habitat, would result in significant economic harm to the counties and their residents within the Planning Area where locatable minerals and good jobs currently exist. Withdrawals from mineral entry should not be considered or recommended for areas with important mineral potential.

Issue Number: PP-OR-GRSG-15-23-6
Organization: Three Valleys Ranch, LLC
Protestor: Steve Jay

Issue Excerpt Text: No mineralized areas should be considered or recommended for minerals withdrawal. The FEIS must address the effects of limiting and prohibiting access, and re-designating GRSG areas or the FEIS must remove unreasonable restrictions on access and mining and provide a public process and involvement before re-designating habitat.

Issue Number: PP-OR-GRSG-15-26-14
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: One plan of operation (9 notices and 117 claims) would be affected on the Vale District. The FEIS contains no documentation of geology or mineral potential within the document or as an appendix. Withdrawing mineralized areas from mineral entry is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. Mining in adjacent counties provides jobs for Baker County residents. Eliminate the proposal to withdraw lands within key/core/priority habitat from mineral entry because it is not supported by any authority under the Endangered Species Act or FLPMA and should not be included as part of BLM's Preferred Alternative.

Issue Number: PP-OR-GRSG-15-26-18
Organization: Baker County Commission
Protestor: William Harvey

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry, limiting and prohibiting access, and re-designating GRSG areas with a ledger entry will curtail minerals development and is contrary to the Mining and Minerals Policy

Act of 1970 ... The FEIS must address the effects of limiting and prohibiting access, and re-designating GRSG areas or the FEIS must remove unreasonable restrictions on access and mining. BLM must provide a public process and involvement before re-designating habitat.

Issue Number: PP-OR-GRSG-15-27-2
Organization: Eastern Oregon Mining Association
Protestor: Ken Alexander

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. Mining in adjacent counties provides jobs for EOMA members. BLM must eliminate the proposal to withdraw lands within key/core/priority habitat from mineral entry because withdrawal is not supported by any authority under the Endangered Species Act or FLPMA and should not be included as part of BLM's Preferred Alternative.

Issue Number: PP-OR-GRSG-15-27-5
Organization: Eastern Oregon Mining Association
Protestor: Ken Alexander

Issue Excerpt Text: In priority areas, new road ROWs will be prohibited, which will make development of private minerals difficult or impossible. Even minerals development on private land may be affected where the miner must access private land mining sites across Public Land in priority habitat. These ROW restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act),

which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress.

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

Organization: Eastern Oregon Mining Association

Protestor: Ken Alexander

Issue Excerpt Text: Withdrawing mineralized areas from mineral entry,

Summary:

The Oregon GRSG PRMPA/FEIS violates FLPMA, the MMPA and the Mining Law of 1872 by:

- Creating de facto withdrawals from mineral entry by imposing disturbance caps, ROW avoidance and exclusion areas and travel management restrictions;
- Proposing to withdraw lands without proper authority to do so; and
- Failing to manage public lands in a manner that recognizes the nation's need for domestic mineral materials.

Response:

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

Action SSS-2 in the Proposed LUPA includes the designation of SFAs (p. 2-18), encompassing roughly 1.9 million acres (shown on Figure 2-2), and Action MLM-3 recommends these areas for withdrawal from mineral entry under the General Mining Law of 1872, subject to valid existing rights (p. 2-32).. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy.

Locatable minerals are minerals for which the right to explore or develop the mineral resource on federal land is established by the location (or staking) of mining claims and is authorized under the General Mining Law of 1872. The BLM can only apply measures necessary to prevent unnecessary or undue degradation, as defined at 43 CFR 3809.5.

Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under

limiting and prohibiting access, and re-designating GRSG areas with a ledger entry will curtail minerals development and is contrary to the Mining and Minerals Policy Act of 1970, as amended, which mandates BLM to facilitate the orderly development of the minerals resources, when there are laws and regulations in place to authorize mining while minimizing impacts to the surface resources, including candidate species. No mineralized areas should be considered or recommended for minerals withdrawal.

the operation of the General Mining Law of 1872 (BLM Handbook H-1601-1, Appendix C, p. 25).

The Oregon GRSG PRMPA/FEIS identified terms, conditions, or other special considerations needed to protect resource values within the planning area in accordance with BLM policy and the Mining and Mineral Protection Act (MMPA).

The BLM properly exercised its authority to manage locatable mineral development.

Special Status Species

Issue Number: PP-OR-GRSG-15-09-5
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: The Objectives of BLM’s sensitive species policy includes the following: “To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” BLM Manual 6840.02. Under this policy, District Managers and Field Managers are tasked with “Ensuring that land use and implementation plans fully address appropriate

conservation of BLM special status species.” BLM Manual 6840.04(E)(6).

Issue Number: PP-OR-GRSG-15-09-6
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG toward ESA listing in violation of BLM Sensitive Species policy.

Summary:

Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of BLM Sensitive Species Policy.

Response:

Contrary to the protest issues raised, the proposed Oregon Sub-Regional Amendment analyzed in the FEIS does satisfy the BLM’s Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM Special Status Species 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 discussed the effectiveness of these measures to ensure that they will protect the Greater-GRSG (FEIS at 2-55 and in Appendix G). Based on the science considered and impact analysis in the Oregon Sub-Regional GRSG Amendment/FEIS, the management proposed in the Oregon GRSG PRMPA/FEIS satisfies BLM’s intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA in conformance with the BLM’s Sensitive Species policies.

Travel Management

Issue Number: PP-OR-GRSG-15-09-14
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: Road densities are also an issue, because GRSG avoid habitats adjacent to roads. Holloran (2005) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to GRSG populations. This road density should be applied as a maximum density in Priority and General Habitats, and in areas that already exceed this threshold, existing roads should be decommissioned and revegetated to meet this standard on a per-square-mile-section basis. BLM’s proposed plan revision fails to provide adequate limits on road density.

Issue Number: PP-OR-GRSG-15-09-15
Organization: WildEarth Guardians
Protestor: Erik Molvar

Issue Excerpt Text: We find BLM failure to provide explicit direction to limit vehicle travel to designated routes, and to designate routes in subsequent travel planning with route designation within 5 years of adoption of the plan amendments and revisions during subsequent travel management planning per NTT (2011) to be troubling. See FEIS at 2-33. While the science indicates that new roads accessing multiple wells or housing developments be located more than 1.9 miles

from leks in PHMAs, BLM direction is inconsistent, applying avoidance within 1.0 mile of occupied leks in one part of the plan (FEIS at 2-33) while applying a 3.1 mile lek buffer elsewhere (FEIS at S-1). The latter standard is adequate if certainty of implementation can be added; the former standard is at odds with the best available science and will result in both unnecessary and undue degradation to GRSG habitats. In order to bring the Oregon RMP amendment up to scientific standards for road location and development, BLM must apply NTT (2011) recommendations as well as road density limits in accord with the best available science.

Issue Number: PP-OR-GRSG-15-10-18
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible.

Issue Number: : PP-OR-GRSG-15-10-21
Organization: American Exploration & Mining
Protestor: Laura Skaer

Issue Excerpt Text: Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, BLM has not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

Issue Number: PP-OR-GRSG-15-30-4
Organization: BlueRibbon Coalition, Inc.
Protestor: Don Amador

Issue Excerpt Text: FAILURE TO ADDRESS OHV NOISE.
The documents suggest that motorized activities, including OHV use, are expected to have a larger footprint on the landscape. They are anticipated to have the greatest level of impact due to noise levels, compared to nonmotorized uses, such as hiking or equestrian use. BRC submitted the following OHV noise management prescription in our comment letter, Consider adopting a defensible standard, such as the 2003 California State OHV Sound Law which states, “Sound emissions of competitive off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of

Automotive Engineers under Standard J-1287, as applicable. Sound emissions of all other off-highway vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 dBA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable.” Link to CA Sound Law: <http://ohv.parks.ca.gov/?pageid=23037>. Notwithstanding our comments and the vague threat that failure to address vehicle noise could be used to justify restrictions, the Proposed LUPA/FEIS fail to meaningfully address this factor. We ask that this oversight be addressed in a supplemental analysis.

Issue Number: PP-OR-GRSG-15-04-2
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: BLM can look to its standard guidance for completing travel plans as part of land use planning, which directs the agency to complete travel and transportation designations within 5 years after signing a Record of Decision. BLM Manual 1626.06(B)(3);BLM Handbook 8342(J)(C)(ii). Using this approach as a guide, BLM must also come up with an action plan and planning schedule, and can prioritize areas that will be completed. BLM Handbook 8342(1V)(B).

Summary:

The Oregon GRSG PRMPA/FEIS violates NEPA by:

- failing to utilize best available science to identify limits on road location and density
- failing to analyze the economic impact of limiting access for exploration and development of mineral deposits

The Oregon GRSG PRMPA/FEIS is inconsistent with BLM Manual 1626 because it fails to balance access needs with resource management goals and objectives.

The Oregon GRSG PRMPA/FEIS fails to include an OHV Noise Management Standard.

The BLM must identify a schedule for completing travel plans within 5 years after the ROD is signed for the Oregon GRSG PRMPA/FEIS.

Response:

Best Available Science

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

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

The Oregon GRSG PRMPA/FEIS considered alternative B, which was based on "A Report on National GRSG Conservation Measures" (NTT, 2011). Consistent with the NTT report (p. 11) this alternative as well as alternatives C- F would eliminate cross-country motorized travel within PHMA and Alternative C and the proposed plan would eliminate cross-country motorized travel within GHMA (Oregon GRSG PRMPA/FEIS, p. 2-82).

The BLM utilized Holloran's 2005 findings, the NTT report, and the USGS Report on Conservation Buffer Distance Estimates for GRSG to define allowable maximum landscape anthropogenic disturbance, required distance from leks for new actions, and density of mining or energy facilities. Additionally, as described in responses to comments, the LUPA has not added a restriction that would limit road densities to less than 0.09 km per km² (Wisdom et al. 2011) in GRSG habitat because the threshold established by Wisdom used coarse road data. When taking into consideration actual road density information, use of this threshold is not appropriate. Based on the GRSG Monitoring Framework, the Proposed LUPA includes surface disturbance direct areas of influence when calculating acreage for the disturbance cap, which would include consideration of existing disturbance (e.g., existing roads) when determining whether a project should be deferred or permitted.

As discussed previously under the NEPA—Range of Alternatives Section, of this report, the BLM complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM regulations, policy, and guidance. The management actions in the Proposed RMPA/Final EIS fall within the range of alternatives for protecting GRSG related to travel management, including travel limitations, road maintenance, and road construction. The Proposed Plan Amendment would prohibit new road construction within 4 miles of active GRSG leks, and avoid new road construction in occupied GRSG habitat, (Oregon GRSG PRMPA/FEIS, p. 2-143).

The Oregon GRSG PRMPA/FEIS includes a list of references (Chapter 7), which lists information considered by the BLM in preparation of the FEIS.

Social and Economic 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 Oregon GRSG PRMPA/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.

Manual 1626

BLM Manual 1626 at .06 states “The Travel and Transportation Management (TTM) planning process will be incorporated into the development of all Resource Management Plans (RMP) to ensure access needs are balanced with resource management goals and objectives.”

The overall purpose for the Oregon GRSG PRMPA/FEIS “is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat” (p. 1-8).

In addition to ensuring access needs are balanced with resource management goals and objectives the BLM Travel and Transportation Manual also refers to 43 CFR 8342.1 – Designation, which describes the required considerations for travel management designations as:

“The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) 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.

(d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.”

Travel management designations in the Oregon GRSG PRMPA/FEIS balance travel management needs with the purpose and need of the LUPA and is therefore consistent with BLM Manual and federal regulation.

OHV Noise Management Standard

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14) if it is determined not to meet the proposed action's purpose and need; (BLM Handbook H-1790-1, Section 6.6.3).

Comment response in the plan notes (p. V-52) that "During subsequent implementation-level travel management planning, new travel management plans would evaluate vehicle routes and determine the need for permanent or seasonal restrictions for roads and trails by season of use, road and trail closures, and type of vehicle use (e.g., motorcycle, ATV, and UTV). Seasonal and temporal closures have been proposed in Oregon for this planning effort (see Proposed Plan), and seasonal restrictions will diminish noise near leks." While noise management standards themselves would be an individual action within an alternative, the BLM appropriately dismissed the suggested action because it would not respond to the plan's purpose and need of "identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (Oregon GRSG PRMPA/FEIS, p. 1-4)."

Completing Travel Plans

Upon approval of the Oregon GRSG PRMPA/FEIS, the BLM will "initiate travel management planning within 5 years of RMP revisions" with a priority of completing travel plans first "in Oregon PACs with declining population needs", then "in all other Oregon PACs", and finally "in all GHMA" (Oregon GRSG PRMPA/FEIS, p. 2-34). The BLM will comply with all policy during subsequent activity level travel planning, including BLM's policy that "if the decision on delineating travel management networks is deferred in the land use plan to the implementation phase, the work normally should be completed within 5 years of the signing of the ROD for the RMP." (BLM Land Use Planning Handbook H-1601-1, p. C-18).

Environmental Justice

Issue Number: PP-OR-GRSG-15-21-6

Organization: High Bar Mining LLC/Auburn Creek Ranch LLC

Protestor: Philip Wirth

Issue Excerpt Text: Background: Baker and Malheur Counties are poor counties, and jobs are scarce. Mining operations are important revenue sources to the counties where mineral production occurs, and there will be a disproportionately high adverse impact to low income populations in the

Planning Area and throughout Eastern Oregon, as a result of restrictions and prohibitions to locatable mineral development, or by re-designating GRSG areas from general habitat to priority habitat. Protest Point: These restrictions will result in decreased revenues generated directly from mining operations and other revenue that is created from the indirect economic benefits associated with mining activities. The FEIS must address these effects to poor counties, or the FEIS must remove unreasonable restrictions on access and

mining and provide a public process and involvement before re-designating habitat.

Issue Number: PP-OR-GRSG-15-22-6

Organization: Queen Resources LLC

Protestor: Edward Rich

Issue Excerpt Text: Baker and Malheur Counties are poor counties, and jobs are scarce. Mining operations are important revenue sources to the counties where mineral production occurs, and there will be a disproportionately high adverse impact to low income populations in the Planning Area and throughout Eastern Oregon, as a result of restrictions and prohibitions to locatable mineral development, or by re-designating GRSG areas from general habitat to priority habitat. Protest Point: BLM must take into account the disproportionately high adverse impact to low income populations in the Planning Area and throughout Eastern Oregon, as a result of restrictions and prohibitions to locatable mineral development, or by re-designating GRSG areas from general habitat to priority habitat. These restrictions could result! in decreased revenues generated directly from mining operations and other revenue that is created from the indirect economic benefits associated with

mining activities. These are important revenue sources to the counties where mineral production occurs.

Issue Number: PP-OR-GRSG-15-23-5

Organization: Three Valleys Ranch and Mineral Valley LLC

Protestor: Steven Jay

Issue Excerpt Text: Baker and Malheur Counties are poor counties, and jobs are scarce. Mining operations are important revenue sources to the counties where mineral production occurs, and there will be a disproportionately high adverse impact to low income populations in the Planning Area and throughout Eastern Oregon, as a result of restrictions and prohibitions to locatable mineral development, or by re-designating GRSG areas from general habitat to priority habitat. Protest Point: These restrictions will result in decreased revenues generated directly from mining operations and other revenue that is created from the indirect economic benefits associated with mining activities. The FEIS must address these effects to poor counties, or the FEIS must remove unreasonable restrictions on access and mining and provide a public process and involvement before re-designating habitat.

Summary:

The Oregon PRMPA/FEIS failed to consider and analyze the “disproportionately high adverse impact to low income populations” located in several Oregon counties due to restrictions resulting in decreased revenues from mining operations and other revenue that is created from the indirect economic benefits associated with mining activities.

Response:

Chapter 3 of the Oregon PRMPA/FEIS succinctly addresses Environmental Justice (p. 3-190 through 3-194) and provides data detailing populations that require environmental justice considerations within Glacier County. As described in Chapter 3 (p. 3-193), “Of the seven counties in the Socioeconomic Study Area, all but one have a greater percentage of residents below the poverty level than the overall Oregon percentage (14 percent). Crook County (14 percent) has the same percentage of residents below the poverty level as Oregon as a whole.

Malheur County (22.7 percent) has the highest percentage of residents below the poverty level. The percentage of Baker County (19.9 percent) and Harney County (18.5 percent) residents below the poverty level are also substantially higher than Oregon as a whole.

As succinctly described in Chapter 4, Table 4-52 (p. 4-357) two alternatives (C and F) analyzed identified disproportionately high and adverse impact related to employment and earnings from ranching and grazing (Lake, Harney, and Malheur) with the other alternatives not identifying such and impact. Under the Proposed LUPA there would be no impact in considering the following (p. 4-356):

- Adverse impacts under any of the alternatives would not be restricted to one community or small communities but would be spread out in a broad region,
- No minority group is identified with the specific collection of activities that could be impacted by GRSG management (e.g., grazing),
- No pathways were identified through which minority populations would be particularly vulnerable to the adverse impacts identified in Chapter 4,

and there would be no disproportionately high and adverse impacts on minority populations under the management alternatives considered.

The study and analysis of environmental justice as described and analyzed in the PRMPA/FEIS consistent with the guidance in Appendix D (p. 11) in the BLM's Land Use Planning Handbook.

The BLM considered relevant information for the consideration of Environmental Justice impact analysis.