



***Bureau of Land Management
Protest Resolution Report***

**Buffalo Field Office Final
Supplemental Environmental
Impact Statement and
Proposed Resource
Management Plan
Amendment**

November 13, 2024

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Acronyms

Term	Definition
BLM	Bureau of Land Management
AML	Abandoned Mine Land
ANCSA	Alaska Native Claims Settlement Act
AQD	Wyoming Department of Environmental Quality, Air Quality Division
ATV	all-terrain vehicle
BLM	Bureau of Land Management
CCS	carbon capture and storage
CCUS	carbon capture, utilization, and storage
CDPA	coal development potential area
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CM	Critical Minerals
DEQ	Wyoming Department of Environmental Quality
DOE	Department of Energy
DSEIS	Draft Supplemental Environmental Impact Statement
EIA	United States Energy Information Administration
EIS	environmental impact statement
EPA	United States Environmental Protection Agency
FCLAA	Federal Coal Leasing Amendments Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
FSEIS	Final Supplemental Environmental Impact Statement
MCFO	Miles City Field Office
MLA	Mineral Leasing Act of 1920
MMPA	Mining and Minerals Policy Act of 1970
NMA	National Mining Association
OCSLA	Outer Continental Shelf Leasing Act
PA	Preferred Alternative
PRB	Powder River Basin
PRMPA	Proposed Resource Management Plan Amendment
REE	Rare Earth Elements
RFFA	reasonably foreseeable future actions
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
SEIS	Supplemental Environmental Impact Statement
U.S.C.	United States Code

Introduction

The Bureau of Land Management (BLM) Buffalo Field Office released the Buffalo Final Supplemental Environmental Impact Statement and Proposed Resource Management Plan Amendment (FSEIS/PRMPA) on May 17, 2024. The BLM received six unique protest letter submissions during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. One of the letters was not complete and the letter only contained comments; therefore, this letter is not addressed further in this report. The remaining five letters were complete and timely and were from parties who had standing to protest. All five of these letters contained valid protest issues. The BLM documents the response to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Wyoming State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Buffalo FSEIS/PRMPA were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the valid protest issues raised by the protesting parties, and the BLM's response to the protest issues.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-WY-BF-EIS-24-01	Todd Parfitt	Wyoming Department of Environmental Quality	Denied
PP-WY-BF-EIS-24-02	Katie Sweeney	National Mining Association	Denied
PP-WY-BF-EIS-24-03	Ken Pearson	Navajo Transitional Energy Company	Denied
	Ryen Godwin	Schwabe, Williamson & Wyatt, on behalf of Navajo Transitional Energy Company	
PP-WY-BF-EIS-24-04	Steve Daines	U.S. Senate	Dismissed: incomplete and comments only
PP-WY-BF-EIS-24-05	Bill Novotny	Wyoming County Commissioners Association	Denied
PP-WY-BF-EIS-24-06	Del Shelstad	Campbell County Board of Commissioners	Denied
	Jim Ford	Campbell County Board of Commissioners	
	Jim Willox	Converse County Board of Commissioners	
	Bill Novotny	Johnson County Board of Commissioners	

Coal Screening Determinations

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: Appendix A contains a coal screening analysis as required by federal law. 43 C.F.R. § 3420.1-4. The DEQ previously raised concerns that the coal screening process in the DSEIS was inconsistent with the law. However, the BLM did not address those concerns in Appendix A or the supporting analysis in the FSEIS. Federal regulations require the coal screening process to inform major land use planning decisions concerning coal resources. See 43 C.F.R. § 3420.1-4(e). The latest coal screen identified 388,430 acres (or 48.01 billion short tons) in the planning area as available for federal coal leasing. (FSEIS at A-9). The purpose of this conclusion was supposed to serve as “a baseline for coal acceptability for further consideration for leasing.” (FSEIS at ES 6). With 48.01 billion short tons of federal coal available for leasing as its regulatory baseline, the BLM then took the unprecedented step of removing all 48.01 billion short tons from any consideration under Coal Screen 3 (multiple use screen) in order “to reduce greenhouse gas (GHG) emissions as a proxy for climate change.” (Id.). The FSEIS does not explain what analysis, if any, BLM actually considered under Screen 3 to come to its conclusion. In other words, BLM ignored its baseline and did not show any of its work when it used supposedly reduced GHG emissions as a self-described “proxy” factor to nullify its own calculations from the coal screening process. This all-or-nothing approach is inconsistent with the coal screening regulations, agency guidance, and past practice including its most recent 2019 coal screen. Troublingly, it appears BLM did not use its coal screening process to inform its rationale, range of alternatives, or the PA. Instead, it used its proposed alternatives to dictate the outcome of the coal screen. The District Court ordered BLM to complete a “new coal screening and NEPA analysis” and to also consider “no leasing and limited coal leasing alternatives.” (District Court Order at 20 (Aug. 2, 2022)). DEQ’s protest centers on BLM’s failure to comply with existing regulations in its effort to respond to the District Court’s order. In particular, the FSEIS does not provide any meaningful explanation as to how BLM went from 48.01 billion short tons available for leasing in the project area to zero within a defined mineral boundary. In the absence of any explanation, calculation, or reasoning, it appears BLM rendered its coal screening baseline an administrative afterthought by using a “proxy” factor to support a particular outcome with no explanation. As if to prove the DEQ’s point about the importance of multiple use, the coal screening resulted in only 940 acres of land being excluded from leasing under coal screening analysis “Screen 3” concerning multiple use (prior to the BLM applying the greenhouse gas “proxy”). (FSEIS A, A-7). This equates to less than two-tenths of one percent of the 481,000 acres in the CPDA. Clearly, no multiple use conflict exists that would warrant not carrying out coal leasing. Moreover, “Screen 2” relating to assessment of so-called unsuitability criteria showed that of the 61.30 billion short tons of coal in the CDPA, 52.66 billion short tons of coal exist with development potential. (FSEIS Appendix A, A-4).

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The legal and factual problems with BLM’s approach are obvious. DEQ’s comments to the draft SEIS (and those of the counties most impacted by the decision) outlined the extent of coal lands within the planning area available for leasing, the historical role that the planning has provided in supporting federal coal production, and the importance of this resource on local communities. (See, e.g., DEQ Draft SEIS Comments at 2 (Aug. 1, 2023)). The BLM appears to have prepared its FSEIS and RMPA without an analysis of the management situation as required by federal regulation. 43 C.F.R. § 1610.4-4. The BLM also acted inconsistently with its coal screening regulations and failed to provide an explanation for its use of “proxy” factors in the coal

screening process. Accordingly, DEQ requests that the BLM reconsider its coal screen in the FSEIS.

Summary:

Protestors stated that the BLM failed to comply with multiple existing regulations in its effort to respond to the District Court's order to complete a "new coal screening and NEPA analysis." Protestors asserted that the BLM is in violation of 43 CFR 3420.1-4 and 43 CFR 1610.4-4 by failing to develop an analysis of the management situation. Protestors also stated that the BLM wrongfully applied multiple-use conflicts during its coal screening analysis and failed to provide adequate explanation for the use of proxy factors in the coal screening process.

Response:

43 CFR 3420.1-4(e) outlines the coal screening criteria to be applied before land use planning actions to identify areas suitable for further consideration for leasing. The BLM competitive leasing regulations define four major steps in the land use planning process to identify Federal coal areas for potential leasing: (1) identification of coal development potential; (2) application of the coal unsuitability criteria; (3) multiple-use conflict evaluation and elimination; and (4) surface owner consultation (43 CFR 3420.1-4(e)). Collectively, these steps are referred to as the Coal Screening Process and are detailed in Buffalo FSEIS/PRMPA Appendix A, *Coal Screening Process*.

As described in Section 1.1, *Purpose and Need*, the purpose of the Buffalo FSEIS/PRMPA is so that the document "(1) Completes a new coal screening and analysis that considers a no-leasing and limited coal leasing alternatives; and (2) Discloses the public health impacts, both climate and non-climate impacts, of burning fossil fuels (coal, oil, and gas) from the decision area" (p. 1-1). Utilizing the coal screening criteria, the BLM developed the No Leasing and Limited Leasing Alternatives. The findings of the BLM Coal Screening Process are outlined in Appendix A of the Buffalo FSEIS/PRMPA. The appendix outlines the screening process for coal resources undertaken by the Wyoming Buffalo Field Office, in accordance with 43 CFR 3420.1-4(e)(1-4). The process was utilized to inform potential land use decisions regarding the acceptability of coal leasing under the alternatives analyzed in the Buffalo FSEIS/PRMPA.

The BLM utilized a coal screen developed for the 2019 Supplemental Environmental Impact Statement (SEIS), which authorizes Federal coal resources in the decision area. The coal screen described in Appendix A of the Buffalo FSEIS/PRMPA corrects errors made in 2019 and provides updated information on resources in the Buffalo Field Office decision area since the last screening in 2019. Corrected errors include elk crucial winter habitat, removal of the Interstate 90 bypass, miscalculations, sage-grouse lek buffers, nonlinear rights-of-way, one additional bald eagle nest, and several additional golden eagle nests. Notably, the BLM did not alter any unsuitability criteria interpretations or decisions. The existing management of coal resources and potential environmental effects are outlined in Section 3.5.5, *Coal Resources* (Buffalo FSEIS/PRMPA pp. 3-124 through 3-128) and discussed throughout the Buffalo FSEIS/PRMPA. Section 3.5.3, *Social and Economic Considerations* (Buffalo FSEIS/PRMPA pp. 3-85 through 3-108), outlines existing management related to socioeconomic conditions within the analysis area and the potential environmental consequences associated with each alternative.

The Buffalo FSEIS/PRMPA followed the Coal Screening Process as outlined in 43 CFR 3420.1-4(e) and therefore this protest is denied.

FLPMA: Consistency with other Plans

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The BLM justified ignoring these county land use plans by simply arguing that the BLM is required to comply with county land use plans only to the extent it finds the plans to be consistent with FLPMA and other federal law and regulation. (See, e.g., FSEIS at H-96). Consequently, the BLM casually dismissed comments by the counties. Yet, these county land use plans in fact are consistent with FLPMA's multiple use mandate. The BLM wrongly brushed off this important legal issue. It is the PA, and not the county land use plans, that is inconsistent with FLPMA.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: There is no indication in the FSEIS that BLM provided sufficient recognition of local land use plans or assured that those plans were given satisfactory consideration as required by FLPMA. Nowhere in the FSEIS does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary, and all three Counties have included their County Natural Resource Management Plans in full as part of the record.^{30 31 32} See 43 C.F.R. § 1610.4-4.

Summary:

Protestors stated that the BLM violated the Federal Land Policy and Management Act (FLPMA) by not providing sufficient recognition or consideration of local land use plans in the Buffalo FSEIS/PRMPA, and by dismissing comments from the counties.

Response:

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

In accordance with this requirement, the BLM has given consideration to the state, local, and Tribal plans that are germane to the development of the Buffalo FSEIS/PRMPA. The BLM has worked closely with state, local, and Tribal governments during preparation of the Buffalo FSEIS/PRMPA. Chapter 4, *Consultation and Coordination*, describes coordination that has occurred throughout the development of the Buffalo FSEIS/PRMPA.

Section 1.6, *Relationship to State and Local Plans*, provides discussion on the BLM's consistency with FLPMA and 43 CFR 1610.3-2. As stated in Buffalo FSEIS/PRMPA Section 1.6 (p. 1-14), the 2015 Buffalo Approved Resource Management Plan/Record of Decision in Section 1.4.4 provides additional plans considered during the analysis in the Buffalo FSEIS/PRMPA. The agency will discuss why any remaining inconsistencies between the Buffalo FSEIS/PRMPA and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision for the Buffalo FSEIS/PRMPA.

The BLM satisfied FLPMA’s consistency requirement in preparation of the Buffalo FSEIS/PRMPA. Accordingly, this protest is denied.

FLPMA and Mineral Leasing Act Violation

National Mining Association

Katie Sweeney

Issue Excerpt Text: In response to NMA’s and similar comments, BLM merely states that neither FLPMA or the MLA require that leases within the allocation area be granted or that coal leasing is excluded from the remainder of the planning area.³⁸ While it is true that FLPMA does not require leases be granted, it does require a balancing test to determine if multiple uses can coexist. That balancing test is appropriately articulated in BLM’s 2006 “Energy and Non- Energy Minerals Policy Statement.”³⁹ The policy indicates that except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest. Furthermore, the policy states that BLM land use planning and multiple-use management decisions will recognize that, with few exceptions, mineral exploration and development can occur concurrently or sequentially with other resource uses. For the reasons articulated in section II.a. of this protest letter concerning impacts to reliable and affordable electricity, ending future federal coal leasing in the largest U.S. coal-producing basin is not in the national interest.

National Mining Association

Katie Sweeney

Issue Excerpt Text: The NMA’s comment on the draft EIS similarly raised concerns about BLM’s compliance with the MLA. In the MLA, the primary statute that governs the leasing of federal coal, Congress recognized the importance of this critical resource. In fact, the MLA is subtitled “an act to promote the mining of coal...” and mandates that “no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract.” BLM rebuffs the NMA’s arguments, once again asserting that neither the MLA or FLPMA require that leases within the allocation area be granted. In this protest, the NMA reiterates its MLA argument and points to the BLM’s 2006 policy as articulating how BLM can comply with FLPMA and the MLA without ending future coal leasing. For the reasons articulated in section II.a. of this protest letter concerning impacts to reliable and affordable electricity, ending future federal coal leasing in the largest U.S. coal-producing basin is not in the national interest.

Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt

Ken Pearson & Ryen Godwin

Issue Excerpt Text: BLM’s proposed decision under the RMPA violates FLPMA’s multiple use mandate. FLPMA requires the Secretary to manage public lands for multiple uses, including mineral development, and to develop comprehensive land use plans incorporating these various uses. 43 U.S.C. §§ 1701(a)(7), 1712(c). FLPMA directs the Secretary to “use and observe the principles of multiple use and sustained yield” in developing land use plans. 43 U.S.C. § 1712(c)(1). BLM’s ban on coal leasing fails to provide for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment[.]” 43 CFR 1601.0-5(i). A complete ban fails to balance multiple uses by simply elevating a single use or resource value over all other uses. It is antithetical to principles of “multiple use and sustained yield” to impose a complete ban on the most significant revenue generating use of federal lands within the Powder River Basin like further coal leasing. 43 U.S.C. § 1712(c)(1).

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: BLM’s application of the multiple use criteria in coal screening not only violates FLPMA’s multiple use mandate, it is also completely arbitrary. The RMPA states: BLM applied a climate change criterion for air resources under Screen 3 (multiple-use) that considers climate change as a resource value unique or of local, regional, or national importance to develop a range of alternatives that meet the purpose and need. To that end, to eliminate federal lands based on a climate change criterion for air resources, the BLM anticipates by limiting future opportunities for federal coal leasing and development there may be a reduction in GHG emissions from combustion of new federal coal, which would thus reduce climate change effects. Miles City Field Office Final SEIS and Resource Management Plan (MCFO RMPA), 2-1.1 First, climate change is not a resource value contemplated by FLPMA. FLPMA’s multiple use standard refers to resource values specific to the land like open space, timber, minerals, water quality, wildlife, and air quality, not global climate change. See 43 USC § 1702, (c). BLM’s attempt to shoehorn climate change into air resources contorts the plain language of the statute. Second, BLM’s conclusion that eliminating coal mining in the PRB will protect the climate change resource is arbitrary. The Multiple Use screen provides that “multiple use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses[.]” 43 CFR 3420.1-4(e)(3) [emphasis added]. The elimination of coal leasing will not “protect other resource values” such as air quality and public health impacts from greenhouse gas (GHG) emissions and/or climate change.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: It is patently arbitrary for BLM to choose a means to an end, like a ban on coal leasing to protect other resource values, where BLM admits that such a means has no causal relationship to the end. There is not a single statement in either the MCFO RMPA or the Buffalo RMPA that links the reduction in coal from the planning area to the actual protection of some other resource value because power plants will find another source of fuel. The Multiple Use screen is intended to resolve actual conflicts between uses like urban development on rangelands, mining through historic or cultural resources, or logging in critical habitat for a listed species. The Multiple Use screen is not intended to act as a catch all for any and all environmental impacts occurring globally. If BLM’s position was correct, then BLM could prohibit logging on public lands in Montana to protect pollution from mills in China or prohibit ATVs on public lands in Wyoming to prevent pollution from manufacturing plants in Ohio. BLM’s action does not protect the climate change resource value, even if climate change could arguably be contemplated as a resource value in FLPMA. Moreover, coal mine permits already require the permittee to protect other environmental resources such as air quality, land quality, water quality, and wildlife. A mine operator is required to hold a Clean Air Act permit, a Clean Water Act water quality permit, a Surface Mining Control and Reclamation Act reclamation plan, a U.S. Army Corps of Engineers dredge and fill permit, and applicable wildlife protection and mitigation to prevent environmental impacts. In other words, there are adequate protections for other resource values provided by public lands so a total ban is entirely arbitrary.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: The MLA requires the Secretary of the Interior to lease public lands for mineral development, including coal. While the MLA certainly allows some discretion, it also emphasizes the importance of promoting the orderly development of domestic mineral resources. This suggests a need to consider the broader consequences of leasing decisions, including their

potential impact on national energy security. As discussed, FLPMA mandates that public lands be managed for multiple use and sustained yield. While FLPMA allows for prioritizing certain uses over others, it also requires that decisions be made in the public interest. Given the potential impact of coal on national security, the BLM should have thoroughly addressed this dimension within its analysis. By failing to adequately consider the national security implications of its decision, the BLM undermines its statutory obligations under both the MLA and FLPMA. A comprehensive assessment of energy security concerns would not only have aligned with the broader intent of these laws but also potentially led to a more balanced and informed decision regarding future coal leases.

Wyoming County Commissioners Association
Bill Novotny

Issue Excerpt Text: On the contrary, if the BLM had followed FLPMA’s multiple use mandate and requirement to coordinate and be consistent with local government plans, it would have selected an alternative that allows for future leasing. Likewise, if the BLM had followed NEPA’s requirement to cooperate with local governments to develop alternatives and evaluate environmental and socioeconomic effects additional analysis would have been in the FSEIS to support the decision to continue leasing such a valuable resource. Unfortunately, the BLM did not include a meaningful analysis of the information provided to it by our member counties and has thus arbitrarily selected the no-leasing alternative without analyzing the required environmental and socioeconomic effects.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: On the contrary, if the BLM had followed FLPMA’s multiple use mandate and requirement to coordinate and be consistent with local government plans, it would have selected an alternative that allows for future leasing. Likewise, if the BLM had followed NEPA’s requirement to cooperate with local governments to develop alternatives and evaluate environmental and socioeconomic effects additional analysis would have been in the FSEIS to support the decision to continue leasing such a valuable resource. Unfortunately, the BLM did not include a meaningful analysis of the information provided to it by our member counties and has thus arbitrarily selected the no-leasing alternative without analyzing the required environmental and socioeconomic effects.

Wyoming Department of Environmental Quality
Todd Parfitt

Issue Excerpt Text: In sum, by selecting the no leasing alternative, the BLM has made coal unavailable to be leased in time to continue production in the PRB, even to 2041 in some instances. Moreover, the BLM effectively sterilized viable coal reserves by selecting the PA This rendered the coal reserves within the defined mineral boundary of the PRB unavailable and resulted in a mineral withdrawal that is in conflict with the requirements of the federal Mineral Leasing Act of 1920 as amended and the Federal Lands and Policy Management Act (FLPMA). Therefore, the FSEIS and RMPA as published are substantially flawed and do not address and disclose the actual economic and environmental impacts of selecting the no leasing alternative.

Wyoming Department of Environmental Quality
Todd Parfitt

Issue Excerpt Text: Thus, it is clear the BLM is mandated to manage the CDPA in accord with multiple use and sustained yield principles. The BLM, however, casually declared that just because various federal laws “may encourage coal mining” (i.e., FLPMA and the Mineral Leasing Act),

those laws “do not mandate that coal mining be authorized wherever coal reserves may be present.” (FSEIS at Appendix, H-75). There might have been some legal justification to support the PA (setting aside the dramatic shift in policy) had the BLM selected the PA based on a need to devote the CDPA to another resource use. That, however, did not occur; the only supposed justification for the PA was the proposition that it would supposedly result in a 0.0158 degree Celsius decrease in temperatures. Thus, the BLM violated FLMPA’s well-established multiple use mandate and Congress’ directive to the BLM to manage public lands for resource needs. The BLM also reversed course and eliminated the long standing CDPA without an adequate explanation. A. The PA is inconsistent with previous Buffalo RMPA findings and conclusions.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: The purpose of the MLA is “to promote the mining of coal” and other minerals on the public domain. MLA, 41 Stat. 437 (1920) (preamble). The MLA clearly states: “Deposits of coal . . . shall be subject to disposition in the form and manner provided by this Chapter to the citizens of the United States[.]” 30 USC § 181. Similarly, the MMPA, directs the Secretary of the Interior to promote the development of domestic mineral resources. 30 USC § 21a. This mandate further requires the Secretary of the Interior to implement Congressional policy through programs providing for the “orderly and economic development of” coal resources. *Id.* The MLA, as amended by the Federal Coal Leasing Amendments Act (FCLAA), provides specific criteria for issuing coal leases. Therein, Congress directed the Secretary of the Interior to adopt rules for coal leases according to a prescribed process for managing federal lands. 30 USC § 189; 30 USC § 201. Congress directed the Secretary of the Interior to develop a “comprehensive land-use plan” for coal development and prohibited the Secretary from implementing policy or regulations inconsistent with that plan. 30 USC § 201. There is nothing in the MLA, FCLAA, or MMPA permitting a total ban on coal development. In fact, such a total ban entirely circumvents Congress’ well expressed intent, and is contrary to well established law. While the Secretary of the Interior certainly has discretion to implement the MLA, FCLAA, and MMPA in a manner consistent with NEPA, the statutes’ clear mandate to make coal available for leasing to support domestic production leaves no discretion to ban coal leasing all together. The Secretary in this regard is amending federal statutes, with a single executive action, and without regard for the decision of elected officials in Congress. It is not for the executive branch to make sweeping energy and mineral policy determinations, as BLM does with the RMPA, where Congress has already made the difficult policy decision to promote and develop the Nation’s coal through federal leasing.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: The BLM’s reason to ban coal leasing here is similar to the reasons that were considered and rejected by the District of Louisiana in *State v. Biden*. *State v. Biden*, No. 2:21-cv-00778, 33- 34 (W.D. Louisiana filed June 15, 2021). In *State v. Biden*, the Biden Administration issued numerous executive orders, similar to those orders cited in the RMPA, to explore options to reduce fossil fuel development. To implement these Executive Orders the Secretary of the Interior “paused” all federal oil and gas development on the Outer Continental Shelf. States that rely upon oil and gas royalties challenged the pause as a violation of the MLA and Outer Continental Shelf Leasing Act (OCSLA). The Court held: By stopping the process, the agencies are in effect amending two Congressional statutes. Neither the OCSLA nor the MLA give the Government Defendants’ agencies the authority to [pause] lease sales. Those statutes require eligible oil and gas leases to continue to be sold in accordance with the statutes. The Court finds that the stopping of leasing of eligible lands and waters is contrary to law. *State v. Biden*, No. 2:21-cv-00778, pg. 33-34 (W.D. Louisiana filed Aug. 18, 2022). NEPA requires federal agencies to consider the

environmental impacts of their actions, but it does not authorize an agency to disregard laws passed by Congress just because it disagrees with the outcome. Whether or not there is a significant impact, BLM is still required to follow all of the pertinent laws and regulations when making its decision. The BLM's decision to ban coal leasing in the Powder River Basin is contrary to law, the MLA, FCLAA, and MMPA in particular, among the other federal statutes promoting domestic coal development.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: BLM's Resource Management Plan Amendment terminates federal coal leasing including pending lease applications, despite clear Congressional direction to the contrary in the Mineral Leasing Act. Under the No Leasing Alternative "only existing leases could be developed." BFO SEIS/RMPA, 2-1. As the BLM is well aware, the Powder River Basin (PRB) provides 85% of the federal coal in the United States, so the decision not to designate any lands outside of the existing leases as suitable for coal mining will effectively eliminating future mining of federally owned coal. That decision is directly contrary to the Mineral Leasing Act of 1920 (MLA) and the Mining and Minerals Policy Act of 1970 (MMPA), and the body of federal regulation implementing those statutes. Congress has specifically directed that coal leasing shall be available in those areas suitable for such activity. The Department of the Interior cannot render meaningless a body of federal legislation in a single executive action such as a resource management plan amendment.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: BLM failed to provide a reasoned explanation for its decision to select the No Leasing Alternative. BLM must evaluate the impacts of each of the alternatives, and provide a reasoned explanation for its decision. However, the RMPA provided no explanation for why BLM chose the No Leasing Alternative. In the section titled "Rationale for Identifying a Proposed Plan Amendment" the closest thing that BLM provides to an explanation, is no explanation at all: "Collectively, the mines have sufficient federal coal leased to meet forecasted production levels into 2041." BFO SEIS/RMPA, 2-5. At best, this could be read as an implicit statement by BLM that federal coal mining should stop in 2041, although it is not clear why BLM believes that Congress put an expiration date on the MLA. Even though the court required BLM to evaluate the environmental impacts of those alternatives, BLM must still give a reasoned explanation for choosing the No Leasing Alternative. BLM has provided a data dump, summarizing what it claims are the foreseeable impacts of each alternative. However, BLM never takes the requisite next step of providing meaningful discussion about why it ultimately chose the No Leasing Alternative. Such discussion is required under FLPMA and NEPA.

Summary:

Protestors stated that the BLM violated FLPMA and the National Environmental Policy Act (NEPA) by choosing the No Leasing Alternative in the Buffalo FSEIS/PRMPA without adequate rationale and not balancing the multiple-use principle without following proper procedures for administrative actions that are in the national interest. In addition, the protestors noted:

- While neither the MLA nor FLPMA requires leases be granted, the BLM can still comply with both FLPMA and the MLA without instituting a blanket ban of future coal leasing and continuing to supply reliable and affordable electricity, which is within the national interest.
- By instituting a complete ban of coal mining, the BLM is violating the MLA, which states that only mining operations that achieve "maximum economic recovery" shall be approved.

- The BLM choosing the No Leasing Alternative is an arbitrary decision because climate change is not a resource valued by FLPMA.
- Ending future Federal coal leasing is not in the national interest of providing reliable and affordable electricity.
- The BLM violated the MLA and FLPMA by failing to address and disclose the economic and environmental impacts of selecting the No Leasing Alternative and making coal reserves unavailable in the Buffalo FSEIS/PRMPA.
- The BLM’s decision of selecting the No Leasing Alternative in the Buffalo FSEIS/PRMPA is contrary to NEPA, the MLA, FCLAA, and MMPA because instituting a total ban on coal development in the planning area appears to be amending Federal statutes with an executive action, which is outside the BLM’s authority.

Response:

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield.” Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

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

The Surface Mining Control and Reclamation Act of 1977 (30 United States Code [U.S.C.] 1271) outlines requirements for designating areas unsuitable for coal mining. These regulations identify certain lands as unsuitable for surface mining or surface mining operations because they contain significant values that conflict with coal development. Lands are considered unsuitable for certain types of surface coal mining operations if such operations will “(A) be incompatible with existing State or local land use plans or programs; or (B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology” (30 U.S.C. 1271(3)(a)).

Furthermore, the act requires that “determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels” (30 U.S.C. 1271(a)(5)). As such, the BLM must provide a rationale if it determines that areas in the Buffalo FSEIS/PRMPA are unsuitable for surface coal mining operations.

The Buffalo FSEIS/PRMPA is a land use-level planning process and associated environmental review specific to the Buffalo Field Office and is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). The court specifically ordered the BLM to consider No Leasing and Limited Leasing Alternatives. In addition, NEPA requires agencies to analyze a No Action Alternative. See Section 2.2, *Alternatives Development*, of the Buffalo FSEIS/PRMPA for further

details. The selection of the preferred alternative/proposed plan is identified in the executive summary and discussed in Section 2.2.5 *Rationale for Identifying a Proposed Plan Amendment*.

Impacts on funding, employment, income, and overall economic output derived from the coal industry and associated socioeconomic consequences are discussed in Sections 3.5.3 and 3.5.4 of the Buffalo FSEIS/PRMPA. Further detail on funding magnitude and how funds for mineral development are allocated has also been added to these sections. Revenues from mineral development and, more specifically, coal are identified, with impacts on funding sources, such as Federal mineral royalties, severance taxes, and ad valorem taxes, are discussed and presented in tables throughout.

The United States Energy Information Administration (EIA) develops coal production projections by using a market-based approach. The EIA balances energy supply and demand, accounting for economic competition across the various energy fuels and sources. The modules function at the regional level to represent regional differences in energy markets. Detailed information on the underlying assumptions of EIA forecasts are available at <https://www.eia.gov/outlooks/aeo/assumptions/>. For the No Leasing Alternative (A), coal is produced through 2041, providing for the forecasted energy needs and allowing alternative technologies to advance while their allotted coal persists. Discussion of alternative coal uses has been added to the coal affected environment section in the Buffalo FSEIS/PRMPA. When those potential uses identified (or other uses not yet conceptualized) mature enough to need Federal coal, the BLM may amend the Resource Management Plan (RMP).

The selection of the preferred alternative/proposed plan is identified in the executive summary and discussed in Buffalo FSEIS/PRMPA Section 2.2.5, *Rationale for Identifying a Proposed Plan Amendment*. The U.S. national long-term strategy of limiting global temperature rise and net-zero emissions is not a legal requirement, but an expressed national goal. The BLM has no legal authority to impose mitigation measures (including emission offsets or climate change impact fees) of GHG emissions resulting from either transportation/processing activities or end-point combustion of fossil fuel products extracted on BLM-administered lands. Only GHG emissions directly resulting from fossil fuel extraction are within the BLM's jurisdiction.

The Buffalo FSEIS/PRMPA Tables 3-33, 3-35, 3-36, and 3-37 show that fossil fuel production emissions total 6.75 million metric tons carbon dioxide equivalent, whereas total life-cycle emissions attributable to Federal fossil fuels extracted from the Buffalo Field Office planning area are 465.29 million metric tons carbon dioxide equivalent emissions. Therefore, the BLM administratively has some level of control over emissions as they relate to climate change, although only to the extent that GHG emissions are attributable to the full life cycle of fossil fuel extracted from the Federal mineral estate within the Buffalo Field Office planning area.

While policies such as the MLA and FLPMA may encourage coal mining, they do not mandate that coal mining be authorized wherever coal reserves may be present. Coal leasing is a discretionary action. The BLM would review any Lease by Application received. Under the No Leasing Alternative, depending on the specific circumstances in the application, the BLM could return the application or consider amending the approved RMP in order to change the allocation decisions and lease additional coal.

While FLPMA establishes guidelines for the management, protection, development, and enhancement of the public lands, it does not prioritize between uses, and does not mandate that every use be available on every acre. Adverse impacts, such as economic loss to some, will occur in certain situations for the overall health of the public lands and resources.

The BLM complied with FLPMA, the MLA, and NEPA by proposing the No Leasing Alternative in the Buffalo FSEIS/PRMPA based on adequate rationale and balancing the multiple-use principle with following proper actions that are in the national interest. Accordingly, this protest issue is denied.

FLPMA: Withdrawals

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: The Counties question BLMs path to amend the RMP without considering in further detail the removal of the CDPA as part of a formal withdrawal under the Federal Land Policy Management Act (FLPMA) Section 204(c), which requires congressional approval and not just a Plan Amendment to the Buffalo RMP. In its previous comments, the State of Wyoming even asked BLM to consider a specific withdrawal alternative that evaluates a scenario where the Secretary adheres to the required withdrawal procedures. That alternative would clearly fall within the scope the District Court’s order. The FSEIS and Plan Amendment, however, fails to take into account the requirements as set forth in the Federal Mineral Leasing Act (MLA) of 1920 as amended, the FLPMA of 1976 as amended, the Mining and Mineral Policy of 1970, and the Fair Market Value Policy for Leasing Federal Coal of 1984. The FSEIS fails to adequately analyze and respond to comments under Appendix H as to the question of why BLM chose to pursue an administrative withdrawal versus a congressional withdrawal as provided by FLPMA Section 204(c)(1) specific to more than 5,000 acres, which the CDPA clearly meets that thresh hold. For the BLM to state in Appendix H (Public Comments and BLM Response to Comments) that “While these policies may encourage coal mining, just as with the Mineral Leasing Act and FLPMA, they do not mandate that coal mining be authorized wherever coal reserves may be present.” Certainly, this is not the case with the CDPA as it is a specified area with rich coal reserves that has been developed for decades and is not just an area where coal reserves are present. The CDPA has a track record of producing billions of tons of coal for mainly thermal use but also non-thermal uses and should remain intact for continued leasing. Furthermore, BLM did not identify any new important resource values or land uses that were not included in the unsuitability criteria. The CDPA has been managed for decades as the highest and best use of that land being coal extraction. Now, based on a court order, BLM has determined that in order to support a policy to limit the effects of climate change by a reduction of greenhouse gas emissions, the entire CDPA should be declared unsuitable for coal mining. BLM has expanded the unsuitability criteria without adhering to the required and mandatory process necessary to remove land allocation decisions by eliminating the long established CDPA. BLM failed under this process.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: The court order only required BLM to consider the option of no leasing or limited leasing and did not require the BLM to choose it as the preferred alternative in the FSEIS document. The no leasing option circumvents congressional review authority by creating a “defacto” withdrawal without following the requirements of FLPMA and removes an entire mineral resource area from potential development in an effort to satisfy a court order based on national policy directives. This is not a prudent strategy for managing national security and meeting domestic energy demands. BLM indicates in the FSEIS that under the “No Leasing” Alternative, there would be “adverse” economic impacts to the local community and state as a whole. This analysis is overly simplified as the loss of coal leasing in the PRB would be devastating to the local and state economies that rely on the severance taxes and federal mineral royalties from the extractive industry, including Wyoming’s educational system. At essence, BLM failed to adequately consider the cumulative impacts of its no leasing alternative on state and local economies. 40 C.F.R. § 1508.7 (2022) (defining cumulative impacts). This decline in education

funding could, in turn, exacerbate the socioeconomic difficulties of Wyoming’s communities. BLM should conduct a thorough evaluation of the economic impacts of a complete withdrawal of leasing opportunities before choosing a preferred alternative. A detailed discussion regarding socioeconomic impacts from this decision is addressed further below (IX. BLM Failed to Adequately Consider Socioeconomic Impacts of a No Leasing Decision).

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: Finally, BLM is scheduled to initiate an RMP Revision around 2038 and this timeframe would be more appropriate to look at land allocations and leasing of coal as the decision to eliminate leasing now is not ripe. The market should be at a place where we can better determine actual coal needs for both thermal and non-thermal uses. Until then, the CDPA should remain intact and coal should be made available for lease. Therefore, the Counties contend that BLMs decision to remove the Coal Development Potential Area (CDPA) for any future leasing is flawed and the federal agency must pursue a formal withdrawal under FLPMA Section 204(c), which requires congressional approval and not just a Plan Amendment to the Buffalo RMP.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: FLPMA also requires that within the environmental consequences section of an FSEIS, the BLM should include a discussion of all “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned.” 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing “the extent to which the agency would reconcile its proposed action with the plan or law.” 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a). The RMP, regulations and programs all support coal leasing in the CDPA. BLM does not provide sufficient reasons as to why they are inconsistent with county policies under current BLM management. BLM failed to provide a thorough consistency review with the Counties Natural Resource Management Plans and explain why they could not be as consistent with local plans as allowed by law. The decision by BLM to eliminate coal leasing in the CDPA was based solely on the Biden Administration’s policies, executive orders and directives -- continued coal leasing is consistent with current laws. If BLM chooses to eliminate coal leasing in the CDPA, they must follow the law to initiative a formal withdrawal as provided by FLPMA Section 204 with concurrence from Congress before an RMP amendment could take effect.

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The DEQ and most others noted that the PA constitutes an impermissible withdrawal of lands from coal leasing. Specifically, they pointed out that the PA constitutes a withdrawal that failed to comply with the procedural rigors of FLPMA Section 204 (43 U.S. § 1714). One BLM response to these comments was that the “term ‘withdrawal’ means withholding an area of Federal land from settlement, sale, location, or entry for the purpose of limiting activities in order to maintain other public values.” (FSEIS at Appendix H, H-24). The BLM fails to include the full definition of “withdrawal” from FLPMA. 43 C.F.R. § 2300.0-5(h). The BLM’s response is both disingenuous and legally-insufficient.

Summary:

Protestors noted that the BLM violated FLPMA Section 204 (43 U.S.C. 1714), MLA, Mining and Mineral Policy of 1970, and Fair Market Value Policy for Leasing Federal Coal of 1984 by removing the CDPA for any future leasing without pursuing a formal withdrawal or congressional approval. In addition, protestors also assert that:

- The BLM failed to analyze and respond to comments in the Buffalo FSEIS/PRMPA of why it chose to pursue an administrative withdrawal over a formal withdrawal, and failed to explain why it could not be as consistent with local land use plans as allowed by law.
- The BLM failed to manage the CDPA in accordance with multiple-use and sustained-yield principles by choosing the preferred alternative that protestors indicated included a withdrawal without legal justification or an adequate explanation to devote the CDPA to another resource.
- The BLM failed to include the full definition of the term “withdrawal” from its response to comments from FLPMA, 43 CFR 2300.0-5(h).

Response:

43 U.S.C. 1714(c) is related to withdrawals of lands greater than 5,000 acres. The closure or restriction of public lands to mineral leasing through the land use planning process pursuant to Section 202 of FLPMA does not constitute a withdrawal under FLPMA. Withdrawals are pursued in a decision-making process outside of the planning process by the Office of the Secretary pursuant to the procedures and requirements in Section 204 of FLPMA. They are specifically defined by Section 103(j) of FLPMA as follows:

“...the term ‘withdrawal’ means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency” (43 U.S.C. 1702(j) and 43 CFR 2300.0-5(h)).

The terms “settlement,” “sale,” “location,” or “entry” are all terms contemplating transfer of title to the lands in question, particularly the patenting, or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. The listed terms are inapplicable to mineral leasing occurring under the MLA as stated in the BLM’s response to comments on the Draft Supplemental Environmental Impact Statement (DSEIS)/Draft Resource Management Plan Amendment (RMPA) (see Buffalo FSEIS/PRMPA Appendix H, row #10, 27, 87–91, and 94). A Federal mineral lease sale is not a “sale” of public land under Section 203 of FLPMA, and a land use planning decision closing an area to leasing under Section 202 of FLPMA is not a “withdrawal” as described in Section 204 of FLPMA.

43 CFR 1610.3-2(a) states: “Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands...” The BLM is not required to be consistent with all local land use plans based on 43 CFR 1610.3-2(a).

As the BLM is making a land use planning decision when it proposed to close or restrict public lands in the planning area to mineral leasing in the Buffalo FSEIS/PRMPA, the BLM is not required to

complete the procedures associated with a withdrawal. The BLM did not include the definition of “withdrawal” in the FSEIS/PRMPA because the BLM is not proposing a mineral withdrawal (administrative or congressional) for the identified public lands. The Buffalo FSEIS/PRMPA does not improperly withdraw public lands from mineral development. Accordingly, this protest issue is denied.

NEPA Violation: Best Available Science

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The conclusion in the FSEIS that the production process for sourcing rare earth elements and critical minerals from coal needs to “mature” before the BLM will consider the issue with any significance ignores new and existing scientific information that indicates these uses will be viable in the near future and during the life of the existing RMPA. See Birgenheier, et al. (2024); Bagdonas, et al. (2022). Agencies “must be alert to new information that may alter the results of its original environmental analysis” and continue to take a “hard look” at the effects of its proposal. *Friends of Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). The BLM’s decision to dismiss the issue as not “mature” enough for further consideration was not reasonable because it failed to adequately consider this publicly available information. BLM’s decision to kick the can down the road in such a fashion violates NEPA’s hard-look mandate. To the extent that BLM believed the necessary information about these uses was unavailable, the BLM had an obligation to consider the burden associated with collecting the information.

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The BLM failed to properly consider improvements in emissions control technology as a mitigation factor from the burning of coal from the CDPA. Again, without any analysis, the BLM mentioned in passing that improved emissions control technology may help mitigate the emissions impact of burning coal. The BLM, however, offered no analysis of the mitigation that would be provided by such technology. The lack of such analysis and consideration violates NEPA’s “hard look” mandate.

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The FSEIS also severely underestimated the economic opportunities associated with coal fired power plants, which is puzzling given the BLM’s attention to the downstream impacts of coal combustion. Although BLM relied on relatively recent data for its estimates identifying the number of coal-fired generating units in the United States, it relied on decades-old studies to estimate the employment impacts associated with these facilities. (FSEIS at 3-92). Moreover, despite BLM’s recognition that PRB coal accounts for a significant portion of the Nation’s coal production, it concluded that “only a portion of jobs and income” are associated with coal originating from the PRB/CDPA. BLM failed to use more recent (and available) nationwide and Wyoming-specific data to calculate the impact on employment on coal-fired power plants. Thus, the BLM did not take the “hard look” required by NEPA.17.

Wyoming County Commissioners Association Bill Novotny

Issue Excerpt Text: The BLM failed to include the impacts of replacement energy production in the indirect effects analysis. Not utilizing coal to produce electricity will cause domestic energy

supplies to fall, demand to rise, and, as a result require other energy production with other sources elsewhere. *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736 (9th Cir. 2020). The BLM should have given a quantitative estimate of the impacts that will result from the substitution of energy sources or “explained more specifically why it could not have done so.” *Sierra Club v. FERC*, 867 F.3d at 1374 (D.C. Cir. 2017). If the BLM later concludes that such impacts will be significant, it may well approve another alternative included in the environmental impact statement. *Cf Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 766-68, 770, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004). The BLM must analyze the indirect impacts of replacement energy sources.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM Incorrectly Identified the Preferred Alternative as Alternative A (No Leasing) As the basis for this Supplemental Environmental Impact Statement (SEIS), in 2019 and in compliance with the United States District Court for the District of Montana court order (*Western Organization of Resource Councils et al. v. BLM*), the BLM amended the 2015 Buffalo RMP. In August of 2022 the Court again invalidated the 2019 Buffalo RMP SEIS based upon an inadequate environmental analysis violating NEPA and once again required additional analysis to be completed. The court order specifically required: 1) The BLM must complete new coal screening and NEPA analysis that considers a no leasing and limited coal leasing alternatives, 2) The BLM must disclose the public health impacts, both climate and non-climate of burning fossil fuels (coal, and oil and gas) from the planning area.”¹² While the court specifically identified the range of alternatives to be analyzed, the court did not mandate a particular outcome. Therefore, the Counties strongly oppose BLMs identified preferred alternative as Alternative A (No Leasing) and contend that the federal agency did not adequately provide compelling evidence to choose a “no coal leasing” alternative.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM failed to include a detailed analysis in the FSEIS that looked at detailed impacts to no further leasing of coal and what that decision will have on further advancements of non-thermal uses of coal and products needed for the supply chain, which in turn supports domestic manufacturing and job creation. BLM also did not disclose the impacts of their decision as it pertains to DOE research, development, demonstration and commercialization of projects that are ongoing and exploring new ways to develop low or no emission technologies - without the feedstock, these opportunities simply will not happen. It is puzzling why BLM would handcuff the nation by restricting opportunities for economic diversification as there are strategic priorities when it comes to domestic energy production and national security needs, which includes critical minerals stemming from coal. It is for all of these reasons that the Counties believe BLM’s identification of the preferred alternative as Alternative A (No Leasing) is short-sighted, arbitrary and flawed and must be reconsidered in the Record of Decision.

Summary:

Protestors stated that the BLM violated NEPA by failing to take a “hard look” and utilizing best and all available information to adequately analyze the impacts of the production process for sourcing rare earth elements and critical minerals from coal. The protestors assert that:

- The BLM failed to analyze the mitigation associated with improvements in emission control technologies related to burning coal.

- The BLM failed to analyze the impacts of the No Leasing Alternative on non-thermal uses of coal in the Buffalo FSEIS/PRMPA.
- The BLM failed to take a hard look at the best available information to determine the effects on employment associated with coal-fired power plants.
- The BLM failed to include the impacts of replacement energy production in the indirect effects analysis.
- The BLM did not provide enough evidence to support choosing the No Leasing Alternative as the best option.

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA requires the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (42 U.S.C. 4332(d)). 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).

To be responsive to comments made on the DSEIS, BLM provided additional discussion of emission control technologies, substitution analysis, grid reliability, alternative coal uses, and local social and economic effects in the Buffalo FSEIS/PRMPA, which can be found in Sections 1.3.2, 3.5.3, and 3.5.5.

The Buffalo FSEIS/PRMPA is a land use-level review specific to the Buffalo Field Office and is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). The court specifically ordered the BLM to consider No Leasing and Limited Leasing Alternatives. In addition, NEPA requires agencies to analyze a No Action Alternative. See Section 2.2, *Alternatives Development*, of the Buffalo FSEIS/PRMPA for further details. The selection of the preferred alternative/proposed plan is identified in the executive summary and discussed in Section 2.2.5, *Rationale for Identifying a Proposed Plan Amendment*.

Discussion of alternative coal uses has been added to Buffalo FSEIS/PRMPA Section 3.5.5.1, which is the coal affected environment section. When those potential uses identified (or other uses not yet conceptualized) are mature enough to need Federal coal, the BLM has the ability to amend the RMP.

Impacts on funding, employment, income, and overall economic output derived from the coal industry and associated socioeconomic consequences are discussed in Buffalo FSEIS/PRMPA Sections 3.5.3 and 3.5.4. Further detail on funding magnitude and how funds for mineral development are allocated has also been added to these sections. Revenues from mineral development and, more specifically, coal are identified, with impacts on funding sources, such as Federal mineral royalties, severance taxes, and ad valorem taxes, discussed and presented in tables throughout.

The effect of substitution between different fuel sources on indirect GHG emissions depends on the replacement energy source. For example, coal is a relatively more carbon-intensive fuel than natural gas and hydroelectricity is the least carbon-intensive fuel. In the transportation sector, alternatives to oil are likely to be less carbon intensive. Additionally, substitution across energy sources or locations may not fully meet the energy needs that would otherwise have been realized through production from the Federal mineral estate. Price effects may lower the market equilibrium quantity demanded for some fuel sources. This would lead to a reduction in indirect GHG emissions. These three effects are likely

to occur in some combination when considering substitution away from Federal fossil fuels, but the relative contribution of each depends on many interrelated and complex factors. While the BLM does not currently have a model suitable to perform such an analysis, Buffalo FSEIS/PRMPA Section 3.5.3 has been edited to discuss such energy substitution considerations more clearly.

All alternatives provide for the forecasted energy needs and allow alternative technologies to advance while their allotted coal persists. For the No Leasing Alternative (A), coal is produced through 2041; for the No Action Alternative (B), coal is produced through 2338; and for the Limited Leasing Alternative (C), coal is produced through 2048. The BLM could make decisions to extend coal leasing through a new planning process in the future by revising or amending the approved plan.

The BLM complied with NEPA by taking a “hard look” and utilizing best available information to adequately analyze the impacts of the production process for sourcing rare earth elements and critical minerals from coal. Accordingly, this protest issue is denied.

NEPA Violation: Consultation and Coordination

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The Wyoming DEQ Air Quality Division (AQD) has legal primacy pursuant to federal law over regulation of air quality in Wyoming per express approval by the EPA. Thus, the AQD has a comprehensive environmental, permitting, and regulatory structure in place to ensure that any activity within DEQ’s authority is handled in a manner that protects human health and environment. Therefore, frankly, it is astonishing the BLM failed to even contact the AQD for its input on air quality issues. During the NEPA scoping process, even the EPA recommended that BLM coordinate with AQD to assist with gathering baseline air quality data, including design values, based on the most recent monitoring data. (See Final Scoping Report at C-2). Such failure is a wholesale violation of NEPA and the BLM’s legal obligation to substantively engage cooperating agencies in the NEPA process. The problems that have arisen from BLM’s failure to consult and cooperate with the AQD are numerous. After review of the BLM’s response to comments - or lack thereof - in Appendix Hof the FSEIS, AQD finds much of the BLM’s process both legally and scientifically inadequate and unresponsive. This resulted in selection of an alternative wholly disconnected from a valid air quality perspective, rendering that selection legally impermissible and factually fatally flawed. First, as recently as March 5, 2024, AQD noted concerns over BLM’s development of Table E-3: Local Analysis Area Select Environmental and Health Indices. The BLM ignored AQD’s input about this table. The BLM did not coordinate with, or even contact, the AQD when developing this table and supposedly related information, even though the table directly involves air quality and relies heavily upon air quality data from an unknown source (it is not from the AQD, the regulatory authority of air quality in Wyoming). The BLM violated 40 C.F.R. § 1501.7(h). The BLM must carry out a new analysis and directly involve the AQD, and not ignore and dismiss AQD’s scientific input and breadth of knowledge. This is especially important given that the BLM is not an environmental regulatory agency.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM Failed to Sufficiently Notify and Disclose to the Cooperating Agencies and the Affected Landowners of their True Intentions to Withdraw the CDPA from Coal Leasing. The BLM failed to disclose to the Counties, as cooperating agencies, the true impacts of selecting the no leasing alternative. The federal agency allowed the cooperating agencies only 14-days from February

21 through March 5, 2024 to conduct a review of the administrative Final SEIS (AFSEIS). Notwithstanding that this was not a sufficient amount of time to thoroughly review a 600+ page document, BLM intentionally did not disclose to the cooperators that they intended to modify their position from supporting a dual preferred alternative (Alternative A - No Leasing and Alternative C - limited leasing) in the DSEIS to a No Leasing Alternative (Alternative A) as the preferred alternative and therefore the final agency decision. See 43 C.F.R. § 1610.5-2. The federal agency remained silent on their decision until the FSEIS was issued and the 30-day clock for protesting was noticed.

Summary:

Protestors stated that the BLM violated NEPA and 40 C.F.R. 1501.7(h) by failing to consult or cooperate with cooperating agencies during the NEPA process. Protestors also felt that the BLM failed to identify “No Leasing” as the preferred alternative in the Buffalo DSEIS/RMPA, depriving the public of the opportunity to comment on the alternative and the FLPMA land use planning criteria supporting that decision, and did not provide sufficient time for cooperating agencies to conduct a review of the Buffalo Administrative FSEIS/PRMPA.

Response:

There is no requirement for how the BLM must involve a particular cooperating agency in the development of a land use planning and NEPA document. The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. The BLM works with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)).

All cooperating agencies were provided opportunities to participate during various steps of the planning process, including regular briefings, identification of issues and data during scoping and during development of the Buffalo DSEIS/RMPA, and requests for input on draft alternatives and the administrative draft Buffalo FSEIS/PRMPA. The BLM allowed the cooperating agencies 14 days from February 21 through March 5, 2024, to conduct a review of the administrative FSEIS. In addition, cooperating agencies were permitted to comment on and review the FSEIS/PRMPA while it was open for a 30-day protest period, from May 17 through June 17, 2024. The Buffalo FSEIS/PRMPA further describes the participation of cooperating agencies in Section 4.8, *Cooperating Agencies and Sovereign Tribal Nations* (Buffalo FSEIS/PRMPA pp. 4-5 through 4-6).

CEQ’s regulations direct that an environmental impact statement (EIS) “identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference” (40 CFR 1502.14(e)). Additionally, the BLM’s planning regulations at 43 CFR 1610.4-7 direct the BLM to “identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM.” The preferred alternative represents the alternative determined to best address the purpose and need and the issues considered at this stage of the process. While collaboration is critical in developing and evaluating alternatives, the final designation of a preferred alternative remains the exclusive responsibility of the BLM (Buffalo DSEIS/RMPA p. 2-4). However, identifying a preferred alternative or alternatives does not indicate any final decision commitments from the BLM. In developing the Buffalo FSEIS/PRMPA, the decision maker may select various components from each of the alternatives analyzed in the DSEIS/RMPA. The FSEIS/PRMPA may also reflect changes and adjustments based on comments received on the DSEIS, new information, or changes in BLM policies or priorities (Buffalo DSEIS/RMPA pp. 2-4 and 2-5).

The BLM used the impact analysis, along with recommendations from cooperating agencies, consideration of planning criteria, and anticipated resolution of resource conflicts to identify Alternatives A and C in the DSEIS/RMPA as co-preferred alternatives (Buffalo DSEIS/RMPA p. 2-5). During public review of the DSEIS/RMPA, the BLM sought constructive input on the proposals for managing coal leasing. After considering these comments, the BLM developed the FSEIS/PRMPA.

The BLM properly involved all cooperating agencies in the development of the Buffalo FSEIS/PRMPA. The also BLM properly identified co-preferred alternatives in the Buffalo DSEIS/RMPA. Accordingly, this protest issue is denied.

NEPA Violation: Effects Analysis—Air Quality

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The PA will worsen human health impacts by decreasing funding for black lung disease (and other health issues) program support. As with AML funding, current-day mining of coal results in a per-ton fee, which is used to fund the federal black lung disease program; the elimination of 80% of federal coal will correspondingly dramatically reduce such funding. Although the FSEIS briefly mentions that federal coal leasing supports the Black Lung Disability Trust in the cumulative analysis section, BLM provided no analysis of this important impact to the human environment and human health. (FSEIS at 3-107). These social and health impacts associated with the PA are exactly the type of effects BLM was required to examine by law. See 40 C.F.R. § 1508.1(g)(4)(2022) (defining “Effects” to include “social, or health, whether direct, indirect, or cumulative”).

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: Although the FSEIS admitted there may be environmental effects associated with the substitution of fossil fuels, the BLM dismissed the need to provide any environmental impact analysis on the issue because it claimed it lacked modeling. (See FSEIS at 1-9; H-5.) The BLM, however, has substitution models.⁹ Thus, the FSEIS is arbitrary and capricious because BLM does not explain why existing models cannot perform the analysis in question. See *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (the agency acted arbitrarily and capriciously by stating there was no way to measure impact of GHG emissions when at least one recognized method was available). Moreover, the concession in the FEIS that there are foreseeable substitution impacts required BLM to fulfil specific NEPA obligations and provide detailed analysis. See 40 C.F.R. § 1502.21.

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: In sum, the FSEIS devoted three paragraphs to discuss how CCUS technology is advancing in Wyoming. Yet, the BLM altogether failed to analyze how CCUS could mitigate against the effects of carbon dioxide emissions from the burning of coal. The FSEIS’s only discussion of mitigation from CCUS was to note that greenhouse gas emissions “would be lower due to carbon capture and sequestration.” (FSEIS at 3-75).

Wyoming Department of Environmental Quality
Todd Parfitt

Issue Excerpt Text: Finally, the FSEIS and RMPA represent a dramatic shift in agency policy and practice. It cannot be disputed that the BFO has managed Wyoming’s PRB for decades to develop natural resources to meet the Nation’s energy needs. Such a policy and practice are well-grounded in the law, for FLPMA requires the BLM to develop and manage resources to meet resource needs.¹⁹ Yet, the BLM fails to explain or adequately justify the 180-degree reversal of decades of policy. While a federal agency is allowed to make policy shifts, when it does so it must provide a “reasoned explanation” for doing so. *FC.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Moreover, “of course” the agency “must show that there are good reasons for the new policy.” *Id.* No such reason exists. The BLM attempts to justify selection of the PA by contending that the PA will decrease global surface temperatures by 0.0158 degrees Celsius. (FSEIS at ES-10). However, this conclusion is based on the BLM’s entirely unjustified, unrealistic, and unfounded assumption that when coal mining from the CDPA is eliminated that electrical power generation companies will use “non-coal” sources of fuel. (FSEIS at ES-9). As explained earlier, this assumption must be based on a further assumption that power companies also will not replace BFO coal with natural gas, because combustion of natural gas is also a source of greenhouse gas, albeit less than coal. Finally, the FSEIS also fails to properly take account of mitigation measures such as CCUS and improved emissions control technology. Thus, a measured examination of the FSEIS reveals an inescapable and unavoidable conclusion: the BLM’s selection of the no leasing alternative is outcome-motivated and is neither scientifically sound nor legally sufficient. This conclusion is illustrated by the fact that “NEPA does not require that an agency elevate environmental concerns over other appropriate considerations.” *Sanjuan Citizens Alliance v. Norton*, 586 F. Supp. 2d 1270, 1280 (D. N.M. 2008) (citing *Baltimore Gas and Electric v. Natural Res. Defense Council*, 462 U.S. 87, 97 (1983)). Yet, that is exactly what the BLM did by selecting the PA. When all other criteria pointed to a reasonable continuation of coal leasing in the CDPA, the BLM let an unsound conclusion about supposed greenhouse gas emissions from the no leasing alternative control the outcome.

Wyoming Department of Environmental Quality
Todd Parfitt

Issue Excerpt Text: The BLM also improperly failed to consider in its analysis future emissions reductions that may result from several new EPA rules and regulations before choosing the no leasing alternative. These include the new PM_{2.5} National Ambient Air Quality Standard; the New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; the revised Mercury and Air Toxics Standards; and the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources, and the suite of additional rules pertaining to methane regulation. These new rules are substantial in scope and could have profound effects. The AQD is quite troubled by the BLM’s failure to coordinate and consider these near-future emissions changes in its decision-making process. Again, had the BLM reached out to the AQD, the AQD could have helped the BFO develop a reliable analysis. The BLM must conduct a new air quality analysis and substantially involve the AQD in that process.

Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin

Issue Excerpt Text: BLM misstated the relative impacts of the different alternatives. Central to BLM’s justification of its decision to block future leasing in the analysis area is its conclusion that that air quality in the downstream communities is significantly better under the No Leasing

Alternative. Since the Powder River Basin produces some of the lowest sulfur coal in the world, BLM can only justify that conclusion if less coal is used in the downstream communities. Not only is that an absurd conclusion, it is a conclusion that contradicts BLM’s own assumptions. BLM is required to estimate the “physical, biological, economic, and social effects of implementing each alternative considered in detail.” If it is unable to estimate the effects precisely, it may give a probable range. 43 CFR 1610.4-6. Similarly, Federal agencies must disclose and consider the reasonably foreseeable effects of their proposed actions, including the reasonably foreseeable GHG emissions. 88 FR 1196, 1200. As noted in the RMPA, the Council on Environmental Quality has released interim guidance to assist agencies with estimating GHG emissions and climate change effects. 88 FR 1196 (Jan. 9, 2023) (the “Interim Guidance”). In short, under the Interim Guidance, agencies should quantify proposed actions’ GHG emissions and place GHG emissions in appropriate context.

Summary:

Protestors stated that the BLM violated NEPA by failing to adequately analyze the air quality effects associated with the proposed action and the effects of GHG emissions. They stated that:

- The BLM failed to analyze the effects and emissions associated with the substitution of fossil fuels.
- The BLM failed to analyze how carbon capture and underground sequestration could mitigate the effects of carbon dioxide emissions from the burning of coal.
- The BLM violated NEPA by failing to analyze the effects on the human environment and human health related to decreased funding to the Black Lung Disability Trust.
- The BLM violated NEPA by failing to analyze the effects of the proposed action on resources outside of air quality.
- The BLM violated FLPMA and NEPA by failing to quantify proposed alternatives’ reasonably foreseeable GHG emissions to provide justification for its decisions.

Protestors also noted that the BLM failed to sufficiently consider several rules pertaining to methane regulation, including:

- PM_{2.5} National Ambient Air Quality Standard;
- New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units;
- Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units;
- revised Mercury and Air Toxics Standards; and
- Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources.

Response:

The effects analysis in an EIS for an RMPA must demonstrate that the BLM took a “hard look” at the impacts of the proposed action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b)). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b)).

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 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 provide the necessary basis to make informed land use plan-level decisions.

As the land use planning decisions under consideration by the BLM are programmatic in nature, 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 planning-level 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 BLM's analysis of Air Quality, Greenhouse Gases and Climate Change, and Social and Economic Consideration are described in Sections 3.5.1, 3.5.2, and 3.5.3 of the Buffalo FSEIS/PRMPA, respectively (pp. 3-6 to 3-85). The BLM discusses impacts related to the loss of revenue and related health effects in Buffalo FSEIS/PRMPA Section 3.5.3.2. This section provides a comparison of effects on public services, such as health support programs, directly funded by coal revenue.

Table 1-2 (Buffalo FSEIS/PRMPA p. 1-9) discusses scoping issues not analyzed further, including analysis of air quality effects related to the substitution away from coal. As discussed in Table 1-2, the BLM currently lacks a suitable model to analyze substitution away from Federal coal, as it depends on numerous interrelated and complex factors. Additional discussion on substitution analysis has been included in Appendix H, response to comment 66 (Buffalo FSEIS/PRMPA Appendix H, p. H-54).

The BLM NEPA handbook describes reasonably foreseeable actions as “Reasonably foreseeable planned actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” Currently, carbon capture, utilization, and storage (CCUS) technology is in the research and development phase and not sufficiently developed to be considered reasonably foreseeable. The Affected Environment of the Greenhouse Gases and Climate Change section (Buffalo FSEIS/PRMPA Section 3.5.2.1, p. 3-72) provides discussion of current development and use of CCUS. The current status of alternative coal uses is also further discussed in Section 3.5.5, *Coal Resources*, under the affected environment (Buffalo FSEIS/PRMPA pp. 3-125 and 3-126).

As described in Section 1.1, *Purpose and Need*, the purpose of the Buffalo FSEIS/PRMPA is so that the document “(1) Completes a new coal screening and analysis that considers a no-leasing and limited coal leasing alternatives; and (2) Discloses the public health impacts, both climate and non-climate impacts, of burning fossil fuels (coal, oil, and gas) from the decision area” (p. 1-1). For this reason, the BLM did not evaluate additional issues raised that fell outside of the scope of the Buffalo FSEIS/PRMPA. Issues considered but not analyzed further in the Buffalo FSEIS/PRMPA are outlined in Section 1.3.2.

Throughout the planning process, the BLM coordinated with cooperating agencies, including the United States Environmental Protection Agency (EPA), to ensure the analysis utilized the latest models and information available. Additional information regarding air resources and emissions methodology and modeling are discussed in the Buffalo FSEIS/PRMPA Appendix C, *Air Resources Technical Support Document*.

Based on the information outlined above, the BLM complied with NEPA's requirements to analyze the environmental impacts related to air quality and GHG emissions in the Buffalo FSEIS/PRMPA. Accordingly, this protest issue is denied.

NEPA Violation: Effects Analysis—Rare Earth Minerals

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: BLM also had to explain how rare earth elements and critical minerals did not factor into its analysis. See 43 C.F.R. § 46.125; 40 C.F.R. § 1502.22. Moreover, the BLM’s casual disregard of the issue violates the mandates of federal Executive Order 13817 which requires federal agencies to identify sources of critical minerals and increase exploration, mining, and production of rare earth elements and other critical minerals. Notably, the PRB appears to be a viable source of rare earth elements and other critical minerals. See Bagdonas, et al. (2022).

Summary:

Protestors stated that the BLM violated mandates of Federal Executive Order 13817 by failing to identify sources of critical minerals and increased exploration, mining, and production of rare earth elements and other critical minerals found in the Powder River Basin.

Response:

Executive Order 13817 outlines a Federal strategy to ensure secure and reliable supplies of critical minerals. However, Section 5(b) of this Executive Order states that “this order shall be implemented consistent with applicable law and subject to the availability of appropriations.” The applicable law under which the Buffalo FSEIS/PRMPA was developed is NEPA. Per NEPA, an effects analysis in an EIS for an RMP amendment must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b)). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b)).

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 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 provide the necessary basis to make informed land use plan-level decisions.

As the land use planning decisions under consideration by the BLM are programmatic in nature, 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 planning-level changes.

The BLM NEPA handbook describes reasonably foreseeable actions as “those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” As described in Section 3.5.5.1 (Buffalo FSEIS/PRMPA pp. 3-125 and 3-126), technologies for extracting rare earth elements from coal and coal refuse are in the research and development phase and not sufficiently developed to be considered reasonably foreseeable. The affected environment subsection of the Greenhouse Gases and Climate Change section (Buffalo FSEIS/PRMPA Section 3.5.2.1, p. 3-72) provides discussion of current development and use of

extracting rare earth elements from coal and coal refuse. The current status of alternative coal uses is also further discussed in Section 3.5.5, *Coal Resources*, under the affected environment subsection (pp. 3-125 and 3-126). This section also discusses other alternative coal uses such as CCUS and metallurgical coal. The potential impacts on rare earth materials are also outlined in Section 3.5.5 of the Buffalo FSEIS/PRMPA (pp. 3-127 and 3-128).

As such, the BLM complied with NEPA’s requirements to analyze the environmental impacts related to rare earth minerals in the Buffalo FSEIS/PRMPA. Accordingly, this protest issue is denied.

NEPA Violation: Effects Analysis—Socioeconomic Impacts

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The BLM altogether ignored DEQ’s Non-Discrimination and Inclusion Policy (Policy Number 32) and glossed over the extreme harmful impacts of the PA on Wyoming’s disadvantaged communities by boldly claiming that “census block groups involved with coal, oil and gas are not potential environmental justice communities of concern unless they are also minority, low-income, and/or Indigenous block groups.” (FSEIS at H61-62). This response from the BLM is not only highly offensive to Wyoming’s populace, but also ignores the simple fact the PA will cause/create low income families in Wyoming, especially in the BFO planning area.

Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt

Ken Pearson & Ryen Godwin

Issue Excerpt Text: BLM gave short shrift to the economic and social impacts on the social justice communities that would be impacted by the loss of livable wage jobs. BLM consistently downplayed the reasonably foreseeable negative impacts of the mines’ closures on the surrounding social justice communities. And it did not even consider the jobs lost in the downstream communities that rely on the PRB coal. Mining plays a crucial role in the economic stability of a rural region where 70% of the census blocks were identified as environmental justice communities. They provide some of the highest-paying private-sector jobs within the region. BFO SEIS/RMPA, Appx. D-3. These positions are not seasonal or transitional jobs, but enduring careers that enable workers to earn wages to support their families as the sole income earner and to support extended family. The economic impacts of coal mines within the planning area extend beyond their employees, permeating throughout the community and significantly contributing to overall economic self-sufficiency. The immense value of coal mining, which is projected to average about two billion dollars per year, is the essential nucleus for a robust economic system. Mined coal is the ultimate source of an estimated \$50,000,000 per year of wages paid for direct, indirect, and induced work, fostering financial security and improving the standard of living for thousands of families. As the RMPA noted, the cessation of mining would precipitate a myriad of health impacts within the local community. BFO SEIS/RMPA, 3-103. The loss of stable, high-paying employment is associated with heightened stress levels and related mental health issues such as anxiety and depression. Economic hardship can also directly affect physical health by decreasing access to healthcare services, nutritious food, and even basic necessities. Unemployment can lead to social isolation and feelings of helplessness, exacerbating mental health concerns. While the RMPA makes passing mention of these social impacts, the environmental justice analysis does not specifically or meaningfully consider how these health and social consequences will disproportionately fall on identified environmental justice communities.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners***Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny***

Issue Excerpt Text: The Counties challenge BLMs premise for determining block census tracks identified in Campbell and Converse County under both the FSEIS Affected Environment and Appendix E (Environmental Justice Support Document) as meeting the criteria for Environmental Justice communities. BLM uses their metrics to determine this designation by looking at total population, minority percentage per geographic area, Native American populations per geographic area, and low-income population per geographic areas. BLM, therefore, determined that several block census tracks meet the criteria for Environmental Justice areas due to coal leasing and production throughout the Counties. We would argue the opposite affect is true for all three Counties and its citizens for leasing and production of coal. In its SDEIS, BLM defines “environmental justice” as “the fair treatment and meaningful involvement of all potentially affected people-regardless of race, color, national origin, or income.” (BLM IM2022-059) (adopting EPA’s definition). Pursuant to this definition, “fair treatment” means that “no group should bear a disproportionate share of the adverse consequences that could result from federal environmental programs or policies.” (Id.). On the other hand, “meaningful involvement” involves “allowing all portions of the population a meaningful opportunity to participate in the development of, compliance with, and enforcement of Federal laws, regulations, and policies affecting human health or the environment regardless of race, color, national origin, or income.”²⁰ This definition requires BLM to consider 1) whether groups and communities affected by BLM decision-making will bear a disproportionate share of the adverse consequences resulting from BLM programs and policies; and 2) whether those communities have been meaningfully involved in the decision-making process.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners***Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny***

Issue Excerpt Text: Wyoming is the largest coal producing state in the nation and produces well over 50% of all coal in the U.S. and by eliminating coal leasing in the PRB, BLM has significantly curtailed the funding stream of programs, which will create a significant environmental impact not only in Wyoming but across the country. BLM failed to assess and describe the environmental impacts on state and national programs going forward by the loss of coal production and the associated fee collections with a no future coal leasing decision.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners***Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny***

Issue Excerpt Text: In addition, an Abandoned Mine Land (AML) reclamation fee is assessed on every ton of coal produced. That fee for Wyoming surface mined coal is 22.4 cents per ton. Funds from the fee collection are used to reclaim mines that were abandoned prior to the enactment of the Surface Mining Control and Reclamation Act (SMCRA) in 1977. One half of the fee collected on Wyoming coal production is distributed to WDEQ for AML reclamation, and the second half is distributed to the remaining eligible states and tribes for AML reclamation purposes. Therefore, the loss of AML revenue associated with the “No Coal Leasing” decision makes it not only a socioeconomic impact but a reasonably foreseeable environmental impact that went unexamined by the BLM. BLM failed to assess and describe the indirect environmental impacts on state and national AML reclamation needs and programs going forward by the loss of coal production and the associated AML fee collection. See 40 C.F.R. § 1508.1(g) (2022) (defining both “indirect effects” and “effects” to include reasonably foreseeable ecological and social impacts).

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: Finally, BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section by the exclusion of bonus bids and AML fees nor did they evaluate the environmental impacts that the no future coal leasing decision would have on disbursements to state and national programs. Further, the federal agency did not sufficiently analyze for the effects that funding and revenue decreases would have on local services, programs and communities. BLM failed to adequately include an in-depth analysis on where those funding streams will be recovered if mineral leasing and development is eliminated long-term.

Summary:

Protestors stated that the BLM undervalued socioeconomic contributions of mineral leasing and did not evaluate or analyze the local financial and environmental impacts of the No Leasing Alternative, including long-term replacements for funding sources, such as the state and national abandoned mine land fee collection. Protestors also asserted that the BLM is in violation of the Department of Environmental Quality’s Non-Discrimination and Inclusion Policy because:

- The BLM failed to analyze all the economic and social impacts of the No Leasing Alternative and did not consider how these health and social consequences will disproportionately fall on identified environmental justice communities.
- The BLM did not consider appropriate metrics as required in the BLM/EPA definition when identifying environmental justice block census tracts.

Response:

The effects analysis in an EIS for a RMP amendment must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b)). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b)).

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 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 provide the necessary basis to make informed land use plan-level decisions. As the land use planning decisions considered by the BLM are programmatic, 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 planning-level changes. The analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In spring 2023, Congress amended NEPA as part of the Fiscal Responsibility Act in tandem with Executive Order 14096, which defined environmental justice to mean the “just treatment and

meaningful involvement of all people” in agency decision-making and actions “regardless of income, race, color, national origin, Tribal affiliation, or disability.” NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through Executive Order 14096, agencies are encouraged to include effects that relate to environmental justice.

In the court decision stemming from *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017), agencies are required to make “educated assumptions” in quantifying GHG emissions, which includes sufficient information on the downstream effects of GHG emissions, where the agency possesses information allowing for reasonable forecasting.

Section 3.5.3, *Social and Economic Considerations*, in the Buffalo FSEIS/PRMPA (pp. 3-85 through 3-108) provides an analysis and discussion of impacts on funding derived from mineral development and associated socioeconomic consequences. This section incorporates by reference the affected environment described in the EIS for the 2015 Approved RMP/Record of Decision (Section 3.8, *Socioeconomic Resources*, p. 607). Additional baseline information that updated the data provided in the 2015 EIS for the Approved RMP/Record of Decision and further detail on funding magnitude and how funds for mineral development are allocated have also been added to these sections and is included in Appendix D, *Socioeconomic Technical Support Document*. Tables 3-67 through 3-81 of the Buffalo FSEIS/PRMPA demonstrate the socioeconomic impacts of coal production and each of the proposed alternatives. Under all alternatives, annual levels of production are based on EIA forecasts from the 2022 Annual Energy Outlook. Current leases provide sufficient reserves to support development at EIA forecast levels through the planning period of 2022–2038. As a result, economic contributions from coal development over this time period would not vary by alternative and are discussed under the affected environment section (Buffalo FSEIS/PRMPA p. 3-102). Revenues from mineral development and, more specifically, coal are also identified, with impacts on funding sources, such as Federal mineral royalties, severance taxes, and ad valorem taxes, discussed and presented in tables throughout.

Section 3.5.4, *Environmental Justice*, provides an analysis and discussion of environmental justice impacts from each alternative (Buffalo FSEIS/PRMPA Section 3.5.4.2, *Direct and Indirect Impacts*). Table E-1 in Appendix E provides an overview of the screening for block groups within the local analysis area. A total of 21 block groups (72 percent of block groups) in Campbell County and 7 block groups (64 percent of block groups) in Converse County meet one or more criteria for consideration as environmental justice communities of concern. Environmental justice screening criteria evaluated for baseline analyses are expected, at a minimum, to be minority percentage per geographic area, Indigenous populations per geographic area, and low-income populations per geographic area per EPA’s EJScreen and BLM Instruction Memorandum 2022-059, among others. Such data and associated baseline findings do not incorporate considerations of energy-related policy or production; in other words, census block groups involved with coal, oil, and gas leasing and production are not potential environmental justice communities of concern unless they are also minority, low-income, and/or Indigenous block groups. For minority populations, meaningfully greater populations were determined using the BLM’s 2022 *Addressing Environmental Justice in NEPA Documents: Frequently Asked Questions*. For this analysis, the BLM used a threshold analysis and meaningfully greater analysis. More detailed information on these two thresholds is provided in Buffalo FSEIS/PRMPA Appendix E.

The BLM relied on appropriate information in preparation of the Buffalo FSEIS/PRMPA and complied with NEPA’s requirements to analyze socioeconomic and environmental justice impacts. Accordingly, this protest issue is denied.

NEPA Violation: Effects Analysis—Water Quality

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: The BLM improperly failed to carry out a water quality analysis. The SEIS did not sufficiently evaluate impacts on water resources. In order to provide meaningful environmental analyses under NEPA, the BLM should have offered a full water quality analysis. In fact, a discussion of the issue demonstrates the importance of letting the DEQ - and not the BLM - regulate environmental issues in Wyoming. DEQ's Water Quality Division must address a comment made by the Center for Biological Diversity. This group contended coal mines had contributed to selenium impairment on the Powder River in Wyoming. BLM responded to the comment by describing how water quality standards were met at the Montana border, and noted there are no permitted dischargers along the Powder River. The BLM was correct in that regard. However, the BLM should have provided a more thorough discussion of water quality.

Summary:

Protestors stated that the BLM violated NEPA by failing to sufficiently analyze the effects on water resources and water quality.

Response:

The effects analysis in an EIS for an RMP amendment must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b)). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b)).

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 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 provide the necessary basis to make informed land use plan-level decisions.

As the land use planning decisions considered by the BLM are programmatic, 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 planning-level changes.

Section 1.3.2 of the Buffalo FSEIS/PRMPA discusses scoping issues not analyzed further, including analysis of water quality effects related to the substitution away from coal. As discussed in Buffalo FSEIS/PRMPA Table 1-2, impacts associated with surface waters, groundwater resources, and riparian areas would be the same as those outlined in the 2019 Buffalo SEIS and discussed in detail in Section 4.1.4 of the 2015 RMP/Final EIS (pp. 733–770). Buffalo FSEIS/PRMPA Appendix H, *Public Comments and BLM Responses*, discusses water quality sampling conducted by the BLM and United States Fish and Wildlife Service on the Powder River at the Montana state line and downstream during fall 2021 and spring 2022. These samples were analyzed for various contaminants, including

selenium. All samples collected at the state line complied with water quality standards. In the 2000s, coalbed natural gas-produced water discharge significantly contributed to the Powder River's flow. However, any produced water was required to meet the Wyoming Department of Environmental Quality standards before being released into the environment (Buffalo FSEIS/PRMPA Appendix H, row 49, p. H-37).

As such, the BLM complied with NEPA's requirements to analyze the environmental impacts related to water quality in the Buffalo FSEIS/PRMPA. Accordingly, this protest issue is denied.

NEPA Violation: Dismissed Alternative

Wyoming Department of Environmental Quality

Todd Parfitt

Issue Excerpt Text: DEQ asked in its draft SEIS comments for BLM to specifically consider “a separate Alternative Action to remove the CDPA boundary, coal acreage, and surface acreage through a formal withdrawal prior to initiating a No Leasing (Alternative A) or Limited Leasing (Alternative C) alternative.” (See DEQ Draft SEIS Comments at 2 (Aug. 1, 2023)). This request was consistent with NEPA in that DEQ offered a “specific, detailed counterproposal” that was an actionable alternative. *City of Angoon v. Hodel*, 803 F.2d 1016, 1021-22 (9th Cir. 1986). DEQ's request also fell squarely within the purpose and need for the SEIS. The BLM did not: (i) consider the alternative DEQ requested, (ii) identify the proposal on its list of alternatives considered but eliminated from further study, and/or (iii) explain why it chose not to, consider it. (See FSEIS at 2-5-2-6). Importantly, the BLM did not offer any explanation as to why the alternative could not be implemented, which is improper. See *BioDiversity Conservation Alliance v. BLM*, 608 F.3d 709, 715 (10th Cir. 2010); 40 C.F.R. § 1501.7(h)(2). The BLM's response only copied and pasted its generic response to other comments regarding withdrawal concerns and did not remotely address DEQ's request to consider a separate withdrawal alternative. (See FSEIS at H-71). The BLM had an obligation to explain why it did not consider the DEQ's suggested withdrawal alternative and its failure to do so violated NEPA. See 40 C.F.R. § 1502.14(a); *High Country Conservation Advocs. v. U.S. Forest Serv.*, 951 F.3d 1217, 1224-25 (10th Cir. 2020) (“Where the agency omits an alternative but fails to explain why that alternative is not reasonable, the EIS is inadequate.”). The decision to not consider DEQ's proposed alternative or even respond to it demonstrates the fundamental flaws in the BLM's range and selection of alternatives. A withdrawal alternative is not only responsive to the District Court's order but it would accomplish BLM's purpose and need while adhering to existing statutory and regulatory procedures.

Summary:

Protestors stated that the BLM violated NEPA by failing to either consider the Wyoming Department of Environmental Quality's proposed alternative of a formal withdrawal of the CDPA boundary, coal acreage, and surface acreage, or listing that alternative as considered but eliminated from further study and providing sufficient justification for its dismissal.

Response:

The BLM must consider all substantive comments received before reaching a decision to the extent feasible (40 CFR 1503.4). All substantive and timely comments are attached or included in a final EIS (40 CFR 1503.4(b)). Comments may be summarized if they are especially voluminous (see Question 29a, CEQ Forty Most Asked Questions Concerning CEQ's NEPA Regulations [March 23, 1981]).

When preparing an EIS, NEPA requires Federal agencies to study, develop, and describe technically and economically feasible alternatives (NEPA Section 102(2)(f)). The BLM must analyze those alternatives necessary to permit a reasoned choice (40 CFR 1502.14). 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). Agencies may dismiss an alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study for several reasons including, but not limited to, if it does not to meet the proposed action's purpose and need; if it is determined to be unreasonable given the BLM mandates, policies, and programs; if it is substantially similar in design to an alternative that is analyzed; if its implementation is speculative or remote; or if it is technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3). The agency must briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14).

Buffalo FSEIS/PRMPA Appendix H, *Public Comments and BLM Response* (p. H-71), notes that FLPMA Section 204 grants the Secretary of the Interior the authority to withdraw lands. This withdrawal includes the transfer of title, particularly the patenting or potential patenting of lands from Federal ownership to private parties, under the General Mining Law of 1872, the Homestead Acts, and other general land laws. However, mineral leasing under the MLA is discretionary and not subject to FLPMA Section 204.

Additionally, Section 2 of the MLA authorizes the Secretary of the Interior to lease coal, with specific planning requirements detailed in 43 CFR 3420.1, which identifies areas suitable for coal leasing. Neither the MLA nor FLPMA mandates leasing within allocated areas or excludes coal leasing in non-allocated areas. Non-allocated areas can be nominated, and the BLM can amend its land use plan if warranted.

The MMPA directs the Secretary of the Interior to promote private enterprise in developing a stable domestic minerals industry and the orderly development of domestic mineral resources. The Fair Market Value Policy of Federal Coal Leasing (1984) ensures taxpayers receive fair market value for leasing Federal coal reserves. While these policies may encourage coal mining, they do not mandate authorization for coal mining wherever reserves are present, similar to the MLA and FLPMA.

Therefore, an alternative to remove the CDPA boundary, coal acreage, and surface acreage through a formal mineral withdrawal prior to initiating the No Leasing (Alternative A) or Limited Leasing (Alternative C) Alternative is outside of the scope of the Buffalo FSEIS/PRMPA. Please see the response to the *FLPMA: Withdrawals* section earlier in this report for more information on the legal context regarding withdrawals. Additionally, in the letter submitted by the Wyoming Department of Environmental Quality on August 1, 2023, a formal, reasonable alternative was not proposed but rather a comment was provided noting that an alternative to remove the CDPA boundary, coal acreage, and surface acreage through a formal mineral withdrawal prior to initiating the alternatives outlined in the FSEIS/PRMPA was not included in the range of alternatives.

The Buffalo FSEIS/PRMPA adequately complied with NEPA's requirements to analyze all reasonable alternatives and therefore this protest issue is denied.

NEPA and FLPMA Violation: Public Involvement

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: BLM violated FLPMA's public participation process when preparing the RMPA. An important principle of FLPMA is public participation. FLPMA requires "procedures,

including public hearings where appropriate, to give . . . the public, adequate notice and opportunity to comment upon and participate in formulation of plans[.]” 43 USC § 1712(f). Providing adequate notice and opportunity to comment means providing a draft of the resource management plan and an environmental impact statement analyzing certain plan alternatives. 43 CFR 1610.2(f). BLM failed to comply with its public notice and participation requirements because it never released a copy of the Resource Management Plan Amendment for public comment. It released a draft Supplemental Environmental Impact Statement in May of 2023, but the contents of the SEIS did not identify the proposed RMPA or analyze the coal screening criteria of the proposed RMPA. At best, the SEIS identified potential alternatives, but it did not even identify a single preferred alternative. Instead, BLM decided to identify two potential alternatives, depriving the public of the opportunity to comment on the actual plan BLM intended to implement and the FLPMA land use planning criteria intended to support that decision.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM failed to adequately notify and disclose the true impacts of their decision to the public and industry by selecting the no leasing alternative. In accordance with 43 CFR 3420.1-4(e)(4)(i), and as noted in Appendix 7 under “Results of Consultation with Qualified Surface Owners:” “. . .BLM mailed letters to 278 private landowners who own property larger than 40 acres in the decision area. . . The BLM sent the letters on October 5, 2022, requesting a response by November 7, 2022. The letters requested verification of landowner qualifications and an opinion on leasing federal coal beneath their surface (in favor of, against, or undecided). The letters also inquired whether the landowners had previously provided consent for surface mining³³. Table A-4 lists the results; landowner response letters are included in the decision file. No areas were made unacceptable based on landowner response due to the inability to form a logical mining unit. Before potential leases are delineated, the BLM would again contact surface owners to solicit their preference for or against surface coal mining, in accordance with the BLM Coal Leasing Handbook.” The BLM posted the federal register notice regarding the Notice of Intent on October 3, 2022 and issued “Surface Owner Consultation Coal Screen - Supplemental Environmental Impact Statement to the Approved Resource Management Plan for the Buffalo Field Offices” on October 5, 2024. The letter sent to the surface owners was a standard one-page survey that asked if they were a qualified surface owner, landowner preference for or against mining, along with any additional information that would be beneficial in determining the suitability or unsuitability for coal leasing. Nowhere in the letter did the BLM indicate its plans for analyzing for a no leasing and limited leasing alternative. Unless a surface owner was aware of this fact through other means or they attended the BLM public meetings on October 17 in Gillette, they would be unaware that BLM was in fact seriously considering a “no leasing” or “limited leasing” alternative.

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners

Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM Failed to Adequately Respond to Counties Comments. Finally, BLM’s response to the Counties’ withdrawal comments were inadequate for three reasons. First, BLM did not respond directly to concerns that a detailed explanation was needed for removing the CDPA. That is in part because BLM merely copied and pasted its generic comment response on withdrawals without addressing the concerns that the Counties raised about the CDPA.

Summary:

Protestors stated that the BLM violated NEPA and FLPMA’s public participation process because:

- The BLM never released a copy of the RMPA for public comment.
- The BLM failed to indicate its plans of considering No Leasing and Limited Leasing Alternatives when consulting with qualified surface owners.
- The BLM did not adequately respond to public comments.

Response:

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making. The CEQ regulations require that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)), but there is a wide variety of ways to engage the public in the NEPA process (BLM NEPA Handbook, H-1790-1, pp. 62–63). FLPMA mandates that the Secretary of the Interior provide opportunities for public involvement and establish procedures to ensure Federal, state, and local governments, as well as the public, receive adequate notice and have the chance to comment on and participate in the creation of plans and programs for public land management (43 U.S.C. 1712(f)).

The BLM’s planning regulations require a minimum 90-day public review period (43 CFR 1610.2(e)) for Draft RMPAs supported by an EIS. Pursuant to NEPA, the BLM must assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pp. 23–24). In compliance with NEPA and FLPMA, the BLM followed the required public participation process. The specific opportunities for public involvement that were provided are described in the Buffalo FSEIS/PRMPA, Chapter 4, *Coordination and Consultation* (Buffalo FSEIS/PRMPA pp. 4-1 through 4-6). Guidance for implementing public involvement under NEPA is codified in 40 CFR 1506.6, thereby ensuring Federal agencies make a diligent effort to involve the public in the NEPA process. The BLM published the DSEIS/RMPA for a 90-day public comment period on May 5, 2023, and notified and involved the public and other agencies via *Federal Register* notices, public and informal meetings, individual contacts, media releases, and the effort’s ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2021239/510> (Buffalo FEIS/PRMPA pp. 4-3 through 4-4).

CEQ regulations direct that an EIS “identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference” (40 CFR 1502.14(e)). Additionally, the BLM’s planning regulations at 43 CFR 1610.4-7 direct the BLM to “identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM.” The preferred alternative represents the alternative determined to best address the purpose and need and the issues considered at this stage of the process. While collaboration is critical in developing and evaluating alternatives, the final designation of a preferred alternative remains the exclusive responsibility of the BLM. However, identifying a preferred alternative(s) does not indicate any final decision commitments from the BLM. In developing the Buffalo FSEIS/PRMPA, the decision maker may select various components from each of the alternatives analyzed in the DSEIS. The FSEIS/PRMPA may also reflect changes and adjustments based on comments received on the DSEIS, new information, or changes in BLM policies or priorities (Buffalo DSEIS/RMPA p. 2-4).

The BLM used the impact analysis, along with recommendations from cooperating agencies, consideration of planning criteria, and anticipated resolution of resource conflicts to identify Alternatives A and C in the Buffalo DSEIS/RMPA as co-preferred alternatives (Buffalo DSEIS/RMPA p. 2-5). During public review of the DSEIS/RMPA, the BLM sought constructive input on the proposals for managing coal leasing. After considering these comments, the BLM developed the FSEIS/PRMPA (Buffalo DSEIS/RMPA p. 2-5).

The BLM considered all public comments submitted on the Buffalo DSEIS/RMPA. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix H, *Public Comments and BLM Response*, of the Buffalo FSEIS/PRMPA presents the BLM's responses to all substantive comments received on the DSEIS/RMPA. The BLM summarized the issues raised by each comment letter and provided a meaningful response in Appendix H. The BLM's responses identify any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's responses also explain why certain public comments did not warrant further agency response. It is important for the public to understand that the BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Buffalo FSEIS/PRMPA.

The BLM complied with NEPA and FLPMA's public participation process and adequately responded to public comments on the DSEIS/RMPA. The BLM also properly complied with regulations addressing preferred alternatives in the Buffalo DSEIS/RMPA. Accordingly, this protest issue is denied.

NEPA Violation: Range of Alternatives

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The FSEIS's no leasing alternative and limited leasing alternative are so similar that they, effectively constitute the same alternative (or are nearly identical), in violation of NEPA. See *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813 (9th Cir. 1999). The so-called limited leasing alternative would make 1.24 Billion short tons of coal available for leasing, while the no leasing alternative would make no coal available for leasing. Compared to the "no action" alternative (which would make 48.01 Billion short tons of coal available for leasing) the no leasing alternative constitutes a 100% decrease of coal available for leasing and the limited leasing alternative constitutes a 97.42% decrease. Thus, there is only a 2.58% difference between the no leasing alternative and the limited leasing alternative.

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: The FSEIS constituted an impermissible "all-or-nothing" analysis, under which one alternative would allow for coal leasing for 314 more years, while the other two alternatives purportedly would allow for coal leasing for only 17 years/24 years. It was patently unreasonable for the BLM to not consider some less-extreme alternative(s). The BLM did not consider any middle-ground alternatives. Case law mandates such an approach. A federal agency must examine reasonable mid-range alternatives in its NEPA analyses. *Union Neighbors United v. Jewell*, 831 F.3d 564, 577 (D.C. Cir. 2016). See also *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999) (an agency must have available a range of alternatives and consider alternatives "that fall between the obvious extremes"). See discussion below.

Summary:

Protestors stated that the BLM violated NEPA by considering two alternatives (No Leasing and Limited Leasing) that were too similar and therefore constitute the same alternative. In addition, protestors stated that the BLM violated NEPA by failing to consider a true mid-range alternative in its analysis that falls between the two obvious extremes (“No/Limited Leasing” and “No Action”).

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project. The BLM established the purpose and need for the Buffalo FSEIS/PRMPA, which is described in Section 1.1, *Purpose and Need* (p. 1-1), to provide an additional analysis for land use planning that:

“(1) Completes a new coal screening and analysis that considers a no-leasing and limited coal leasing alternatives; and (2) Discloses the public health impacts, both climate and non-climate impacts, of burning fossil fuels (coal, oil, and gas) from the decision area.” The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative management approaches as a response to the U.S. District Court of the District of Montana court order (*Western Organization of Resource Councils, et al. v. Bureau of Land Management* [4:20-cv-00076-GF-BMM]). All alternatives within the considered range of alternatives met the purpose and need, and neither the purpose and need nor the court order required the BLM to select one alternative over another. The process of developing and analyzing alternatives for managing coal allocations was not predetermined; instead, it enabled a thorough NEPA analysis to inform the final agency decision. The court order mandated that the BLM analyze two specific alternatives for managing coal allocations within defined parameters. However, this agreement did not limit the BLM from considering additional alternatives, nor did it prevent the selection of the No Action Alternative or any other action alternative in the final decision.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Buffalo FSEIS/PRMPA. For the FSEIS/PRMPA, the BLM defined the alternatives by refining the multiple-use coal screen (Screen 3) to consider GHG emissions as a nexus for climate change. Chapter 2 of the Buffalo FSEIS/PRMPA details the alternatives that address the volume of BLM-administered coal available for future leasing consideration. The coal volume available differs across the alternatives. The multiple-use coal screen includes the specific constraints for each alternative applied during the screening process. Detailed descriptions of the alternatives can be found in Sections 2.2.1 through 2.2.3 (pp. 2-1 through 2-4). Alternative A analyzed a No Leasing Alternative in which the CDPA would be unacceptable for future consideration of Federal coal leasing throughout the duration of the planning period based on the multiple-use screening process. Under Alternative A, screen 3 would result in 48.12 billion short tons of coal to be excluded from consideration to mitigate GHG emissions as a measure for addressing climate change, in compliance with the court order. Alternative B, No Action, would allow for 48.01 billion short tons of BLM-administered recoverable coal to be available for future consideration of leasing within the CDPA. In compliance with the court order, the BLM also considered a Limited Leasing Alternative (Alternative C) in which 1.24 billion short tons of BLM-administered recoverable coal within the CDPA would be available for the future consideration of leasing. Under Alternative C, screen 3 would remove 46.88 billion short tons of coal from consideration to reduce GHG emissions as a proxy for climate change in response to the court order.

The BLM considered a reasonable range of alternatives in the Buffalo FSEIS/PRMPA in full compliance with NEPA. Accordingly, this protest issue is denied.

NEPA Violation: Reasonably Foreseeable Future Actions and Cumulative Impacts

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: Under the National Environmental Policy Act (NEPA) implementing regulations, indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8 (2020); 40 C.F.R. § 1508.1(g) (2022); see also 40 C.F.R. § 1508.25(c) (2020) (requiring the EIS to analyze direct, indirect, and cumulative impacts from a federal action). The FSEIS recognized that Wyoming will face reclamation needs well beyond 2041, and the fact the no leasing alternative will eliminate federal revenues from coal production. Thus, AML impacts are an archetypal “reasonably foreseeable” impact the BLM should have evaluated in the interest of informed decision-making.

Wyoming Department of Environmental Quality Todd Parfitt

Issue Excerpt Text: In past planning efforts, non-conventional coal development was on BLM’s reasonably foreseeable future actions list. But this FSEIS does not even attempt to incorporate non-thermal coal or alternative uses into its emissions analysis or the indirect and cumulative assessments. Such short-sight violates NEPA. It is well-established that federal agencies carrying out a NEPA analysis must take a “hard look” at environmental consequences related to proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390,409 (1976).

National Mining Association Katie Sweeney

Issue Excerpt Text: BLM’s Inadequate Impacts Evaluation Violates the National Environmental Act. BLM’s failure to analyze the reliability impacts of the BFO RMP violates the requirement of the National Environmental Policy Act (NEPA) to evaluate both direct and indirect foreseeable impacts. Uncertainty inherent in predicting the future - as BLM maintains in arguing that it does not have the tools to analyze reliability impacts - cannot serve as an excuse for agencies to completely avoid this obligation. While courts have agreed that the indirect impact analysis is bounded by what it reasonably foreseeable,⁷ they have similarly cautioned against agencies attempting to “travel the easy path and hastily label the impact of the [action] as too speculative and not worthy of agency review.”⁸ While agencies are [N]ot required ... to do the impractical, if not enough information is available to permit meaningful consideration, because the basic thrust of an agency’s responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects fully known [r]easonable forecasting and speculation is ... implicit in NEPA.⁹

Campbell County Government & Campbell, Converse, and Johnson Counties Board of Commissioners Del Shelstad, Jim Ford, Jim Willox, and Bill Novotny

Issue Excerpt Text: BLM’s addition of the “Alternative Coal Uses” section concedes that non-thermal uses of coal are relevant and have reasonably foreseeable effects that are not examined in the FSEIS. For example, BLM did not consider the cumulative effects that CCUS, CCS, CM, and REE might impact its emissions calculations. In other words, BLM does not meet its NEPA obligations by

merely acknowledging the existence of relevant factors, it must also take a hard look at the consequences of its proposed action on those factors.

National Mining Association

Katie Sweeney

Issue Excerpt Text: BLM’s Inadequate Impacts Evaluation Violates the Administrative Procedures Act. Similarly, BLM’s refusal to evaluate the impacts to reliability and affordable electricity is arbitrary and capricious under the Administrative Procedure Act (APA). One consideration in determining the lawfulness of agency actions, is whether an agency “failed to consider an important aspect of the problem.”³² In attempting to focus its impacts analysis solely on impacts within the BFO planning area, BLM is failing to consider an important aspect of the problem and is also arbitrarily limiting its analysis. As discussed above, the impacts of BLM’s adoption of a no future leasing alternative on reliable and affordable electricity is an important aspect the agency was required to analyze.

Summary:

Protestors stated that the BLM violated NEPA by failing to comprehensively evaluate the direct and indirect cumulative effects of the proposed action and proposed alternatives. Protestors noted a number of perceived deficiencies, including:

- The BLM violated NEPA by failing to analyze the indirect and cumulative socioeconomic effects related to the loss of abandoned mine land fees.
- The BLM violated NEPA by failing to take a “hard look” at reasonably foreseeable future actions (RFFA) related to non-thermal coal or factor alternative uses into the emissions analysis or effects analysis in the Buffalo FSEIS/PRMPA.
- The BLM violated NEPA by failing to analyze grid reliability impacts of the Buffalo FSEIS/PRMPA. Furthermore, the protester argued that the BLM claiming it did not have adequate tools to analyze grid reliability impacts is not sufficient and the agency is required to predict the impacts of the proposed action.
- The BLM failed to evaluate the impacts of the BLM’s adoption of a no future leasing alternative on reliable and affordable electricity.

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). RFFAs are defined by the BLM as “those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends” (BLM Handbook H-1790-1, Section 6.8.3.4, p. 59).

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. Cumulative impacts under each alternative were disclosed in detail in Chapter 3 of the Buffalo FSEIS/PRMPA in their own cumulative effects sections after the individual alternatives analysis sections for each resource or resource use. These

cumulative effects sections identify all reasonably foreseeable actions that were considered in the cumulative impacts analysis and provide a basis for the cumulative impacts analysis for each affected resource and resource use.

One protester stated that the BLM violated NEPA by failing to analyze the indirect socioeconomic effects related to the loss of abandoned mine land fees beyond 2041, under the No Leasing and Limited Leasing Alternatives. However, the Buffalo FSEIS/PRMPA adequately discusses both direct and indirect economic impacts associated with the No Leasing and Limited Leasing Alternatives in Section 3.5.3.2. While abandoned mine land fees are not directly mentioned by name, the BLM asserts that there will be ripple effects from loss of revenue from coal production beyond 2041 under these alternatives and details how the socioeconomic landscape in the region is anticipated to change.

Protesters argued that the BLM must include an analysis on the cumulative effects of non-conventional coal development projects in the RFFA scenario; however, per the definition of RFFAs in the BLM NEPA Handbook (BLM Handbook H-1790-1, Section 6.8.3.4, p. 59), the BLM must only analyze development actions that are “highly probable,” including those with existing decisions, funding, or formal proposals in place. In preparing the Buffalo FSEIS/PRMPA, the BLM did not identify any non-conventional coal development projects that qualify under the definition of an RFFA. As such, the BLM is not required to include a discussion of non-thermal coal or incorporate alternative uses into its emissions analysis or the indirect and cumulative assessments. Also, in Buffalo FSEIS/PRMPA Appendix H, the BLM notes that when non-thermal potential uses are identified (or other uses not yet conceptualized) and mature enough to need Federal coal, the BLM may amend the RMP to address new information.

One protester maintained that BLM violated NEPA by failing to analyze grid reliability impacts of the proposed Buffalo FSEIS/PRMPA. However, the BLM incorporated a discussion on grid reliability in Sections 1.3.2, 3.5.3, and 3.5.5 following the public comment period. In Buffalo FSEIS/PRMPA Section 1.6, the BLM notes that it “does not currently have a model suitable to perform an impact analysis to consider whether [the No Leasing and Limited Leasing Alternatives] would increase energy costs or energy grid reliability after 2041” and cannot speculate on whether these alternatives would be consistent with policy statements concerning Johnson County’s support for the continued production of coal beyond 2041. However, the RMP may be revised in the future should new modeling methods become available.

One protester contested that the BLM did not complete an analysis of the No Leasing Alternative (Alternative A) on the future reliability and affordability of electricity. However, the BLM included a substitution analysis, grid reliability, alternative coal uses, and local social and economic effects in Sections 1.3.2, 3.5.3, and 3.5.5 of the Buffalo FSEIS/PRMPA. Additionally, in Buffalo FSEIS/PRMPA Appendix H, the BLM explains that “electricity generation from coal has been declining since the late 2000s as natural gas and renewable energy costs have decreased. Free-market economics drive the demand for coal. Federal policies and coal management are a factor, but they are not a driver of coal’s predicted future demands. Renewable energy options are the most cost-effective new sources of electricity generation in most markets (see <https://www.iea.org/reports/coal-in-net-zero-transitions>). Federal policies and coal management are a factor but not a driver of coal’s market share decline. Utility companies are responsible for providing continuous electricity to customers and typically do not retire coal-fired power plants without a reliable replacement energy source.”

The analysis in the Buffalo FSEIS/PRMPA adequately considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Buffalo FSEIS/PRMPA enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately identified RFFAs and analyzed cumulative effects in the Buffalo FSEIS/PRMPA. Accordingly, this protest issue is denied.

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