

*BLM Director's Protest Resolution
Report*

**South Dakota Greater Sage-
Grouse Resource
Management Plan / Final
Environmental Impact
Statement**

September 15, 2015



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-SD-GRSG-15-02-03

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

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

Summary

General statement summarizing the issue excerpts (optional).

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

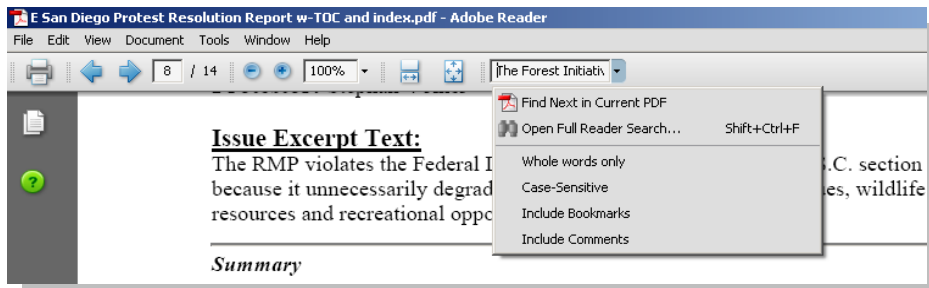
Response

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

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

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission(s) Number	Determination
William Smith	South Dakota Department of Agriculture	PP-SD-GRSG-15-01	Denied—Issues and comments
Erik Molvar	Wild Earth Guardians, et al	PP-SD-GRSG-15-02	Denied—Issues and comments
Travis Bruner	Western Watersheds Project	PP-SD-GRSG-15-03	Denied—Issues and comments
Mark Salvo	Defenders of Wildlife	PP-SD-GRSG-15-04	Denied—Issues and comments
Craig Kauffman	Safari Club International	PP-SD-GRSG-15-05	Dismissed—Comments only

Issue Topics and Responses

FLPMA—General

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

The ability to adopt post-leasing mitigation measures – see 43 C.F.R. § 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 U.S.C. §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-SD-GRSG-15-02-20

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.

Issue Number: PP-SD-GRSG-15-02-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

Given that the BLM’s position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to sage grouse (at least in the future) will be dealt with. This violates FLPMA and BLM Sensitive Species policy.

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 impose post-leasing oil and gas development stipulations, and by failing to take steps other than a possible withdrawal of areas from operation under the mining law to address threats to GRSG habitat posed by development of locatable minerals.

The PRMP/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs. The PRMP/FEIS fails to adequately evaluate and protect relevant and important values.

Response

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

For the development of fluid minerals under existing leases, the South Dakota PRMP/FEIS details BLM’s objectives on pages 48-49 to “work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources.” 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. As such, the South Dakota PRMP/FEIS will not result in “unnecessary or undue degradation of public lands.

The BLM has acted consistent with FLPMA, which provides that BLM in its land use plans give priority to the designation and protection of areas of critical environmental concern. BLM policy does not require that a potential ACEC’s relevant and important values be protected to the same level or degree of protection in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that “[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes” (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The South Dakota PRMP/FEIS analyzed a range of alternatives for the management of ACECs and other special designations. The South Dakota PRMP/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Pages 951 through 963 contain detailed analysis of the special designation alternatives, and the analysis of Alternative C on page 961 details the management challenges posed by an alternative that designates all PHMA as an ACEC.

However, as described on page 45, 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. Land use allocations in the Proposed Plan would limit or eliminate new surface disturbance in PHMA, while minimizing disturbance in GHMA. In addition to establishing protective land use allocations, the Proposed Plan would implement a suite of management tools such as disturbance limits, habitat objectives and monitoring, mitigation approaches, and lek buffer-distances throughout the range. These overlapping and reinforcing conservation measures will work in concert to improve GRSG habitat condition and provide clarity and consistency on how the BLM will manage activities in GRSG habitat.

Range of Alternatives

Issue Number: PP-SD-GRSG-15-03-13

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text:

We protest the failure to consider an alternative would remove livestock grazing from the entirety of GRSG habitat, including all of the priority and important habitats.

None of the alternatives consider eliminating livestock grazing across the range. There is no true analysis of the beneficial impacts of removing livestock grazing from sage-grouse habitat entirely, or seasonally in accordance with the best available science.

Issue Number: PP-SD-GRSG-15-03-7

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text:

The need for seasonal restrictions has been affirmed by leading sage-grouse 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 sage-grouse nesting the following spring.” The courts have also established that “to avoid conflicts with sage grouse 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 sage-grouse habitats.

Summary

The South Dakota PRMP/FEIS failed to analyze an adequate range of alternatives as required by NEPA by not considering removing livestock grazing from the entirety of GRSG habitat or applying seasonal restrictions on grazing.

Response

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (South Dakota PRMP/FEIS, Issues Considered but Not Furthered Analyzed (p. 1-10)). 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 developed a reasonable range of alternatives that meet the purpose and need (South Dakota PRMP/FEIS, p. 1-2) and that address resource issues identified during the scoping period. The PRMP/FEIS analyzed five alternatives, which are described in Table 2.5 Comparison of Alternatives (p. 2-27). The alternatives analyzed 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.

Eliminate Grazing from BLM Public Lands or GRSG Habitat

The section, Alternatives Considered But Not Carried Forward for Detailed Analysis (South Dakota PRMP/FEIS, p. 80) provides a succinct discussion as to why an alternative to make the entire planning area unavailable to livestock grazing was not analyzed in detail (Eliminate or Reduce Livestock Grazing on BLM-Administered Public Lands, (p. 82)). No issues or conflicts were identified during this land use planning effort that required the complete removal/ elimination of livestock grazing within the planning area. NEPA requires agencies to study, develop and describe appropriate alternatives that involve unresolved conflicts concerning resource uses. The CEQ guidelines for compliance with NEPA require that agencies analyze the “No Action Alternative” in all EISs (40 CFR 1502.14(d)). For the purposes of this NEPA analysis, the “no action alternative” is to continue the status quo, which includes livestock grazing. For this reason and those stated above, the South Dakota Planning Area dismissed a “no grazing alternative” for the entire planning area from further consideration in this RMP/EIS. The alternatives analyzed in detail do include various considerations for eliminating or reducing livestock grazing or maximizing individual resource values or uses in specific areas where conflicts exist (p. 83).

Livestock Seasonal Restrictions

As identified in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-79), 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. For Alternative B, the BLM used GRSG conservation measures in A Report on National Greater Sage-Grouse Conservation Measures (Sage-Grouse National Technical Team 2011, also referred as to the NTT Report) to form management direction.

For alternative C individuals and conservation groups submitted management direction recommendations for protecting and conserving GRSG and habitat range-wide. The recommendations, in conjunction with resource allocation opportunities and internal BLM input, were reviewed in order to develop management direction for GRSG.

Alternative D describes conservation measures to conserve, enhance, and restore GRSG habitat while balancing resources and resource use among competing human interests, land uses, and the conservation of natural and cultural resource values. This alternative incorporates the NTT report and includes local adjustments and habitat boundaries to provide a balanced level of protection, restoration, enhancement, and use of resources and services to meet ongoing programs and land uses.

Table 2-8 describes grazing guidelines that would be applied in each of the identified seasonal habitats. If guidelines cannot be achieved based upon a site-specific analysis using Ecological Site Descriptions, long-term ecological site capability analysis, or other similar analysis, grazing management would be adjusted to move towards desired habitat conditions consistent with the ecological site capability. Moving towards desired habitat conditions would conserve, protect and enhance GRSG habitat.

The BLM considered a reasonable range of alternatives in the South Dakota PRMP/FEIS in full compliance with NEPA.

Cumulative Effects

Issue Number: PP-SD-GRSG-15-04-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

The cumulative impacts analysis for Zone I states that: "[h]abitat fragmentation reduces connectivity of populations and increases the likelihood of extirpation from random events such as drought or outbreak of West Nile vims. Furthermore, climate change is likely to affect habitat availability to some degree by decreasing summer flows and limiting growth of grasses and forbs, thereby limiting water and food supply (BLM

2012b). Sensitive species such as [sage-grouse], which are already stressed by declining habitat, increased development, and other factors, could experience additional pressures as a result of climate change" (783). The plan does not elaborate further on this point. The plan also describes potential changes to crop yields from climate change, which is irrelevant to BLM land use management planning (806), and states that cheatgrass invasion is unlikely in the planning area (799), a claim which is difficult to evaluate given the lack of downscaled climate information in the document.

Summary

The PRMP/FEIS failed to adequately analyze cumulative effects because:

- it did not fully discuss the potential effects of climate change on habitat availability and address how climate change may result in additional pressures on sensitive species.
- it did not acknowledge that potential changes to crop yields from climate change is irrelevant to BLM land use planning; and

- it states that cheatgrass invasion is unlikely. This claim is difficult to evaluate.

Response

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

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section (Chapter 4) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

In Chapter 4, the Climate Change section (beginning on page 5-90) discusses impacts from climate change to the extent that is possible given the fact that the lack of scientific tools (models with sufficient spatial and temporal resolution) to forecast climate change at local scales limits the ability to quantify many future impacts of climate change in the planning area. For example, as the PRMP/FEIS states "climate change is likely to combine with other human-induced stress to further increase the vulnerability of ecosystems to pests, invasive species, and loss of native species. Warming temperatures are leading to earlier timing of spring events such as leaf-unfolding, bird migration, and egg-laying (IPCC 2007). The range of many plant and animal species is shifting north and to higher elevations, as the climate of these species' traditional habitat changes (Lawler et al. 2009). Warming temperatures are also linked to longer thermal growing seasons (IPCC 2007). Climate change is likely to affect wildlife breeding patterns, water and food supply, and habitat availability to some degree. Sensitive species in the planning area, such as sage-grouse, which are already stressed by declining habitat, increased development, and other factors, could experience additional pressures as a result of climate change".

References to cheatgrass invasion are generally qualitative and based on best available information.

The PRMP/FEIS states that "the COT report states that the Dakotas GRSG population is at risk from oil and gas development and conversion of native rangeland to cropland. Other threats include over-grazing in localized areas which has degraded the sagebrush habitat and can reduce nesting success, and small population size". The PRMP/FEIS also states, "the conversion of private lands to agriculture continues to be a challenging threat to manage in Management Zone

1. As described above, these conversions are attractive to ranchers as crop prices increase and climate conditions support more tillage. Once tilled, GRS habitat is not only lost on the tilled land, but surrounding habitat areas become fragmented and less hospitable to birds. BLM management cannot restrict tillage on private lands, and state governments have limited control over this action but management actions on BLM lands and state land policies may influence the potential for conversion on adjacent private lands.” The last sentence in this paragraph explains why the information was included.

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

The BLM adequately analyzed cumulative effects in the South Dakota PRMP/FEIS.

Best Available Science

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

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

BLM proposes no restrictions that would prevent the use of guy wires with meteorological towers. See, e.g., FEIS at Appendix V-4 p. 5. The record establishes that met towers can result in sage grouse population declines (see Cotterel Mountain data reviewed in ‘Wind Power in Wyoming,’ attached to Guardians’ DEIS comments for this plan amendment), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by grouse. The 2-mile buffer for such tall structures (Appendix V-3) is not supported by the science to prevent impacts to nesting habitats, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied. In addition, this restriction should not be limited to PHMAs but should also extend to General Habitats, crucial winter habitats, and connectivity areas as well.

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

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 grouse habitat. Allowing land uses and development to within minimum distances of sage-grouse breeding areas would have a greater negative impact on sage-grouse than if the agency required larger lek buffers. Managing to the minimum not only increases the risk of harming sage-grouse, 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 sage-grouse populations that depend on those leks and associated nesting and brood rearing habitat.

Summary

The South Dakota PRMP/FEIS does not comply with NEPA guidance to use the best available science in determining lek buffer distances in the Proposed Alternative.

Response

The BLM considered a variety of literature with regard to lek buffer size, including the COT Report, the NTT Report, and Manier et al. 2013. The alternatives in the South Dakota PRMP/FEIS considered a range for lek buffers sizes and dates (p. 141-146). The impacts of the various buffers are analyzed in Chapter 4 (beginning on p. 725).

In November 2014, the USGS released their Report on Conservation Buffer Distance Estimates for Greater Sage-Grouse – A Review (Open File Report 2014-1239). The purpose of this report is to provide a reference for land managers and others who are working to develop biologically relevant and socioeconomically practical buffer distances around GRSG habitats (including buffers for tall structures and structures with guy wires). The proposed plan imposes restrictions targeted to the individual threats to breeding and nesting activity in GRSG habitat. The findings of the Buffer Report have been incorporated into the Proposed Plan in Appendix V-3. As stated in that appendix,

Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized “that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the sage-grouse range.” The USGS report also states that “various protection measures have been developed and implemented... [which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands.” All variations in lek buffer-distances will require appropriate analysis and disclosure as part of activity authorization. (Appendix V-3, p.1)

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.

Impacts - Greater Sage-Grouse

Issue Number: PP-SD-GRSG-15-02-18

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage grouse populations, or describe the

relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015)

Issue Number: PP-SD-GRSG-15-03-14

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text:

We protest the failure to analyze whether the sage-grouse populations in the planning area will be conserved, enhanced, or recovered by the management actions within the plan.

While the purpose of the plan is to incorporate specific management actions and conservation measures to conserve sage-grouse and its habitats on BLM land, PRMP/FEIS at 1-14, the plan provides no analysis of whether sage-grouse populations in the planning area will be conserved, enhanced, or recovered by the management actions within the plan.

Issue Number: PP-SD-GRSG-15-03-15
Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text:

NEPA requires that agencies take a ‘hard

look’ at the direct impacts of activities approved under projects and plans, the efficacy of mitigation measures, and cumulative impacts considering other reasonably foreseeable impacts that will occur to the resource in question. BLM Resource Management Plans historically have had lifespans exceeding 20 to 30 years, and thus it is critical that the Sage-grouse Plan Amendments strike the proper level of protection for this species. For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage grouse populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Summary

The South Dakota PRMP/FEIS fails to adequately analyze impacts to GRSG because the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations.

Response

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. The effectiveness of these decisions on changes to GRSG populations will be evaluated based on criteria in the monitoring plan (see Appendix V-2 of the South Dakota PRMP/FEIS).

Chapter 4 of the South Dakota PRMP/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations.

Instructional Memorandum 2012-044 provided direction for the National Greater Sage-grouse Conservation Measures (NTT report). Conservation measures included in the NTT based alternative focus primarily on GRSG priority habitat and includes percent disturbance caps as a conservation measure to maintain or increase sage-grouse 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.

Impacts – Air Quality

Issue Number: PP-SD-GRSG-15-02-12

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

This failing has been incorporated by the BLM in its plan amendment by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a sage-grouse lek could have indirect (noise disturbance) or direct (mortality) negative effects on sage-grouse populations.” WBEA at 131.

BLM proposes a limit of 10 dBA above ambient at sunrise at the perimeter of leks in its Required Design Features. FEIS at Appendix V-1 p. 3. The ambient level should instead be set at 15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. These noise levels should be enforced around the clock, to avoid driving sage grouse out of their key habitats. In addition, by setting the noise level at the perimeter of the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Summary

The South Dakota PRMP/FEIS violated NEPA by failing to take a hard look at the environmental consequences when setting noise level limits near lek perimeters to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

Response

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

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

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are

truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). In this manner, the BLM takes a “hard look” at potential environmental impacts of adopting the South Dakota PRMP/FEIS.

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

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

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

The South Dakota PRMP/FEIS used the best available research information for setting the noise limits and buffer distance from leks. The South Dakota PRMP/FEIS discusses impacts from noise throughout Chapter 4 for resources that could be impacted by noise. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the South Dakota PRMP/FEIS, coupled with the mitigation of those activities and the of a net conservation gain mitigation standard. The Proposed Alternative provides the most permanent long-term protection for nesting and brood-rearing habitat in GHMA with the 2 mile Controlled Surface Use stipulation than the other alternatives. The stipulations in the Proposed Alternative would provide better long-term protection for sage-grouse on winter ranges and nesting and brood-rearing areas than the timing stipulations in Alternatives B and C. The Proposed Alternative provides specific guidance and management actions for the protection of priority habitat management areas from habitat loss and fragmentation. (South Dakota PRMP/FEIS Chapter 4, p. 767). For all alternatives, ambient noise is discussed and defined in Chapter 4, Air Resources, under Impacts Common to All.

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the South Dakota PRMP/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the South Dakota PRMP/FEIS planning effort.

The South Dakota PRMP/FEIS includes a bibliography and reference section located in Chapter

6, page 1007 of the South Dakota PRMP/FEIS, which lists information considered by the BLM in preparation of the South Dakota PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts of noise limits and buffers to leks in the South Dakota PRMP/FEIS.

Impacts - Other

Issue Number: PP-SD-GRSG-15-02-17

Organization: WildEarth Guardians

Protestor: Erik Molvar

'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 Excerpt Text:

BLM has failed to take the legally required

Summary

The South Dakota PRMP/FEIS violated NEPA by failing to take a hard look at the effectiveness of proposed mitigation measures and fails to analyze cheatgrass invasion in determining patterns of rangeland fire.

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 South Dakota PRMP/FEIS.

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

Chapter 4 of the South Dakota PRMP/FEIS (p. 799 and 802) discusses the effects of vegetation and wildland fire management on cheatgrass:

"Within the Dakotas population of the South Dakota planning area, the threat of weeds on the GRSG is considered present but localized (USFWS 2013). Although cheatgrass (*Bromus tectorum*) does occur, past fire history and research has repeatedly demonstrated a healthy northern mixed-grass prairie plant community is resilient to cheatgrass expansion. Haferkamp (2001), studying annual bromes, including cheatgrass in eastern Montana, concluded there would be no ecological shift of northern mixed-grass prairies toward annual grass dominance. Instead, he concluded the amount and abundance of annual bromes occurring on Northern Great Plains rangeland is cyclic, depending on seedbank, temperature, amount and distribution of precipitation. Expansion of annual

bromes in mixed–grass prairie communities is buffered by two long-lived perennial grasses (western wheatgrass and blue grama), where grazing management maintains healthy native mixed-grass prairie vegetation (Haferkamp 2001). Vermeire et al. (2011) studied effects of fire on perennial and annual grasses (including cheatgrass) and found increased production of western wheatgrass and decreased annual grass production following summer fire in the northern mixed-grass prairie. Climate change research also suggests there would not be a cheatgrass invasion into the Northern Great Plains. In particular, climate change modeling (Bradley 2009) illustrates the median precipitation change scenario (used to identify the most likely future climate change scenario) depicts little to no increase in cheatgrass climatic habitat within MZ I.

“While most sagebrush subspecies are killed by fire and slow to reestablish, cheatgrass recovers within one to two years of a fire from seed in the soil. This annual recovery leads to a reoccurring fire cycle that prevents sagebrush reestablishment (USFWS 2010, p. 13932). However, cheatgrass establishment after fires in MZ 1 is not currently a concern because resistance to widespread conversion to cheatgrass after fire is generally high throughout MZ 1.”

The BLM complied with NEPA’s requirement to analyze the impacts to vegetation and wildland fire management in the South Dakota PRMP/FEIS.

GRSG - General

Issue Number: PP-SD-GRSG-15-02-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

BLM has not made a showing through its collective NEPA analyses that sage grouse 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 sage grouse based on scientific studies. Indeed, the science shows that responses of sage grouse 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 sage grouse, 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 sage grouse 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-SD-GRSG-15-03-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

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 PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. Sage-grouse 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-SD-GRSG-15-04-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

Other proposed final federal sage-grouse plans would adopt standards for average grass height in sage-grouse nesting and brood-rearing habitat...

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

include perennial grasses and forbs 2" 7 inches high during nesting and early brood-rearing season (Idaho FEIS: 2-20, Table 2-3).

While these plans also provide that desired conditions may not be met on every acre of sage-grouse habitat and that a specific site's ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (similar to the South Dakota FEIS) (and recognizing that these additional disclaimers, by themselves, further complicate grazing management in sage-grouse range), the plans at least adopt science-based minimum standards for evaluating grazing effects and informing adaptive management of sage-grouse nesting and brood-rearing habitat.

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

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

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

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

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

The South Dakota plan should follow the example set by the Nevada and Oregon plans ...

Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses BLM's responsibility to consider climate change

impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [sage-grouse] habitat due to climate stress" as a threat to sage-grouse; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on sage-grouse and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species.

The Proposed RMPA in the Oregon FEIS would designate a network of "climate

change consideration areas," generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for sage-grouse over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current sage-grouse range. The purpose of these areas is to benefit sage-grouse over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Summary

Protests identified inconsistencies among the various sub-regional GRSG land use plan amendments and revisions. These differences include how they address grazing management, surface disturbance caps, and GRSG habitat in general and may lead to arbitrary decisions in each sub-region.

Response

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

While the BLM has used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences (see pages 35 and 36 of the PRMP/FEIS). Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG – Density and Disturbance Cap

Issue Number: PP-SD-GRSG-15-03-11

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. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupts vegetation communities, disturb and compact soils, and

make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns to other uses. The PRMPA says nothing about limiting the disturbance caused by the mere presence of livestock, e.g. that which is known to increase stress levels in the species.

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.

Response

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

“Sage-grouse are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 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 PRMP/FEIS that address impacts from improper grazing (see Chapter 2, Tables 2-5 and 2-6). The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of improper livestock grazing to GRSG habitat proposed in the South Dakota PRMP/FEIS.

GRSG – Data and Inventories

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

Organization: Defenders of Wildlife

Protestor: Mark Salvo

within the planning area; the plan does not incorporate available information from the Northwestern Plains Rapid Ecological Assessment.

Issue Excerpt Text:

The "Affected Environment" section on climate (383-392) contains no downscaled projections of climate conditions or impacts

Issue Number: PP-SD-GRSG-15-02-7

Organization: Wild Earth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

This policy required BLM to complete an Ecoregional Assessment for the Wyoming Basins Ecoregion [Northwestern Plains Ecoregion]. Id. at 11. The Northwestern Plains Ecoregional Assessment publication (“NPEA”) was completed in 2012, and

BLM should reference the findings of this report as they apply to the Lewistown amendment [South Dakota PRMP/FEIS], which falls within the NPEA area, in order for the BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy.

Summary

The South Dakota PRMP/FEIS does not incorporate climate projections from the Northwestern Plains Rapid Ecological Assessment.

Response

The BLM used the best available science, including the Northwestern Plains Rapid Ecological Assessment, during the development of the South Dakota PRMP/FEIS. The Ecoregional Assessment consolidated data for a larger study area in the Northwestern Plains Ecoregion, including the South Dakota planning area. The data referenced in the assessment that is applicable to the South Dakota planning was collected from the BLM South Dakota FO and is the same data that was used in this planning effort (see p. 385-392 of the South Dakota PRMP/FEIS). While not explicitly cited in the PRMP/FEIS, much of the data and conclusions from this assessment were used to formulate the alternatives and analysis presented in the PRMP/FEIS. The project file for this planning effort does contain and reference the data that was used in the ecoregional assessment.

GRSG – Livestock Grazing

Issue Number: PP-SD-GRSG-15-03-6

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 on 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 sage-grouse populations, the plan must include restrictions on spring grazing in all sage-grouse breeding habitat. In addition to

the needs for hiding cover and concealment of nests and young broods, sage-grouse 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 sage-grouse. 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-SD-GRSG-15-03-8

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text:

The agencies also fail to define grazing as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1- June 15). PRMP/FEIS at 38. And yet, the best science recommends that grazing be restricted during this same period. This failure is arbitrary and capricious, and the PRMP/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, the PRMP/FEIS has not considered limiting grazing in this way within the planning area. The PRMP/FEIS also doesn't specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 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 sage-grouse, the PRMPA/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

Summary

1. The South Dakota PRMP/FEIS fails to sufficiently analyze livestock grazing, does not analyze seasonal restrictions, does not set utilization limits or stocking rates, does not mandate specific terms and conditions to grazing permits and does not specify any consequence if terms and conditions are violated. Contrary to the best science, the South Dakota PRMP/FEIS 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.

2. The BLM also fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity.

Response

1. When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). In accordance with BLM's Land Use Planning Handbook and BLM IM No. 2012-169, the South Dakota PRMP/FEIS considers a range of alternatives that make the area available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. This analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the South Dakota PRMP/FEIS and that address resource issues identified during the scoping period. The South Dakota PRMP/FEIS analyzed four alternatives, which are described in Chapter 2, Proposed Action and Alternatives. The summary of the Proposed Alternative is detailed alongside the other alternatives (including current management) on pages 83-219; the summary of the impacts of the alternatives follows from page 219-336. Livestock grazing alternatives are addressed specifically from page 177 to 187; the impacts to livestock grazing from other resource management are detailed from page 316-322.

The BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands in an RMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in this RMP/EIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the Standards for Rangeland Health.

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

The South Dakota PRMP/FEIS sufficiently analyzed livestock grazing by providing a reasonable range of alternatives and analyzing them as required by law, policy, and regulation.

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

While there are no proposed Sagebrush Focal Areas (SFAs) in the SD planning area, as bird densities are lower and quality habitat is limited compared to other western states that have proposed SFAs, other important habitat areas such as winter range, brood-rearing, and nesting areas are addressed throughout the range of Alternatives. Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the South Dakota PRMP/FEIS that address these impacts. The BLM did not fail

to use the best available science in the South Dakota PRMP/FEIS in addressing the threat of livestock grazing.

Air Quality, Climate Change, and Noise

Issue Number: PP-SD-GRSG-15-04-7

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

Properly addressing climate change in sage-grouse planning would require the BLM to analyze the effectiveness of their proposed conservation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis of

climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate as their baseline for analysis. For example, the impacts of habitat disturbance may be more pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

Summary

In order to properly address impacts of climate change in Greater Sage-Grouse planning, BLM needs to do the following:

- Evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
- Examine cumulative environmental consequences in a changed climate as the baseline; and
- Examine impacts such as habitat disturbance in concert with climate change.

Response

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The BLM applies this requirement to the preparation of RMP revisions and amendments, as indicated in Chapter 1, Issues Addressed (page 17) – Climate Change: “Provide for adaptable, flexible management and diverse, healthy ecosystems that are resilient to the impacts of climate change. Consider the impacts of BLM actions on climate change.” Climate change is discussed in Chapter 3, Climate Change (page 385) and Chapter 4, Climate Change (page 590).

As indicated in Chapter 4 in the discussion of climate change, climate change is considered with regard to the potential effect it could have on various resources. For example on page 591, the PRMP/FEIS states: “Climate change is likely to affect wildlife breeding patterns, water and food supply, and habitat availability to some degree. Sensitive species in the planning area, such as sage-grouse, which are already stressed by declining habitat, increased development, and other

factors, could experience additional pressures as a result of climate change.” The impacts of climate change are also considered throughout the chapter as it might affect resources.

In the future, as tools for predicting climate change in a management area improve and changes in climate affect resources and necessitate changes in how resources are managed, the BLM may be required to reevaluate decisions made as part of this planning process and to adjust management accordingly.

The BLM complied with Secretarial Order 3289 in developing the South Dakota PRMP/FEIS.

Special Status Species

Issue Number: PP-SD-GRSG-15-02-11

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

...protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as BLM’s responsibility to prevent undue degradation to sage grouse habitats under FLPMA and the agency’s duty to uphold the responsibilities outlined in its Sensitive Species policy. BLM’s failure to apply adequate lek buffers to conserve sage grouse, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

Issue Number: PP-SD-GRSG-15-02-16

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 150), 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 also apply to crucial winter habitats as well. This, BLM’s proposed management of rights of way in PHMA is inadequate based on the science and likely to result in unnecessary and undue degradation pursuant to FLPMA and violations of the BLM’s Sensitive Species policy.

In GHMA, BLM proposes avoidance for major rights-of-way, but avoidance only within 2 miles of leks for minor rights-of-way. FEIS at 141, 144. For wintering habitats, BLM also proposes “avoidance” in GHMA. FEIS at 143. This is an appropriate level of management for major rights-of-way, but allows unlimited placement of distribution lines in nesting habitats as close as 2 miles from leks, which is inconsistent with the BLM’s own expert recommendations (NTT 2011) and will lead to displacement of sage grouse from prime nesting habitats and elevated predation rates in these sensitive habitats.

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

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

In the South Dakota RMP Amendment EIS, BLM has failed to apply in its proposed plan the recommended sage grouse protections

presented to it by its own experts (the BLM National Technical Team), and as a result development approved under the proposed plan violate the directives of BLM Sensitive Species Policy and will result in both unnecessary and undue degradation of sage grouse Priority Habitats and result in sage grouse population declines in these areas, undermining the effectiveness of the RMP amendment strategy as an adequate regulatory mechanism in the context of the decision.

Issue Number: PP-SD-GRSG-15-02-5
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-SD-GRSG-15-02-6
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 sage grouse toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act

Summary

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

BLM’s proposed management of rights of way in PHMA is inadequate based on the science and likely to result in unnecessary and undue degradation pursuant to FLPMA and violations of the BLM’s Sensitive Species policy.

Response

Contrary to the protest issues raised, the proposed land use plan revision for South Dakota 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’s Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to “address Bureau sensitive species and their habitats in land use plans and associated NEPA documents” when engaged in land use planning with the purpose of managing for the conservation (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in

compliance with existing laws, including the BLM multiple-use and sustained yield mission as specified in FLPMA (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans." (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the GRSG as contemplated in the policies (See Chapter 2, beginning on page 40 and in Table 2-2 on page 43).

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the Greater-Sage Grouse and provided for conservation measures in the FEIS. For example, in page 787 states that "...conservation measures for Sage Grouse (Appendices B and V) would help protect unfragmented habitats, minimize habitat loss and fragmentation, and maintain conditions that meet GRSG life history needs". Since, land planning-level decision is broad in scope. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

In short, based on the science considered and impact analysis in the South Dakota PRMP/FEIS, the management proposed in the South Dakota PRMP/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.

Travel Management

Issue Number: PP-SD-GRSG-15-02-13

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

Road densities are also an issue, because sage grouse avoid habitats adjacent to roads. Holloran (2005) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to sage grouse 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 amendment fails to provide adequate limits on road density.

Issue Number: PP-SD-GRSG-15-02-14

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text:

In order to bring the South Dakota RMP 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.

Summary

The South Dakota PRMP/FEIS violated NEPA by failing to utilize best available science to identify limits on road location and density.

Response

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "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 South Dakota PRMP/FEIS incorporated conservation measures and management practices to conserve GRSG consistent with "A Report on National Greater Sage-Grouse Conservation Measures" (NTT Report, 2011). Consistent with p. 11 of the NTT report this alternative would limit motorized travel "...to designated routes. Existing roads and trails will be considered designated routes until such time as an area-specific Travel Management Plan is completed and specific routes are identified and designated." (South Dakota PRMP/FEIS, p. 99).

The BLM utilized Holloran's 2005 findings, the NTT report, and the USGS Report on Conservation Buffer Distance Estimates for Greater Sage-Grouse to define allowable maximum landscape anthropogenic disturbance, required distance from leks for new actions, and density of mining or energy facilities.

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 PRMP/FEIS fall within the range of alternatives for protecting GRSG related to travel management, including travel limitations, road maintenance, and road construction.

The South Dakota PRMP/FEIS includes a bibliography (Chapter 6), which lists information considered by the BLM in preparation of the South Dakota PRMP/FEIS.

The BLM relied on high quality information in the preparation of the South Dakota PRMP/FEIS.

Reasonable Foreseeable Development Scenario

Issue Number: PP-SD-GRSG-15-01-1

Organization: South Dakota Department of Agriculture

Protestor: William Smith

Issue Excerpt Text:

The BLM responded by stating that data used was from the Reasonable Foreseeable Development Scenario developed by the Wyoming State Office, Reservoir

Management Groups and dated October 7, 2009. The State did not agree with this assessment so the State provided BLM with updated information, including maps and GIS shapefiles of the State's projections for the oil and gas development. In November 2014, the BLM responded that the BLM projections included many of the factors brought up by State but they did not believe that development would increase to the degree shown by the State's data and maps. The May 2015 Proposed RMP used the inaccurate and outdated data from the 2009 Reservoir Management Group instead of the more accurate and newer information provided by the State.

As a result, we protest the portions of the RMP dealing with the Reasonable Foreseeable Future for oil and gas development because the BLM chose to use the 2009 data rather than the current data offered by the State. Throughout the BLM planning process, the BLM has stated that they want to use current data in the development and implementation of the RMP; however, this was an instance where the BLM chose not to use current data. We believe that the BLM decision to use the old data was incorrect and should be reconsidered.

Summary

The South Dakota PRMP/FEIS failed to use information from the State of South Dakota in the Reasonable Foreseeable Development Scenario for Oil and Gas Activities in South Dakota.

Response

Based on comments received by the State of South Dakota, the BLM reviewed the Reasonable Foreseeable Development Scenario for Oil and Gas Activities on Bureau Managed Lands in the South Dakota Study Area (RFD; BLM, 2009). The report was reviewed by the Wyoming Reservoir Management Group, which includes BLM technical experts in the fields of petroleum engineering and geology. In addition to reviewing information provided by the State of South Dakota, the reviewers considered additional data on drilling that has occurred in the first 4 years and 10 months of the analysis period for the 2009 RFD.

The review of 2009 RFD and the information provided by the State of South Dakota determined that the current drilling rate does not support the projections offered by the State of South Dakota. Additionally, the reviewers determined that the 2009 RFD adequately accounted for variables such as increased gas prices. While the RFD is not able to accurately predict the exact locations of future wells, the reviewers determined that in aggregate, it still provides the best available information with regard to overall potential development.