

Director's Protest Resolution Report

**TransWest Express
Transmission Line Project
Final Environmental Impact
Statement (FEIS)**

December 16, 2016



Contents

Reader's Guide.....	3
List of Most Commonly Used Acronyms.....	4
Protesting Party Index.....	5
<i>Issue Topics and Responses</i>	6
<i>NEPA Range of Alternatives</i>	6
<i>Unnecessary and Undue Degradation</i>	7
<i>Public Comment</i>	9
<i>Impacts Analysis</i>	11
<i>Best Available Science</i>	14

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) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-WY-TRANSWEST-15-01-11

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.

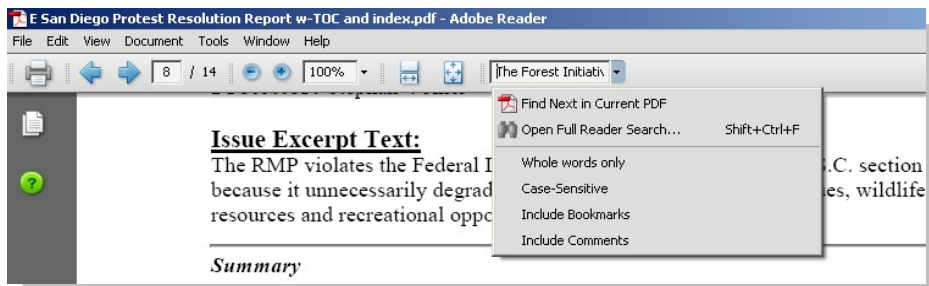
Response

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 Most Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	KOP	Key Observation Points
BMP	Best Management Practice	LRMP	Land and Resource Management Plan
BO	Biological Opinion	MOU	Memorandum of Understanding
CAA	Clean Air Act	NEPA	National Environmental Policy Act of 1969
CEQ	Council on Environmental Quality	NDOW	Nevada Division of Wildlife
CFR	Code of Federal Regulations	NOA	Notice of Availability
COA	Condition of Approval	NOI	Notice of Intent
CSP	Concentrated Solar Power	NRHP	National Register of Historic Places
CSU	Controlled Surface Use	NTT	National Technical Team
CWA	Clean Water Act	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
DEIS	Draft Environmental Impact Statement	ORV	Outstandingly Remarkable Value
DM	Departmental Manual (Department of the Interior)	PA	Preliminary Assessment
DOI	Department of the Interior	PPA	Power Purchase Agreement
EA	Environmental Assessment	RFDS	Reasonably Foreseeable Development Scenario
EIS	Environmental Impact Statement	RMP	Resource Management Plan
EO	Executive Order	ROD	Record of Decision
EPA	Environmental Protection Agency	ROW	Right-of-Way
ESA	Endangered Species Act	SO	State Office (BLM)
FEIS	Final Environmental Impact Statement	T&E	Threatened and Endangered
FEIS	Final Environmental Impact Statement	USC	United States Code
FLPMA	Federal Land Policy and Management Act of 1976	USGS	U.S. Geological Survey
FO	Field Office (BLM)	UDOW	Utah Division of Wildlife
FWS	U.S. Fish and Wildlife Service	WA	Wilderness Area
GIS	Geographic Information Systems	WBEA	Wyoming Basin Eco-regional Assessment
HRV	Historic Range of Variability	WGFD	Wyoming Game and Fish Department
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Ronald Winterton/Ken Burdick/Greg Todd	Duchesne County Commission	PP-WY-Transwest-15-02	Dismissed – Incomplete
Erik L. Glenn	Colorado Cattlemen’s Agricultural Land Trust	PP-WY-Transwest-15-03	Dismissed – Incomplete
John E. Hiatt	Red Rock Audubon Society	PP-WY-Transwest-15-05	Dismissed – Incomplete
Mark Salvo	Defenders of Wildlife / Sierra Club	PP-WY-Transwest-15-06	Denied – Issues and Comments
Erik Molvar	WildEarth Guardians	PP-WY-Transwest-15-07	Denied – Issues and Comments
Alex Daue	On behalf of: The Wilderness Society/Conservation Colorado/Audubon Rockies	PP-WY-Transwest-15-08	Denied – Issues and Comments

Issue Topics and Responses

NEPA Range of Alternatives

Issue Number: PP-WY-TransWest-15-07-9

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: It is reasonable within the framework of the BLM's multiple use mandate to consider at least one alternative

that avoids Priority Habitats, and another that requires underground transmission through Greater Sage-Grouse occupied habitats. Neither of these alternatives was considered by the BLM, despite their reasonableness and the fact that NEPA demands a full range of alternatives be considered.

Summary:

The TransWest Express Final Environmental Impact Statement (TWE FEIS) violated NEPA by failing to consider an alternative that avoids Priority Habitats, and another that requires underground transmission through Greater Sage-grouse-occupied habitats.

Response:

The BLM did analyze a reasonable range of alternatives. NEPA requires the BLM to consider reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment (40 CFR 1502.1). 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 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). For the TWE FEIS, the BLM used an iterative, adaptive process to identify a reasonable range of alternative transmission corridors that meet BLM's purpose and need, and that address potential resource or siting constraints identified during the scoping process, which help inform decision-makers. The TWE Project analyzed 18 major alternatives, and numerous minor variations as well as numerous alternatives considered but eliminated from further consideration, including an underground transmission alternative, which are described in chapter 2. The alternatives analyzed in the TWE Transmission Project cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration. In short, the BLM considered a reasonable range of alternatives for the TWE Project in compliance with NEPA.

Unnecessary and Undue Degradation

Issue Number: PP-WY-TransWest-15-08-12

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: FLPMA obligates BLM to prevent unnecessary and undue impacts: “In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 USC §1732(b) (emphasis added)). Despite this obligation, the BLM-proposed action in Northwest Colorado would impact state and federally-designated Preliminary Priority Habitat for Greater Sage-Grouse, as well as conservation easements obtained by the State of Colorado.

Summary:

The TransWest Express FEIS violated FLPMA by failing to take any action necessary to prevent unnecessary or undue degradation to Lands with Wilderness Characteristics and to Greater Sage-Grouse (GRSG) Preliminary Priority Habitat in Northwest Colorado.

Response:

The BLM has met its obligation under FLPMA to prevent unnecessary and undue degradation of BLM-managed 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.” Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM does not consider activities that comply with applicable statutes, regulations, and BLM policy—and include appropriate mitigation measures—to cause unnecessary or undue degradation.

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

Issue Number: PP-WY-TransWest-15-08-9

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: The BLM violated its obligations under FLPMA to prevent unnecessary or undue degradation of public lands by failing to select a feasible, lower impact alternative route for TWE. Despite comments, follow-up discussions and additional submissions, the BLM has not selected the route in Northwest Colorado that would avoid impacts to Lands with Wilderness characteristics and Greater Sage-Grouse habitat.

specifically describes mitigation measures at SSWS-5 found in the project Biological Assessment (BA), in FEIS chapter 3 Section 8 (Wildlife-special status species), and discussed in the analyses for Region 1 of the project which covers Wyoming and Northwest Colorado in Volume II of the TWE FEIS.

The TransWest Express FEIS will not result in “unnecessary or undue degradation of the lands” as set forth in Section 302(b) of FLPMA.

Public Comment

Issue Number: PP-WY-TransWest-15-08-15

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: The Wilderness Society, Conservation Colorado, Audubon Rockies and other conservation groups submitted extensive comments on the Draft EIS which BLM did not respond to in a substantive and meaningful way.

1. Our recommendation that TWE follow the lowest-impact route was labeled "Opinion Only" and not responded to in a substantive

Summary:

Our recommendation that the TransWest Express project follow the lowest-impact route was labeled “opinion”, and not responded to in a substantive and meaningful way. The BLM also failed to respond to substantive comments regarding specific Lands with Wilderness Characteristics units (Comment ID 164-1671-1685).

Response:

Contrary to the protestor’s comments, the BLM satisfied its obligations to respond to all substantive comments. NEPA requires an agency to assess, consider, and respond to all substantive comments received on a Draft (DEIS) when preparing a FEIS (40 CFR 1503.4). BLM has identified “substantive comments” as “those that reveal new information, missing information, or flawed analysis that would substantially change conclusions” (BLM Handbook H-1601-1, p. 23-24). See also BLM’s NEPA Handbook H-1790-1 at 65-66.

In compliance with NEPA, the BLM considered all public comments submitted on the TWE DEIS. The BLM performed a detailed comment analysis that assessed and considered all substantive comments received, which is reflected in Appendix L of the TWE FEIS. In particular, BLM responded to concerns about Lands with Wilderness Characteristics in Appendix L by explaining that “Inventories, designations, and determinations for areas with wilderness character are the responsibility of the BLM and are beyond the scope of the TWE EIS process to address or change. However, BLM field offices have been contacted to incorporate any updates to recent lands with wilderness characteristics inventories since the DEIS, and that information was incorporated into the FEIS”. These responses explain the BLM’s position with

and meaningful way.

Issue Number: PP-WY-TransWest-15-08-16

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: BLM failed to respond to substantive comments regarding specific lands with wilderness characteristics units.

We submitted many comments about lands with wilderness characteristics units along specific geographic segments of the proposed transmission line (Comment ID 164-1671-1685).

respect to the information provided by the protestor on the DEIS and the relevance of the information to the proposed TWE project.

Additionally, the protestor's claim that the BLM failed to respond to their recommendation to select the lowest-impact route is without merit. The BLM's NEPA Handbook H-1790-1 at p. 66 provides examples of comments not considered substantive, including "...comments in favor of or against the proposed action or alternatives without reasoning." The NEPA Handbook also indicates that BLM need not respond to non-substantive comments (H-1790-1 at p. 67). The protestor's opinion that if the BLM approves a right-of-way grant for TWE, it must follow a route "that has the lowest impacts" expresses a preference, which does not require a response. In any event, the BLM did respond to the protestor's opinion submitted in comment ID number 164-1459 in Appendix L at p. 93. In short, the BLM has responded, where appropriate, to the comments submitted by the protestor.

Impacts Analysis

Issue Number: PP-WY-TransWest-15-06-01

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The FEIS fails to provide any analysis by alternative documenting how many acres of nesting habitat will be negatively impacted by the proposed transmission line.

Issue Number: PP-WY-TransWest-15-06-02

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The FEIS provides no metrics by alternative to describe how many acres of brood-rearing habitat will be negatively affected.

Issue Number: PP-WY-TransWest-15-06-03

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The FEIS fails to quantify the acres of winter habitat negatively impacted by the project by alternative.

Issue Number: PP-WY-TransWest-15-06-04

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The cumulative effects in the FEIS fails to analyze the degree to which sage-grouse habitats are already heavily impacted by existing infrastructure.

Issue Number: PP-WY-TransWest-15-07-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The agency has failed to provide any analysis by alternative regarding how many acres of nesting habitat will be negatively impacted by the transmission line. See FEIS at 3.8-101.

Issue Number: PP-WY-TransWest-15-07-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: [The BLM] makes no effort to calculate how many acres will experience behavioral avoidance and/or population reduction as a result of these projects, current or future roads, and the TransWest project (and Gateway South).

Issue Number: PP-WY-TransWest-15-07-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM makes no effort to assess the cumulative impacts of these two power lines combined together on grouse migration and dispersal.

Issue Number: PP-WY-TransWest-15-08-18

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: BLM has not provided any information regarding an impact analysis of the population level impacts to any wildlife species from disruption of migration corridors.

Issue Number: PP-WY-TransWest-15-08-4

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: BLM's failure to adequately analyze the long-term cumulative effects on wildlife, particularly Greater sage grouse and LWC.

Issue Number: PP-WY-TransWest-15-08-5

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: Cumulative effects analysis fails to incorporate any information regarding anticipated road density increases.

Issue Number: PP-WY-TransWest-15-08-6

Summary:

The TWE FEIS fails to:

- quantify the number acres impacted for brood-rearing habitat affected, winter habitat affected, and nesting habitat affected or indirect loss of GRSG habitat;
- analyze impacts from multiple, co-located transmission lines on Lands with Wilderness Characteristics, anticipated road density increases, behavioral avoidance, or effects to seasonal migration; and
- adequately analyze the indirect loss of habitat and long-term cumulative effects, and provides no required mitigation practices for GRSG.

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: BLM has failed to look at indirect impacts, including: the indirect loss of habitat for wildlife species, in particular Greater sage grouse. The FEIS's cumulative impacts to Greater sage grouse only takes direct mortality from increased predation into account in terms of indirect impacts and even then provides no required mitigation practices, only recommendations and best management practices. BLM must properly analyze, disclose and evaluate the potential impacts from multiple, co-located transmission lines upon the variety of resources and values potentially affected.

Issue Number: PP-WY-TransWest-15-08-7

Organization: On behalf of: The Wilderness Society / Conservation Colorado / Audubon Rockies

Protestor: Alex Daue

Issue Excerpt Text: The effects of a project on the scope and scale of TransWest Express on this seasonal migration have not been analyzed in the EIS.

Response:

The BLM met its obligation to adequately analyze the impacts of the proposed project on GRSG and its habitat, as well as Lands with Wilderness Characteristics, including quantifying the direct, indirect, and cumulative impacts. NEPA requires federal agencies to take a “hard look” at the direct, indirect, and cumulative impacts associated with a proposed project and each alternative (See 40 CFR 1502.16, 1508.7, 1508.13).

In the TWE FEIS, the BLM has considered the impacts of the proposal and alternatives, including the impacts to GRSG and GRSG habitat, which provides for a comparison between alternatives. Wildlife-related issues addressed by this impact assessment were identified through the public scoping process and in consultation with the BLM, Bureau of Reclamation (BOR), Colorado Parks and Wildlife (CPW), Nevada Department of Wildlife (NDOW), Utah Division of Wildlife Resources (UDWR), U. S. Forest Service (USFS), U.S. Fish and Wildlife Service (USFWS), Western, and Wyoming Game and Fish Department (WGFD) (TWE FEIS 1.7.3).

The primary impact issues and analysis of considerations for wildlife are noted in Table 3.7-12. Relevant Analysis Considerations for Special Status Wildlife Species is found in Table 3.8-16. Table 3.8-22 provides a summary of the types of potential impacts to GRSG resulting from construction and operation of the Project. Other comprehensive tables present summaries of alternative route impact parameters for GRSG leks, GRSG habitats, GRSG attendance at leks within 4 miles of the alignment, and GRSG lek visibility by alternative route. A summary of impacts from the Project’s action alternatives is provided by region in Tables 2-23 through 2-26. Table 2-27 compares the applicant proposed route with the agency preferred route on a Project-wide basis (sum of impact parameters across the four Project Regions). Cumulative impacts to GRSG are presented in Sections 5.3.8, 5.3.14.2, and 6.2.4.3, and summarized in Table 5-20. The impacts analyzed adequately satisfy the NEPA’s required hard-look standard.

Additionally, BLM analyzes proposed mitigation measures that would avoid or minimize impacts to wildlife species and habitats, including GRSG, through the implementation of project design features (page 3.7-26), agency best management processes (BMPs), and proposed mitigation measures (TWE FEIS, Appendix C). These measures would apply during all phases of the Project through decommissioning and reclamation. In addition to the aforementioned measures, the Habitat Equivalency Analysis and compensatory mitigation plan for GRSG habitat also would benefit other wildlife species that occur within occupied GRSG habitat, and adjacent to occupied habitat. Details regarding the HEA and compensatory mitigation plan are discussed in Section 3.8.6, Impacts to Special Status Wildlife Species, Appendix J of this EIS, and Appendix K of the POD (TWE FEIS, Appendix D). The application of proposed mitigation measure SSWS-5, as discussed in Section 3.8.6, Impacts to Special Status Wildlife Species, also would minimize impacts to other wildlife species. In short, the TWE FEIS takes a hard look at the impacts to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives. Contrary to the protestor’s claims, the BLM has complied with the requirements of NEPA.

Best Available Science

Issue Number: PP-WY-TransWest-15-07-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Wyoming Basins Eco-regional Assessment publication (“WBEA”) was completed in 2011, and BLM should

reference the findings of this report as they apply to the TransWest Express project, which falls partially within the Wyoming Basins Ecoregion, 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 BLM failed to meet its obligation to use the best available science by not referencing in the TWE FEIS the findings of the 2011 Wyoming Basin Eco-regional Assessment (WBEA).

Response:

The BLM did use best available science in analyzing the TWE FEIS. NEPA requires that agencies use “high quality information” (40 CFR 1500.1(b)) and “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). The TWE FEIS discloses reference information of all of its sources. With respect to the WBEA, the BLM did not rely on it because a final report has not been published even though it was initiated in 2011, and the preliminary WBEA findings do not provide specific information that is more useful than cited references. In conclusion, the BLM relied on high quality information and the best available data in preparation of the TWE FEIS.
