



***Bureau of Land Management
Director's Protest Resolution Report***

**Greater Sage-Grouse
Rangewide Planning Proposed
Resource Management Plan
Amendment and Final
Environmental Impact
Statement**

January 10, 2025

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Acronyms

Term	Definition
ACEC	Area of Critical Environmental Concern
APA	Administrative Procedure Act
BLM	Bureau of Land Management
BMP	best management practice
CEQ	Council on Environmental Quality
CFA	causal factor analysis
CFR	Code of Federal Regulations
COT	Conservation Objectives Team
DDCT	Disturbance Density Calculation Tool
DOI	U.S. Department of the Interior
EIS	Environmental Impact Statement
EO	Executive Order
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
GHMA	General Habitat Management Area
GRSG	Greater Sage-Grouse
GRSG PRMPA/FEIS	Greater Sage-Grouse Rangewide Planning Proposed Resource Management Plan Amendment and Final Environmental Impact Statement
HAF	Habitat Assessment Framework
HMA	habitat management area
IM	Instruction Memorandum
IPaC	Information for Planning and Consultation
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NOA	Notice of Availability
NSO	No Surface Occupancy
NTT	National Technical Team
OHV	off-highway vehicle
PHMA	Priority Habitat Management Area
PRMPA	Proposed Resource Management Plan Amendment
RFD	Reasonably Foreseeable Development Scenario
RMPA	Resource Management Plan Amendment
RNA	Research Natural Area
ROD	Record of Decision
ROW	right-of-way
SFA	sagebrush focal area
U.S.C.	U.S. Code
USFWS	U.S. Fish and Wildlife Service
UUD	unnecessary or undue degradation
WAFWA	Western Association of Fish and Wildlife Agencies
WEM	waivers, exceptions, and modifications
WGA	Western Governors' Association
WOGCC	Wyoming Oil & Gas Conservation Commission

Introduction

The Bureau of Land Management (BLM) released the Greater Sage-Grouse Rangewide Planning Proposed Resource Management Plan Amendment (PRMPA) and Final Environmental Impact Statement (FEIS) on November 15, 2024 (GRSG PRMPA/FEIS). The BLM received 60 unique protest letter submissions during the subsequent 30-day protest period, which ended on December 16, 2024.

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. Four letters were complete and timely but were dismissed because the protesting parties who submitted the letters did not have standing to protest because they did not participate in the planning process previously. The remaining 56 letters were complete and timely and were from parties who had standing to protest. Of those, 50 letters contained valid protest issues. The BLM documents the responses 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 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. While the BLM found that no changes to the GRSG PRMPA/FEIS were necessary as a result of the protest issues, the BLM nonetheless will modify elements of the Approved RMPA regarding PHMA with limited exception in consideration of feedback received from various states during the governor's consistency review process. The BLM will provide further explanation in the BLM's Record of Decision (ROD). The decision was sent to the protesting parties by certified mail, return receipt requested. Consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority), 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)).

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

Protesting Party Index

Letter Number	Protestor	Organization	Determination
PP-WO-GR-EIS-24-01	Cody Oxarart		Dismissed - No Standing
PP-WO-GR-EIS-24-02	Jennifer Marshall		Dismissed - No Standing
PP-WO-GR-EIS-24-03	Sid Marshall		Dismissed - No Standing
PP-WO-GR-EIS-24-04	Christina Witham	Baker County, Oregon	Denied
	Doni Bruland		
PP-WO-GR-EIS-24-05	Maria McNees		Dismissed - No Standing
PP-WO-GR-EIS-24-06	Kevin and Mary Buchholz	South Dakota Public Lands Council	Dismissed - Comments Only
PP-WO-GR-EIS-24-07	Dennis Brabec	Fiddleback Farms, LLC	Dismissed - Comments Only
PP-WO-GR-EIS-24-08	Katie Fite	Wildlands Defense	Denied
PP-WO-GR-EIS-24-09	Amy Emmert	American Petroleum Institute	Denied
	Wendy Kirchoff	American Exploration & Production Council	
	Sonny Capece	Montana Petroleum Association	
	Ron Ness	North Dakota Petroleum Council	
PP-WO-GR-EIS-24-10	Ben Tettlebaum	The Wilderness Society	Denied
PP-WO-GR-EIS-24-11	Jeness Saxton	Sublette County, Wyoming	Denied
	Sam White	Sublette County, Wyoming	
PP-WO-GR-EIS-24-12	Allison Murray	Idaho Power Company	Dismissed - Comments Only
	Scott Pugrud		
PP-WO-GR-EIS-24-13	Ryan Schierman	Ur Energy	Denied
PP-WO-GR-EIS-24-14	Fred Devish	Crook County Board of Commissioners	Denied
PP-WO-GR-EIS-24-15	Nikki Bailey-Lundahl	Nevada Mining Association	Denied
	Amanda Hilton		
PP-WO-GR-EIS-24-16	Sierra Nelson	The Utah Wool Growers Association	Dismissed - Comments Only

Letter Number	Protestor	Organization	Determination
PP-WO-GR-EIS-24-17	Colby Prout	Lithium Nevada Corp.	Denied
PP-WO-GR-EIS-24-18	Mark Compton	American Exploration & Mining Association	Denied
PP-WO-GR-EIS-24-19	Charlotte Sawyer	Western Energy Alliance	Denied
	Kathleen Sgamma	Western Energy Alliance	
	Pete Obermueller	Petroleum Association of Wyoming	
PP-WO-GR-EIS-24-20	Matt Vincent	Montana Mining Association	Denied
PP-WO-GR-EIS-24-21	Michael Edmondson	State of Idaho - Idaho Governor's Office of Species Conservation	Denied
PP-WO-GR-EIS-24-22	Les Culliton	Hot Springs County, Wyoming	Denied
PP-WO-GR-EIS-24-23	Travis Deti	Wyoming Mining Association	Denied
PP-WO-GR-EIS-24-24	Darcy Marud	Western Exploration	Denied
PP-WO-GR-EIS-24-25	Robert Joyce	Sierra Club	Denied
PP-WO-GR-EIS-24-26	Katie Sweeney	National Mining Association	Denied
PP-WO-GR-EIS-24-27	Becky Freeman	Niobrara County, Wyoming	Denied
	Patrick Wade		
PP-WO-GR-EIS-24-28	Becky Hadlock	Weston County, Wyoming	Denied
	Nathan Todd		
	Don Taylor		
PP-WO-GR-EIS-24-29	Erika Malmen	Perkins Coie on behalf of Idaho State Legislature	Denied
PP-WO-GR-EIS-24-30	Amy Harvey	Berkshire Hathaway Energy Company	Denied
	Sherry Liguori		
PP-WO-GR-EIS-24-31	Karen Rimmer	Converse County, Wyoming	Denied
	Jim Willox		
PP-WO-GR-EIS-24-32	Greta Anderson	Western Watersheds Project	Denied
	Vera Smith	Defenders of Wildlife	

Letter Number	Protestor	Organization	Determination
	Randi Spivak	Center for Biological Diversity	
	Joanna Zhang	WildEarth Guardians	
	Bonnie Gestring	Earthworks	
	Steve Homer	American Bird Conservancy	
	Sarah Stellberg	Advocates for the West	
	Nancy Hilding	Prairie Hills Audubon Society	
	Chandra Rosenthal	Public Employees for Environmental Responsibility	
PP-WO-GR-EIS-24-33	Martin Paris	Nevada Cattleman's Association	Denied
	Hanes Holman		
PP-WO-GR-EIS-24-34	Peter Lacy	Oregon Natural Desert Association	Denied
	Mark Salvo		
	Anne White		
	Ryan Houston		
PP-WO-GR-EIS-24-35	Jake Tibbitts	Eureka County, Nevada	Denied
	J.J. Goicoechea		
PP-WO-GR-EIS-24-36	Jeremy Drew	Churchill County, Nevada	Denied
	Jim Barbee		
PP-WO-GR-EIS-24-37	Nichole Stephey	White Pine County, Nevada	Denied
	Laurie Carson		
PP-WO-GR-EIS-24-38	Mary Darling	Darling Geomatics on behalf of Custer County, Idaho	Dismissed – Comments Only
		Custer County, Idaho	
PP-WO-GR-EIS-24-39	Sindy Smith	State of Utah, Public Lands Policy Coordinating Office	Denied
	Redge Johnson		
PP-WO-GR-EIS-24-40	Kerry McMurray	Cassia County, Idaho	Denied
	Leonard Beck		
	Mary Darling		
PP-WO-GR-EIS-24-41	Sara DiRienzo	State of Wyoming, Office of Governor Mark Gordon	Denied

Letter Number	Protestor	Organization	Determination
	Mark Gordon	State of Wyoming, Office of Governor Mark Gordon	
	Angela Bruce	Wyoming Game and Fish Department	
	Tom Kropatsch	Wyoming Oil and Gas Conservation Commission	
	Doug Miyamoto	Wyoming Department of Agriculture	
	Todd Parfitt	Wyoming Department of Environmental Quality	
	Jason Crowder	Wyoming Office of State Land and Investments	
PP-WO-GR-EIS-24-42	John Fahlgren	Montana Natural Resource Coalition of Counties	Denied
PP-WO-GR-EIS-24-43	John Robison	Idaho Conservation League	Denied
PP-WO-GR-EIS-24-44	Michael McCarthy	Barrick Gold of North America, Inc.	Denied
	Hiliary Wilson	Nevada Gold Mines, LLC	
PP-WO-GR-EIS-24-45	Jennifer Berthiaume	Nevada Association of Counties	Denied
	Vinson Guthreau		
PP-WO-GR-EIS-24-46	Kelly Carpenter	Wyoming Farm Bureau Federation	Denied
PP-WO-GR-EIS-24-47	Jeremy Drew	N-4 State Grazing Board	Denied
	Gracian Uhalde		
PP-WO-GR-EIS-24-48	Bill Novotny	Wyoming County Commissioners Association	Denied
PP-WO-GR-EIS-24-49	Eric South	Wyoming Coalition of Local Governments	Denied
PP-WO-GR-EIS-24-50	Cameron Mulrony	Idaho Cattle Association	Denied

Letter Number	Protestor	Organization	Determination
PP-WO-GR-EIS-24-51	Jessie Hill	Humboldt County Board of Commissioners	Denied
PP-WO-GR-EIS-24-52	Jeremy Drew	N-2 State Grazing Board	Denied
	Don Jones		
	Hank Dufurrena		
PP-WO-GR-EIS-24-53	Cherie Leeden	Hog Ranch Minerals, Inc. - Rex Minerals	Denied
PP-WO-GR-EIS-24-54	Mary Greene	The American Clean Power Association	Denied
	Tom Vinson		
	Madelyn Smerillo		
PP-WO-GR-EIS-24-55	Vance Broadbent	JRB, LLC	Denied
PP-WO-GR-EIS-24-56	Leanne Correll	Saratoga-Encampment-Rawlins Conservation District	Denied
	Arla Strasser		
PP-WO-GR-EIS-24-57	ValJay Rigby	Utah Farm Bureau Federation	Dismissed - Comments Only
PP-WO-GR-EIS-24-58	Del Shelstad	Campbell County, Wyoming	Denied
	Jim Ford		
PP-WO-GR-EIS-24-59	Simone Griffin	BlueRibbon Coalition	Denied
	Ben Burr		
PP-WO-GR-EIS-24-60	William Novotny	Johnson County, Wyoming	Denied

Administrative Procedure Act

The Wilderness Society

Ben Tettlebaum

Issue Excerpt Text: This omission is also illustrated by comparing the RFD’s projections for Alternative 3 and Alternative 1 in Wyoming. Alternative 3 would close sage-grouse habitat to new leasing, and thus dramatically reduce future development: the RFD predicts that future drilling under Alternative 3 will drop by more than 70% compared to Alternative 1. See RFD at 12-41 (forecasting 4,900 wells drilled in Wyoming sage-grouse habitat under Alternative 1, and only 1,453 wells under Alternative 3). The RFD’s disregard of leasing prioritization distorts the entire analysis of oil and gas impacts, and inaccurately portrays Alternative 1 as worse for the sage-grouse than other alternatives under consideration. In fact, the RFD asserts that every FEIS alternative (other than the 2019 plan) would result in less drilling and surface disturbance in Wyoming sage-grouse habitat than Alternative 1. RFD at 12-41. Disregarding prioritization, and assuming that removing limits on new leasing will have no impact on future levels of oil and gas development, violates the National Environmental Policy Act (NEPA) and represents classic arbitrary and capricious decision making.

American Clean Power Association

Tom Vinson et al.

Issue Excerpt Text: The BLM does not explain the addition of restrictions on renewable energy development in the FEIS. Under the Administrative Procedure Act an agency must articulate a rational connection between the facts and the decision, based on substantial evidence in the administrative record. Additionally, the agency must explain what justifies the determination with actual evidence beyond a “conclusory statement.” Here, BLM does not explain what changed between the issuance of the draft EIS and the final EIS to justify further restrictions on renewable energy development. In the FEIS BLM notes that it is considering amending the RMPS in part “to minimize the likelihood of and need for listing of [GRSG] under the ESA.” However, BLM does not provide any scientific or data-driven justification to suggest that further restrictions on renewable development in PHMA will achieve this goal. Indeed, beyond adding a few clarifying sentences, and eliminating references to two studies (without explanation), the impact analysis between the draft EIS and the FEIS does not change substantively enough to justify the blanket exclusion for wind and solar energy within PHMA.

National Mining Association

Katie Sweeney

Issue Excerpt Text: BLM’s failure to take a “hard look” and analyze the impacts of the RMPA violates the requirement of NEPA to evaluate both direct and indirect foreseeable impacts. Uncertainty inherent in predicting the future but 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 is reasonably foreseeable, 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.” 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.” Here, the BLM failed to consider an important aspect of the problem and also arbitrarily limited its analysis.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: We protest that the Bureau would authorize state-by-state differences within the plans, and differences from National Technical Team recommendations, without a reasonable justification. This is arbitrary and capricious. There is no reason that, say, greater sage grouse need fewer acres of protection from fluid mineral leasing in Wyoming than they do in the Montana/Dakotas. (See, e.g. PRMPA/FEIS at 2-25.) We raised this issue in our comments on the DEIS. See Advocates et al. 2024 at 33. See Defenders of Wildlife DEIS comment letter at 13. The FEIS claims that the “management differences between states” all “meet the purpose and need of improving GRSG conservation.” FEIS at 2-64. That is simply untrue. Most of the differences downgrade protections compared to the 2015 plans. Touting that the PRMPA strengthens protections compared to the DEIS preferred Alternative 5 is not a relevant comparison. DEIS preferred alternative 5 provides inadequate protections and is weaker than the 2015 plans, which should be the baseline for comparison given the BLM’s responsibility to maintain adequate regulatory mechanisms and FWS’s determination of the not warranted finding. Although the Bureau also claims that state-specific circumstances justify these changes, with few exceptions it fails to describe or provide actual evidence of these biological, geographical, or other circumstances for public review or comment. That has foreclosed meaningful public comment on this issue. The Bureau argues that the National Technical Team recommendations were intended to be adjusted while incorporating “some adjustments of these conservation measures in order to address local ecological site variability.” FEIS at Appendix 6-1, emphasis as provided by the agency in Appendix 6. In many cases, the agency has failed to document ecological site variability that corresponds to state-by-state differences in habitat protection measures, thereby failing to provide a rationale connecting the facts found with the decisions made.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau’s proposed management of oil and gas varies state-by-state without biological justification. In Wyoming and portions of Montana, for example, the Bureau does not describe ecological site variability that supports its decision to use a 0.6-mile lek buffer for fluid minerals in PHMA, which differs radically from the prohibition on oil and gas surface disturbance applied to all PHMA in most other states. It also departs drastically from the 4-mile lek buffer outlined by the National Technical Team, (2011) and identified as the median of a recommended conservation buffer zone by Manier et al. (2014). Likewise, the agency does not identify any ecologically unique aspects of Wyoming sage grouse habitats that support its decision to apply a 5% disturbance cap (with no scientific support) in Wyoming (including fires), allowing almost double the industrial disturbance of sage grouse habitats in areas which lack fires compared to the 3% surface disturbance limit applied in other states (and supported by some science). Sage grouse habitats within Wyoming diverge more from each other than they do with habitats in adjacent states with stronger sage grouse protections. For example, sage grouse habitats in northeastern Wyoming are Great Plains ecosystems, similar to sage grouse habitats in eastern Montana, and based on local ecological site variability should have similar levels of protection. Sage grouse habitats in southwestern Wyoming are high-elevation shrubsteppe ecosystems indistinguishable from those in northwestern Colorado, and should have similar levels of protection were the agency making adjustments from NTT recommendations or more recent science based on ecological site variability. The fact of the matter is that the Bureau has ignored ecological site variability, in contrast to the direction in IM 2014-44, and instead varied protection levels based on the whims and preferences of various state governments. There is no analysis provided to justify this in the NEPA process for the 2015 ARMPAs, the 2019 ARMPAs, or the 2024 ARMPAs. Numerous other similar regional variations outlined below also have no connection to varying ecological conditions, and are likewise unjustifiable departures from NTT recommendations and/or more recent science. Likewise, the agency claims that National Technical Team recommendations

“do not provide for future updates in scientific knowledge” (FEIS at Appendix 6-2), yet there are no subsequent scientific publications, including Manier et al. (2014), that either suggest that a 4-mile lek buffer is inappropriate or that a 0.6-mile lek buffer is appropriate for industrial disturbances. In fact, there is no justification in the literature or in the record to arbitrarily and (almost) universally apply the lower end of the range of Manier et al. (2014) when the authors themselves admit that the larger distances of the range suggest, “that for some populations, the minimum distance inferred here (5 km [3.1 mi]) from leks may be insufficient to protect nesting or other seasonal habitats.” Emphasis added. Nonetheless, the Bureau went with the lowest end of the range as the maximum protected zone around leks.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: Under the APA, an agency must provide “a more detailed explanation” when reversing a prior policy, decision, or position that “has engendered serious reliance interests.” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 106 (2015) (internal quotation marks omitted); see also *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2126 (2016). Despite removing key planks of its 2015 plans that supported the U.S. Fish and Wildlife Service’s 2015 decision not to list the sage-grouse on the ESA, the Bureau has failed to account for the “serious reliance interests,” the Service’s “Not Warranted” determination placed on its prior 2015 plans. USFWS expressly relied on the components of the 2015 plans—including the SFA designation, the proposed mineral withdrawal, the lek buffers, fluid mineral lease stipulations and the net conservation gain standard, among other requirements—as adequately reducing various threats to the species. The Bureau is proposing to weaken or eliminate all of these measures. Where a listing is avoided based on promised conservation efforts that are not implemented, the USFWS must “reevaluate the status of the species and consider whether initiating the listing process is necessary.” See 68 Fed. Reg. 15,100–02 (Mar. 28, 2003). USFWS’s “Not Warranted” finding was expressly dependent upon the “continued implementation of the regulatory mechanisms” in the 2015 Plans. See *id.* at 59,941. The Bureau’s failure to acknowledge this serious reliance interest, or consider how the proposed amendments would affect the sage grouse’s ESA listing status, is arbitrary and capricious. We raised this issue in comments, *Advocates et al.* 2024 at 93, yet the Bureau entirely failed to respond.

Summary:

Protestors claimed that the BLM’s approval of the GRSG PRMPA/FEIS would violate the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) by:

- Disregarding prioritization of oil and gas leasing, which assumes that removing limits on new leasing will have no impact on future oil and gas development and distorts the Reasonably Foreseeable Development Scenario (RFD) under every alternative except for the no action alternative.
- Failing to explain the decision to make further restrictions on renewable energy development or how that will minimize the likelihood of listing the greater sage-grouse (GRSG) under the Endangered Species Act (ESA).
- Failing to sufficiently analyze the impacts of the GRSG PRMPA/FEIS, specifically on the issue of reliable and affordable electricity.
- Failing to provide justification for authorizing state-by-state differences (such as stating that GRSG need less acres of protection from fluid mineral leasing in Wyoming than they do in the Montana/Dakotas) that downgrade overall protections to GRSG and deviating from the National Technical Team recommendations (such as the 4-mile lek buffer outline versus the 0.6-mile lek buffer the BLM accepted for fluid minerals in Priority Habitat Management Areas [PHMAs]).

Protestors claim that these decisions have led the BLM to ignore ecological site variability in contrast to direction from Instruction Memorandum (IM) 2014-44.

- Disregarding the direction to provide “a more detailed explanation” when reversing a prior policy, decision, or position that “has engendered serious reliance interests” and failing to account for eliminating or weakening protections to GRSG.

Response:

Pursuant to NEPA and the Council on Environmental Quality’s (CEQ) NEPA regulations,¹ the BLM evaluates the environmental impacts of a proposed action and reasonable alternatives when preparing an Environmental Impact Statement (EIS). A land use planning-level decision, such as the GRSG PRMPA/FEIS, is broad in scope. For this reason, analysis of land use plan impacts is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM would not authorize any on-the-ground actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis for the GRSG PRMPA/FEIS was conducted at a regional, rangewide level. 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 APA (5 U.S.C. 551–559) establishes how Federal administrative agencies like the BLM make rules and how they adjudicate administrative litigation, including granting agencies the ability to make rulemaking decisions formally or informally, as well as going beyond the resolution of specific controversies to include administrative functions. The APA also specifies that courts can set aside agency actions if they are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. This standard is used to ensure that agency decisions are based on a rational connection between the facts found and the choices made. If an agency fails to provide a reasonable explanation for its actions or if its decision lacks a rational basis, it can be deemed arbitrary and capricious.

The BLM has fully analyzed the environmental effects associated with each alternative in the GRSG PRMPA/FEIS, including the impacts to oil and gas leasing. BLM’s planning processes allow for analysis and consideration of a range of alternatives that identify and incorporate appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat, and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was recommended. This includes alternatives that provide a greater and lesser degree of restrictions in various use programs, in accordance with applicable law, and would not eliminate or invalidate any valid existing rights.

In all GRSG habitat management areas under all action alternatives (Alternatives 3 through 6 and the PRMPA), and consistent with valid existing rights and applicable law, BLM will apply the mitigation hierarchy (pursue avoidance first, then minimization, compensation last) when authorizing third-party actions such as oil and gas leasing resulting in GRSG habitat loss and degradation to achieve minimum standards (GRSG PRMPA/FEIS p. 2-118). The BLM’s consideration and implementation of the mitigation hierarchy to achieve either “no net loss” or “net conservation gain” is consistent

¹ The BLM is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BLM has nonetheless elected to follow those regulations at 40 CFR Parts 1500–1508, in addition to the Department of the Interior’s procedures/regulations implementing NEPA at 43 CFR Part 46, to meet the agency’s obligations under NEPA, 42 U.S.C. 4321 et seq.

with CEQ regulations (40 CFR 1508.1(s) (2022)), the Federal Land Policy and Management Act's (FLPMA's) direction to manage public lands under the principles of multiple use and sustained yield, and is designed to promote consistency with State regulatory requirements. The GRSG PRMPA/FEIS evaluates direct, indirect, and cumulative impacts from the management proposed under each alternative to mineral resources in Section 4.10 (pp. 4-73 – 4-88) and Appendix 10 Section 10.10 (pp. 10-71 – 10-107), and addresses fluid mineral development specifically in Section 4.10.1 (pp. 4-73 - 4-78) and Appendix 10 Section 10.10.1 (pp. 10-71 – 86). GRSG PRMPA/FEIS Appendix 12 presents the RFD. The RFD for fluid mineral leasing across the planning area in GRSG PRMPA/FEIS Appendix 12 Sections 12.1 through 12.9 (pp. 12-1 – 12-43) presents a reasonable projection of future activity associated with mineral exploration and development in the planning area under each of the proposed alternatives, in order to assist in the analysis of impacts resulting from proposed actions (GRSG PRMPA/FEIS Appendix 12 pp. 12-1 – 12-42).

Regarding renewable energy development, the GRSG PRMPA/FEIS analyzes a reasonable range of alternatives for renewable energy development and associated transmission that is adequate to address the agency's purpose and need as described in Section 1.4.2 (GRSG PRMPA/FEIS pp. 1-4 – 1-6). Management proposed under each alternative related to renewable energy development and associated transmission is provided in detail for Alternatives 1 through 6 in Appendix 21 Section 21.1.8 (pp. 21-85 - 21-91) and in Table 2-4 for the Proposed Plan (p. 2-23 – 2-24) and is summarized in Table 2-14 (p. 2-115 – 2-117 and 2-31 – 2-33). Direct, indirect, and cumulative impacts from renewable energy development under the management proposed under each alternative are discussed in Section 4.9 (GRSG PRMPA/FEIS pp. 4-70 – 4-72) and Appendix 10 Section 10.9 (pp. 10-66 – 10-71) and includes a discussion on the benefits of co-locating infrastructure in existing rights-of-way (ROWs) to reduce land use conflicts and associated impacts. Valid existing rights, would be respected, and would be subject to the new restrictions or exclusions only to the extent consistent with applicable law (GRSG PRMPA/FEIS p. 4-71). The RFD for wind and solar energy is discussed in detail in Appendix 12, Section 12.10 (GRSG PRMPA/FEIS pp. 12-43 – 12-52). Finally, as explained in Section 1.7 of the PRMPA/FEIS, between the Draft EIS and FEIS, the BLM clarified and refined how management direction from the 2015 and 2019 planning efforts would be amended by the PRMPA, in response to public and cooperating agency comments and internal review, which is consistent with NEPA and the APA. Additionally, as explained in Section 2.2 of the PRMPA/FEIS identifying PHMA as exclusion for solar and wind in the PRMPA was designed to provide additional protections for GRSG and its habitat in light of anticipated development threats and negative impacts from climate change such as drought.

In the ongoing effort to meet the purpose and need of this planning effort, which is to amend certain goals, objectives, allocations, and management direction for GRSG management in its RMPs to respond to updated scientific information and changing land uses and provide for consistent and effective range wide conservation based on biological information that is responsive to locally relevant habitat variability (GRSG PRMPA/FEIS p. 1-4), the BLM coordinated with the U.S. Fish and Wildlife Service (USFWS) and state agencies throughout the planning process (GRSG PRMPA/FEIS p. 5-2). The BLM utilized data from the USFWS's Information for Planning and Consultation (IPaC) tool and from their Environmental Conservation Online System, as well as other sources to determine how decisions enacted under the GRSG PRMPA/FEIS would potentially affect GRSG habitat and therefore minimize impacts to GRSG populations (GRSG PRMPA/FEIS Appendix 8 pp. 8-1 – 8-36). However, as this is a planning document, there are no direct impacts to any listed species or designated critical habitat. The BLM will conduct future site-specific ESA Section 7 consultation should any project require it. The GRSG PRMPA/FEIS does not address enforcement of protections of ESA, but the BLM does comply with any regulations associated with ESA for projects and actions on BLM-administered lands. Nothing in the GRSG PRMPA/FEIS negates any current

action for conservation of listed species and the BLM commits to continuing conservation of listed species.

Management proposed related to transmission or the delivery of electricity is provided in Table 2-4 (GRSG PRMPA/FEIS pp. 2-23 – 2-29) and Appendix 21 (pp. 21-33 – 21-92), and impacts from this management under the Proposed Plan are analyzed in Section 4.9, *Lands and Realty (Including Solar and Wind)*, Section 4.10, *Mineral Resources*, and Section 4.12, *Social and Economic Conditions (Including Environmental Justice)* and from Alternatives 1 through 6 in Appendix 10 Section 10.9, *Lands and Realty (Including Solar and Wind)*, Section 10.10, *Mineral Resources*, and Section 10.12, *Social and Economic Conditions*. There are many factors that operators consider when siting electricity projects that are not influenced by BLM-management decisions, including resource potential, electricity prices, and business decisions, among others. These factors can vary by site, operator, and technology, and are outside the scope of this land use planning process, which is why they are not discussed in detail throughout the GRSG PRMPA/FEIS.

Regarding the BLM's state-by-state approach, the GRSG PRMPA/FEIS seeks to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission, and GRSG management efforts with federal, State, local, and Tribal partners. As explained in Section 1.4.2 of the PRMP/FEIS, some management concerns are localized to circumstances in individual states and the ecological diversity across the sagebrush ecosystem. In addition to rangewide considerations, each state also determined the need to amend management actions independently based on a review of updated scientific literature, changing land uses and locally relevant habitat variability. This can result in differences in proposed management strategies across states particularly given resources use and habitat variability among these other factors. See GRSG PRMPA/FEIS Section 2.5 for State-specific circumstances and how the BLM is proposing management approaches by state (GRSG PRMPA/FEIS pp. 2-64 – 2-105). This amendment effort recognizes the importance of including RMP actions that address GRSG threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions. This effort also recognizes the legal and functional imperative of coordinating management with state, federal, tribal, and local plans and policies. The purpose of this land use planning process is to amend a sub-set of the GRSG management actions to ensure management actions on BLM-administered lands support GRSG conservation goals, respond to changing land uses in GRSG habitats, improve the efficiency and effectiveness of GRSG management actions, provide for consistent conservation outcomes in GRSG habitat, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals. This amendment focuses on cross-cutting management actions and topics that are applicable throughout the planning area with variations for local, state-specific variation. RODs will be issued using a state-by-state approach that further accounts for site-specific variation, including differences in lek buffers, ROWs, mineral development, and withdrawals.

BLM IM 2012-44², which provides direction for the BLM's GRSG land use planning strategy, acknowledges that while the BLM's planning efforts involving GRSG conservation measures are typically range-wide in scale, it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability. However, while the IM recognizes that ecological site variability may contribute to variations in conservation measures across states or regions, the IM does not require the BLM to rely on ecological site variability data for its management decisions.

² The IM cited by protestor, IM 2014-044, is related to cadastral surveys and is not relevant here. The BLM assumes the protestor intended to cite IM 2012-044, *BLM National Greater Sage-Grouse Land Use Planning Strategy*.

For decades, federal, state and private land managers have worked to conserve and restore the sagebrush ecosystem, with federal agencies managing habitat on the lands whose surface they administer and states managing and monitoring wildlife populations. Despite these best efforts, the GRSG is in sharp decline. Populations once in the millions now number fewer than 800,000, largely due to habitat loss exacerbated by climate change effects such as drought, increasing wildfires, and the spread of invasive species. The BLM is striving to slow or stop the decline of GRSG on BLM-administered lands with this planning amendment. The goal to conserve and manage GRSG habitats to support persistent, healthy populations is consistent with BLM's special status species policy (BLM-M-6840) and is in conformance with inventory requirements found in Section 201 of FLPMA.

The GRSG PRMPA/FEIS complies with FLPMA, NEPA, and the APA, and the BLM has conducted the analysis according to the purpose and need of this planning effort. Accordingly, this protest issue is denied.

Conservation and Landscape Health Rule

Western Watersheds Project et al. Greta Anderson et al.

Issue Excerpt Text: The Bureau Has Failed to Comply With the Conservation and Landscape Health Rule, 89 Fed. Reg. 40,308. The Bureau claims it does not have to adhere to the recently-promulgated Conservation and Landscape Health Rule (“Public Lands Rule”) because the Rule was promulgated after the Notice of Availability of the Draft EIS was published for this planning effort. See PRMPA/FEIS at 22-10 (citing DOI Information Bulletin 2024-48). That is wrong. The effective date of the Public Lands Rule was June 10, 2024. That Rule now has the force and effect of law and the final RMPs must fully comply with its terms. The Bureau cannot delay the effective date of that Rule through an internal guidance document—Information Bulletin 2024-48—that was not promulgated pursuant to the notice-and-comment requirements of the Administrative Procedure Act (APA).

Western Watersheds Project et al. Greta Anderson et al.

Issue Excerpt Text: Accordingly, the Bureau has improperly failed to consider or adhere to its many obligations under the Public Lands Rule, including but not limited to:

- 43 C.F.R. § 1610.7-2 - requiring the Bureau to undertake various steps in designating and protecting Areas of Critical Environmental Concern.
- 43 C.F.R. § 6102.1 - requiring the Bureau to “prioritize actions that conserve and protect landscape intactness.”
- 43 C.F.R. § 6102.2(b) - requiring the Bureau, when updating a resource management plan, to “use . . . available high-quality information about landscape intactness . . . to: (1) Identify and delineate boundaries for intact landscapes within the planning area, taking into consideration habitat connectivity and migration corridor data; (2) Evaluate alternatives to protect intact landscapes or portions of the intact landscapes from activities that would permanently or significantly disrupt, impair, or degrade the ecosystem’s structure or functionality of the intact landscapes; and (3) Identify which intact landscapes or portions of intact landscapes will be managed for protection consistent with the principles enumerated in § 6102.1(a).”

- 43 C.F.R. § 6102.2(c) - requiring the Bureau to “identify desired conditions and landscape objectives to guide implementation of decisions regarding management of intact landscapes, habitat connectivity, and old-growth forests.”
- 43 C.F.R. § 6102.5 (b)(1), (8) - requiring the Bureau to analyze whether land use allocations have the potential to impair ecosystem resilience, make every effort to avoid authorizing uses of the public lands that permanently impair ecosystem resilience, and to provide justification for decisions that may impair ecosystem resilience.
- 43 C.F.R. § 6102.3.1(a) - requiring the Bureau to identify quantifiable restoration outcomes in land use plans that are consistent with the restoration principles of 43 C.F.R. § 6102.3
- 43 C.F.R. § 6103.2(c) - requiring the Bureau to “use high-quality inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decision making across program areas, including” land use planning.
- 43 C.F.R. § 6103.1.1(c), (d) - requiring the Bureau to identify in a land use plan the allowable uses and actions anticipated to achieve or promote significant progress towards achieving land health standards and to identify any statutory, regulatory, or other requirements that may prevent the achievement of land health standards. Land use plans must also identify best management practices and mitigation measures to minimize effects to land health resulting from such requirements. Requiring the environmental effects analysis in a land use plan to consider effects to indicators used to measure achievement of land health standards.

Summary:

A protestor claimed the BLM failed to comply with the Conservation and Landscape Health Rule (“Public Lands Rule”) by claiming the BLM does not have to adhere to this rule because it was promulgated after the Notice of Availability (NOA) for the GRSG Draft RMPA/EIS was published. As such, the protestor claims the BLM failed to consider many of the obligations under this rule.

Response:

The Conservation and Landscape Health Rule (“Public Lands Rule”; 89 FR 403080) implements the BLM’s statutory authority to manage lands for conservation, including by considering certain resource values specifically addressed in the rule. The effective date of the Public Lands Rule was June 10, 2024, well after the BLM initiated and made substantial progress in developing the Proposed RMPA.

The NOA for the GRSG Draft RMPA/EIS was published on March 14, 2024, prior to the effective date of the Public Lands Rule (GRSG PRMPA/FEIS Section 1.5, p. 1-6.), thus the GRSG PRMPA/FEIS does not incorporate Public Lands Rule elements. As stated in BLM Information Bulletin 2024-048, published August 6, 2024, “[t]he incorporation of the Public Lands Rule into ongoing land use planning efforts in FY 2024 will occur on a case-by-case basis, where scope, schedule, and budget of the planning effort allow. Generally, planning efforts for which the BLM has published a Notice of Availability (NOA) for a draft RMP prior to the effective date of the rule would not be expected to incorporate otherwise required elements or include those required elements in the final RMP and EIS. In such situations, the authorized officer may still exercise discretion to include elements of the rule, subject to planning and NEPA requirements.” Although the NOA for the GRSG Draft RMPA/EIS was published prior to the effective date of the Public Lands Rule, and is, therefore,

not expected to incorporate all elements of the Public Lands Rule per BLM IB 2024-048, the GRSG PRMPA/FEIS is largely consistent with the Public Lands Rule (Section 3.11.1, p. 3-44).

The BLM properly considered the Conservation and Landscape Health Rule (Public Lands Rule) per BLM IB 2024-048 in the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

Endangered Species Act

Western Exploration

Darcy Murad

Issue Excerpt Text: BLM's approach in the FEIS/RMPA, which permits PHMA designation where GRSG are not present, is likewise not supported by caselaw. Notably, the Supreme Court recently rejected the U.S. Fish and Wildlife Service's decision to manage habitat for the dusky gopher frog where the area did not presently support a dusky gopher frog population and could not presently constitute habitat for the species. The Comt held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species." The same holds true for BLM: BLM is not permitted to designate PHMA unless PHMA is also habitat for GRSG. We protest the FEIS/RMP A's definition of PHMA; BLM should return to its 2019 definition of PHMA.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: The PRMPA Does Not Provide Adequate Regulatory Mechanisms to Avoid Need for Greater Sage Grouse Endangered Species Act ("ESA") Listing. The Bureau's 2015 resource management plan amendments (ARMPAs or "2015 plans") were a significant basis of the U.S. Fish and Wildlife Service's "Not Warranted" determination on whether to list greater sage grouse (*Centrocercus urophasianus*) as an Endangered or Threatened species. 80 FR 59858 et seq. FWS expressly relied on components of the 2015 federal land use plans—including, but not limited to, the BLM's Sagebrush Focal Area designation, proposed mineral withdrawal, lek buffer protections, and net conservation gain standard—to justify this finding. Subsequently however, implementation of the 2015 plans, amendments to the 2015 plans, and the prevalence of exemptions to the 2015 plans have paralleled a continued decline in sage grouse populations throughout their range. The PRMPA retains components of the 2015 plans that have been demonstrated to be ineffective. Examples include retaining high levels of disturbance caps not supported by science and inadequate lek buffers, especially for Wyoming and Montana, that have been demonstrated to be completely insufficient. It is clear, based on these continuing downward trends, that management has not improved the extinction risk of sage grouse since the 2015 finding.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: The Bureau failed to adequately consider the impacts of the PRMPA/FEIS's alternatives on the numerous species that call the Sagebrush Sea home, including the pinyon jay and the pygmy rabbit that are directly and indirectly affected by sage-grouse habitat management actions along with other at-risk species. See WWP et al 2023 at 12, 19. See Defenders of Wildlife DEIS comments at 42-45. We protest the FEIS's scant analysis of the plan's effects on special status species, which cites instead to a Biological Assessment under development that is supposed to be included with this FEIS but is not. See PRMPA/FEIS at 4-62. Failure to take a hard look at the consequences to special status species including the pinyon jay and the pygmy rabbit that are directly and indirectly affected by sage-grouse habitat management actions. See PRMPA/FEIS at 4-62.

Summary:

Protestors stated that the BLM should return to its 2019 definition of PHMAs because the new definition is inconsistent with caselaw concerning the designation of critical habitat under the ESA and that the BLM should state that PHMA cannot be designated where GRSG are not present. Protestors also stated that the BLM violated the ESA in development of the GRSG PRMPA/FEIS by inadequately assessing impacts on threatened and endangered species in the project area, relying on ineffective mitigation measures, and failing to enforce protections under the ESA. Protestors claimed that the BLM violated NEPA by failing to consider the impacts to other special status species, specifically pinyon jay and the pygmy rabbit, that are directly and indirectly affected by GRSG habitat management actions.

Response:

The BLM has identified PHMAs to include, but not be limited to, GRSG habitat. The BLM has intentionally identified these management areas to assist in its management of the priority habitat contained therein. This approach is consistent with the BLM's discretion under section 202 of FLPMA and applicable policies, including Manual 6840, *Special Status Species Management*. The GRSG PRMPA/FEIS explains how the BLM may further evaluate site-specific conditions and verify the presence of GRSG habitat during project-specific reviews. If the BLM finds that a proposed project is located in potential non-habitat, the BLM would use up-to-date high-quality information, including through field investigations, where appropriate, to review the potential non-habitat (GRSG PRMPA/FEIS, pp. 2-50 – 2-51). If the BLM confirms that the project is proposed in verified non-habitat, and subject to the additional criteria described in the PRMPA, PHMA management direction would not apply (GRSG PRMPA/FEIS, pp. 2-50 – 2-51).

The BLM also complied with the ESA. The Proposed RMP Amendment/Final EIS describes potential impacts on threatened and endangered species because of management actions proposed in the alternatives. In addition, the BLM has met with the USFWS, a cooperating agency in this planning process, and provided them with drafts of proposed management direction for discussion and input.” (p. 5-2). The BLM's biological assessment was delivered to USFWS on November 19, 2024. The USFWS response to this consultation process will be included in the ROD and made available to the public on the project's ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2016719/510> (GRSG PRMPA/FEIS p. 5-2).

As the GRSG PRMPA/FEIS is a planning document, there are no direct impacts to any listed species or designated critical habitat that would occur as a result of the proposed management under any of the alternatives in the GRSG PRMPA/FEIS. The proposed management directives are intended to inform how future on-the-ground actions will be framed; however, no on-the-ground actions are directly implemented by these directives. The BLM will conduct future site-specific ESA Section 7 consultation for any potentially affected species and/or designated critical habitat. Nothing in the PRMPA negates any current action for conservation of listed species and the BLM commits to continuing conservation of listed species.

Additionally, the BLM complied with NEPA. The BLM developed a reasonable range of alternatives that meet the purpose and need of the GRSG PRMPA/FEIS and that address resource issues identified during the scoping period. The GRSG PRMPA/FEIS analyzed six alternatives and the PRMPA, which are described in Chapter 2, *Alternatives*, and Appendix 21, *Detailed Description of the Draft EIS Alternatives*. The alternatives analyzed in the GRSG PRMPA/FEIS vary in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration. Alternative 1 represents the management direction from the 2015 Approved RMPA and reflects how the BLM is currently managing GRSG habitat (GRSG PRMPA/FEIS pp. 2-1

through 2-2). Alternative 2, the No Action Alternative, represents the management direction from the 2019 Approved RMPA and reflects the management language currently in the BLM's approved land use plans (GRSG PRMPA/FEIS p. 2-2). Only a subset of management actions from the 2015 and 2019 efforts are being considered for amendment and the proposed changes in that management are described in Alternatives 3, 4, 5, 6, and the Proposed Plan Amendment. Alternative 3 offers the most protective measures to preserve GRSG and its habitat and would update the Habitat Management Area (HMA) boundaries based on science-based data that have become available since the 2015 and 2019 planning efforts. These HMAs would be managed as PHMAs under this alternative. Additionally, the BLM would designate 32 GRSG habitat Areas of Critical Environmental Concern (ACECs). Alternative 4 is similar to Alternative 3 except in Wyoming all PHMA would have a NSO stipulation added for new oil and gas leases and "management associated with some of the major minimization measures (e.g., disturbance cap and adaptive management) is adjusted to address cross-boundary coordination of shared populations, rangewide biological and managerial concerns based on monitoring, and experience gained from implementing management for GRSG since 2015. Alternative 4 allows compensatory mitigation to be used under specific conditions" (GRSG PRMPA/FEIS p. 2-2). Alternative 5, identified as the preferred alternative in the GRSG Draft RMPA/EIS, attempts to balance other potential alignments of habitat management areas and associated management for GRSG conservation with public land uses. This alternative would allow for updated GRSG management area boundaries if state governments update their specific state plans. "HMAs are similar to but refined from Alternative 4 and restrictions would generally be similar to Alternative 4; with the exception of Wyoming which would follow the oil and gas management direction in Alternative 2; and the fact that Alternative 5 considered options with fewer restrictions on resource uses and provided more opportunities for considering compensatory mitigation to offset impacts on GRSG and its habitat than Alternative 4" (GRSG PRMPA/FEIS pp. 2-2 through 2-3). Alternative 6 would be the same as Alternative 5 except there are 32 ACECs proposed for designation and the management direction would be less restrictive compared to Alternative 3 (GRSG PRMPA/FEIS p. 2-3). Under the PRMPA, protections for GRSG and its habitat would be increased from the Preferred Alternative (Alternative 5), including identifying PHMA as exclusion for solar and wind energy development, and NSO for fluid minerals with exceptions. The additional protections in the PRMPA for GRSG and its habitat address anticipated threats from development and climate change (GRSG PRMPA/FEIS p. 2-3).

GRSG PRMPA/FEIS Section 3.6, *Special Status Species*, discusses the affected environment for animal and plant species status species that require specific management due to their listing status under the ESA and as BLM sensitive species (GRSG PRMPA/FEIS pp. 3-23 through 3-29). Section 3.6.1, *Federally Listed Species*, states "Under the ESA, all federal agencies must participate in the conservation and recovery of listed threatened and endangered species. The ESA also states that federal agencies shall ensure any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat" (GRSG PRMPA/FEIS p. 3-24). Activities within the planning area will primarily affect special status species strongly associated with sagebrush habitat and pinyon-juniper woodlands which may be directly or indirectly affected by proposed management actions to protect and enhance GRSG habitat (GRSG PRMPA/FEIS p. 3-25). Pygmy rabbit affected environment is discussed on pages 3-25 through 3-26 (GRSG PRMPA/FEIS). Pinyon jay affected environment is discussed on pages 3-27 through 3-28 (GRSG PRMPA/FEIS). Additionally, Appendix 11, *Species Status Species*, shows the ESA-listed species, candidate and proposed species for ESA listing and the BLM sensitive species with their associated habitats (GRSG PRMPA/FEIS pp. 11-1 through 11-81).

Section 4.6, *Special Status Species*, discusses that impacts on special status wildlife species would be similar to those discussed in Section 4.5, *Fish and Wildlife*, and Section 4.2, *Greater Sage-Grouse*. Section 4.6, *Special Status Species*, indicates that certain federally listed and proposed species and

designated and proposed critical habitat and species more closely associated with sagebrush communities or species that ranges that overlap with PHMA and General Habitat Management Area (GHMA) may benefit from conservation measures intended to protect GRSG and sagebrush habitat (e.g., sparrow and to a lesser extent white-tailed prairie dog, black-footed ferret, pygmy rabbit, western burrowing owl, ferruginous hawk, Holmgren lupine, Beatley's buckwheat, and squalid milkvetch). On the other hand, BLM states, "...excluding or avoiding development in GRSG habitats most likely outside of PHMA and IHMA, in GHMA inclusions, may lead to increased development activity in other vegetation types (e.g., pinyon-juniper, mountain shrub, and aspen/spruce/fir). Special status species associated with these habitat types, such as pinyon jay, northern goshawk, Canada lynx, Columbian sharp-tailed grouse, sand cholla, Reese River phacelia, Eastwood milkweed, and BLM-sensitive bat species, may be adversely influenced to varying degrees, depending on alternative and development scenarios" (GRSG PRMPA/FEIS p. 4-62).

GRSG PRMPA/FEIS Appendix 10, *Chapter 4 Methodology, Assumptions, Indicators, and Environmental Consequences for Alternatives 1-6*, further explains how BLM analyzed the potential effects from implementation of the management in each alternative to all resources (GRSG PRMPA/FEIS pp. 10-1 through 10-196). Section 10.2, *Greater Sage-Grouse*, specifically describes the methodology, indicators, assumptions for the analysis and details rangewide and state specific environmental consequences for Alternatives 1 through 6 (GRSG PRMPA/FEIS pp. 10-3 - 10-28). Under *Habitat Designation and Management*, BLM discusses, "Alternative 1 incorporates an adaptive management strategy composed of soft and hard triggers based on population and habitat changes. BLM would rely on data from several sources to track and identify population changes to assess the population trigger in the adaptive management approach. Triggers would be determined by population area, making the strategy more locally responsive than if triggers were determined on a sub-regional or statewide basis. Responses to soft triggers may require adjustment of future project level/plan implementation activities, as consistent with the individual site-specific NEPA analyses. Soft trigger responses can come in the form of terms, conditions, RDFs, or site-specific mitigation measures. Hard triggers mean that immediate action is necessary to stop a severe deviation from conservation objectives set forth in the Proposed RMP Amendment" (GRSG PRMPA/FEIS p. 10-5). As discussed under Alternative 2, "Impacts from designating GRSG habitat as SFAs, PHMA, IHMA, and GHMA and associated management would be similar to those described for Alternative 1. The overall acreage would be slightly less with less than 1% fewer acres of PHMA and approximately 1.5% fewer acres of GHMA. Some SFAs would be removed in states as described under state impacts. Impacts from language to maintain and enhance sagebrush habitats would be the same as described for Alternative 1. Additionally, habitat objectives would be the same as described for Alternative 1" (GRSG PRMPA/FEIS p. 10-11). Under Alternative 5, the GRSG Draft RMPA/EIS preferred alternative, "Impacts from designating GRSG habitat as HMAs would be similar to those described for Alternative 1, though the BLM would manage approximately 7% more PHMA than Alternatives 1 and 2 and 10% fewer acres of GHMA" (GRSG PRMPA/FEIS p. 10-24).

GRSG PRMPA/FEIS Appendix 10 Section 10.6, *Special Status Species*, specifically lays out the methodology, indicators, assumptions and then describes rangewide and state-specific environmental consequences for Alternatives 1 through 6 (GRSG PRMPA/FEIS pp. 10-52 - 10-54). Pygmy rabbit and pinyon jay are both discussed in relation to their close association with sagebrush communities and pinyon-juniper habitats and species ranges overlapping with PHMAs and GHMAs, as similarly discussed in Chapter 3 and Chapter 4 (GRSG PRMPA/FEIS Appendix 10 p. 10-54).

The BLM's management of PHMA habitat in order to assist with the protection of priority habitat is consistent with the ESA and other applicable law. The BLM has also developed the GRSG PRMPA/FEIS with sufficient protections for GRSG, as well as endangered or threatened species in the planning area, in compliance with the ESA. Finally, the GRSG PRMPA/FEIS complies with NEPA by sufficiently considering the impacts to threatened and endangered species and other special

status species, specifically pinyon jay and the pygmy rabbit, that may be directly and indirectly affected by GRSG habitat management actions. Accordingly, this protest issue is denied.

FLPMA – Consistency with Other Plans

***Western Energy Alliance et al.
Charlotte Sawyer et al.***

Issue Excerpt Text: FLPMA requires that BLM work with state and local governments in the land use planning process in order to ensure consistency as well as to reduce conflict when such land use plans could have a significant impact on adjacent non-federal lands...FLPMA and BLM's own regulations require RMPs be consistent with officially approved or adopted resource-related plans of other federal, state, local, and tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands. See FLPMA Section 202(9); 43 C.F.R. § 1610.3-2; see also PRMPA/FEIS Appendix 23 – Consistency with State and Local Land Use Plans at 23-22. BLM must ensure that its planning process is consistent with state measures in order to avoid a patchwork of management requirements across land ownership lines, leading to unintended consequences that ultimately harm the GrSG and its habitat. While BLM acknowledges that there are differences between the proposed management actions in the PRMPA/FEIS and state-specific plans, the document makes clear that BLM fails to practically resolve these differences, unlawfully ignoring the fact that such inconsistencies will likely result in surface impacts on non-federal lands instead of on more restrictive federal surface lands. See PRMPA/FEIS Appendix 23 – Consistency with State and Local Land Use Plans 23-1. As FLPMA and its implementing regulations recognize, states and their wildlife management agencies are best suited to manage GrSG and its habitat through their data collection, historic understanding of population trends and triggers, and expert knowledge. Therefore, BLM's PRMPA/FEIS should be consistent with and have the ability to adapt to state plans to the maximum extent. Overlaying a federal management plan without actual collaboration and coordination with states violates FLPMA and is arbitrary and capricious.

***Western Energy Alliance et al.
Charlotte Sawyer et al.***

Issue Excerpt Text: The PRMPA/FEIS Risks Longstanding Cooperation and Collaboration by Applying a One-Size-Fits-All Approach to GrSG Management In addition to FLPMA's requirement that BLM coordinate and collaborate with state agencies on its land use plans, BLM must endeavor to draft plans that are consistent with state and local plans in recognition of the fact that state agencies often have superior knowledge of local ecosystems, wildlife needs, and the dynamics of industry and species interaction. BLM's PRMPA should include greater collaboration with and deference to the states, which would allow BLM to utilize local expertise for more precise and effective species and habitat management strategies. Additionally, close collaboration with the states would enhance alignment with ongoing state-led conservation programs and minimize duplication of efforts, creating a more streamlined and effective management model for GrSG. Because BLM's PRMPA will rely in great part on state-based population data, it is imperative BLM work with the corresponding states to ensure consistent and meaningful adaptive management based on local conditions. Existing state wildlife agencies have established conservation strategies and goals for GrSG that have been developed and informed by decades of research and stakeholder collaboration. BLM must work with the states to ensure local management goals are met while also recognizing a broader management goal. BLM should not apply a one-size-fits-all approach to GrSG management when localized differences require localized solutions. BLM must allow for state and local variations.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: The PRMPA/FEIS needs to more fully align with existing state mitigation policies to ensure consistency and compliance with FLPMA. States like Nevada and Wyoming have developed detailed frameworks for compensatory mitigation, including policies addressing habitat durability, credit systems, and offset effectiveness. Federal alignment would ensure uniform implementation of mitigation measures and reduce confusion for operators across state and federal lands. See GrSG PRMPA/FEIS Appendix 2, pp. 2-NVCA-72. The PRMPA should fully leverage state expertise in habitat offset quantification. States have spent years developing quantitative tools to measure habitat loss and recovery, ensuring that compensatory mitigation is tied to measurable ecological outcomes. For example, the Habitat Quantification Tool (HQT) used in Nevada, Idaho, Montana, and Oregon assesses development impacts and helps calculate required mitigation credits. See PRMPA/FEIS Appendix 14. Misalignment between federal and state compensatory mitigation requirements creates inefficiencies, such as the need for duplicative reviews or project delays. Consistency, therefore, would ensure state and federal efforts are complementary, maximizing the effectiveness of conservation efforts and dollars.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: The PRMPA/FEIS proposes to require compensatory mitigation to PHMA and GHMA designated lands, in contravention of existing state plans and significantly diverging from current BLM GrSG management. Inevitably, requiring these compensatory mitigation standards, including implementing a “no net loss standard,” requiring mitigation to be completed prior to any disturbance, and requiring compensation be implemented in the same HAF Fine Scale unit as the proposed disturbance creates an overly complex and unwieldy regulatory program for operators to navigate, inconsistent with state plans. BLM must revise its compensatory mitigation requirements to allow for flexibility and consistency with state plans. Further, BLM must provide support for its changed course to require such measures in PHMA and GHMA designated lands. By requiring compensatory mitigation that diverges from state frameworks or imposes additional burdens, BLM is infringing on state authority in violation of FLPMA, creating legal inconsistencies. BLM must ensure that proposed compensatory mitigation requirements in the PRMPA/FEIS fall does not exceed BLM’s authority by infringing on state and privately managed lands and projects.

State of Utah Public Lands Policy Coordinating Office
Redge Johnson and Sindy Smith

Issue Excerpt Text: As discussed, the State has numerous concerns with the BLM’s adaptive management strategy for the proposed plan amendments in Utah. The BLM cannot adopt adaptive management strategies that circumvent the State’s jurisdiction over wildlife. Additionally, the BLM cannot avoid a plan amendment under FLPMA by contemplating management decisions based on projected scenarios. For these reasons, the adaptive management plan is flawed, violates existing law, and must be rewritten in consultation with the State.

N-2 State Grazing Board
Hank Dufurrena et al.

Issue Excerpt Text: It remains extremely concerning to the Board that the BLM has decided to stay with a rangewide approach as the method of analysis for all 11 states in the West with Sage-grouse habitat and populations. Each of these states included in the BLM’s analysis has its own unique, complex management needs in addition to social and economic factors that cannot be fully detailed in one “consistent” approach. It is impossible to provide an adequate amount of detail when each state vastly differs from one another. It is apparent that the BLM did not seriously consider

any input from the State of Nevada, the Board, or others which is in direct conflict with FLPMA (43 U.S.C. § 1712(c)(9)).

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: Finally, at Row 9 of our fatal flaw comments, we asked BLM to revise, for consistency with the State Plan, language regarding when BLM will grant exceptions for wind and solar energy development in PHMA. We suggested revising the language now at p. 2-24 of the FEIS/RMPA to read “If the State agency does not concur with granting the exception, the Authorized Officer should withhold granting the exception ~~must provide rationale for how the criteria are met considering the information the State provides.~~” We protest BLM’s failure to make this revision, and note, as we explain below, that this is inconsistent with BLM’s obligation under FLPMA to ensure maximal consistency between BLM’s land use plans and state and local land use plans as well as its obligation under NEPA to describe such inconsistencies and explain any possible reconciliation.

Federal Agencies and Regulations

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: FLPMA provides that “[i]n the development and revision of land use plans, the Secretary shall . . . to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments.” 43 U.S.C. § 1712(c). The Bureau must also “assist in resolving, to the extent practical, inconsistencies between Federal . . . plans.” Id. The Bureau land use plans and amendments must also be “consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies . . . 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.” 43 C.F.R. § 1610.3-2. The Bureau has violated these duties by failing to coordinate this land use planning effort with the U.S. Forest Service or ensure its PRMPA is consistent with Forest Service land use plan protections for sage-grouse. The Bureau itself acknowledges that under its Proposed RMPA, “management direction will no longer be consistent across the two agencies. Most notably, the Bureau’s updated alignment of habitat management area boundaries and targeted allocations and management direction identified in the Proposed RMPA is inconsistent with the USFS’ September 2015 Land Management Plan Amendments.” FEIS Appendix 23 at 23-1. This is impermissible unless the Bureau can establish that the Forest Service plans are somehow not “consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands,” which it has failed to do. 43 C.F.R. § 1610.3-2.

Wyoming Plans and Regulations

State of Wyoming, Office of Governor Mark Gordon, et al.

Sara DiRienzo, et al.

Issue Excerpt Text: Page 2-44, portions of this section continue to be inconsistent in recognizing the Wyoming Game and Fish Department's (WGFD) management jurisdiction for Greater sage-grouse. WGFD is the authoritative source for Greater sage-grouse population data in Wyoming and is responsible for developing the population trend analyses the BLM should use for Adaptive Management. (See, e.g., Wyo. Exec. Order 2019-3, Greater Sage-Grouse Core Area Protection, Appendix H (Aug. 21, 2019)). As in the past, WGFD continues to offer for the state to provide a

population trend analysis; BLM did not acknowledge, respond or analyze the comment. BLM briefly recognizes "state wildlife agency population trend analyses" as "the best available information regarding habitat and population thresholds" in the Management Action section. (pg. 2-44).

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: Page 2-45, Population Trend Adaptive Management Thresholds: includes the following statement, "Since State wildlife agencies receive lek specific information from TAWS ... " This statement blatantly demonstrates BLM expects the states to submit their population data to the U.S. Geological Survey (USGS), so that USGS can produce the only population trend analyses, which the BLM plans to use for Adaptive Management. The WGFD is the only authoritative source for Greater sage-grouse data and will provide the definitive population trend analyses for Adaptive Management in Wyoming. Expecting the WGFD to submit data to inform a process that is inconsistent with the Executive Order is unreasonable and not informed by any applicable legal requirement. See, e.g., Wyo. Stat. Ann. 16-4-203 (b)(viii) (explaining a custodian can deny access to "[s]ensitive wildlife location data in the custody of the game and fish department which could be used to determine the specific location of an individual animal or group of animals.") The approach in the referenced sentence is inappropriate and it undermines the federal government's respect for the wildlife management authority reserved for the State.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: Pages 2-23-52, Table 2-4, describes the protections afforded by the proposed PHMA restrictions, which also apply to the Wyoming area proposed for Priority Habitat Management Areas with limited exceptions. WGFD generally concurs with BLM's proposed restrictions for PHMA, and we are unable to locate the analysis in the EIS, which identified how PHMA protections were determined to be inadequate for this specific area. WGFD was also unable to locate the results of the analyses in the EIS justifying why only this one area was selected for Priority Habitat Management Areas with limited exceptions while other lands in Wyoming did not merit the proposed designation. Further, Priority Habitat Management Areas with limited exceptions to be managed with no surface occupancy stipulations for fluid minerals is inconsistent with the Governor's Greater Sage-grouse executive order. (Wyo. Exec. Order 2019-3, Greater Sage-Grouse Core Area Protection, Appendix E (Aug. 21, 2019)) (limiting the perimeter of NS Os to 0.6 miles of an occupied greater sage grouse lek with core areas and 0.25 within non-core areas). BLM must analyze why the proposed PHMA protections were inadequate to protect the area proposed to contain PHMA with limited exceptions and resolve the consistency with State plans by removing the no surface occupancy stipulations for fluid minerals. See, e.g., 43 U.S.C. 1712(c)(9) ("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.").

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: The overly restrictive proposed management actions in PHMA with limited exceptions unlawfully interferes with the federal mandate in Wyoming's Act of Admission. Upon admission to the Union in 1890, the State received certain lands with the State's boundaries. (Wyo. Act of Admission section 4). These lands were granted to support public education and other State institutions by charging for the use of State trust lands for mineral leasing; grazing and agricultural leasing; easements; temporary use permits; special use leasing; renewables leasing; and much more. The proposed PHMA with limited exceptions is focused almost exclusively in the Golden Triangle,

where BLM administered lands surround a significant number of State trust lands. Actions like treating the area as ROW exclusion will impact the State's ability to generate revenue on its parcels. Accordingly, the proposed PHMA with limited exceptions conflicts with the State Constitution and the federal government's mandate in Wyoming's Act of Admission.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: BLM Failed to Adequately Ensure Consistency with the Wyoming GrSG Executive Order 2019-3 (EO) Sublette County has gone on record numerous times throughout this plan amendment process strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Further, Sublette County believes the steps taken by the BLM historically to align with the EO is critical to successful population and habitat management, as well as providing a management balance for all overlapping resource uses. Coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the GrSG and other species. Unfortunately, on this RMPA, the BLM deviated from that past precedent of working with Wyoming to implement the EO, which has created inconsistencies in management prescriptions.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues the BLM is now readdressing in this latest series of NEPA analysis are all addressed in depth by the Wyoming EO, which has a proven track record of providing sufficient protection and management for GrSG and its habitat—all while providing a balance between all multiple uses of federal lands. The BLM did attempt to address inconsistencies between this PRMPA and the Wyoming EO. Under Appendix 23 “Consistency with State and Local Land Use Plans,” BLM states on page 23-22:

The SGEOs in effect at time of planning were critical in developing each iteration of the BLM WY GRSG plans, including SGEO 2019-3 in the Proposed RMP Amendment. Most of SGEO 2019-3 and the BLM's Proposed RMP Amendment are conceptually consistent, though wording differs in situations. Known inconsistencies between BLM's Proposed RMP Amendment and SGEO 2019-3 include: •Core area maps in SGEO 2019-3 differ from PHMA in BLM's Proposed RMP Amendment. The HMAs adopted by the BLM in the Proposed RMP Amendment match the current State of Wyoming draft (03/22/2024) revised core areas (the State's proposed core area revisions can be found here Sage-Grouse Executive Order | Wyoming Game & Fish Department).

- The BLM's Proposed RMP Amendment includes approximately 273,000 acres of BLM surface and/or mineral estate in Southwest Wyoming (The Golden Triangle) where increased protections include NSO stipulations for new fluid mineral leases. SGEO 2019-3 allows surface occupancy in this area with density and surface disturbance restrictions.
- Adaptive management metrics, quantification approaches, and threshold levels differ in the BLM's Proposed RMP Amendment compared to those established in SGEO 2019-3 Appendix I. Since SGEO 2019-3 went into effect the State has modified their adaptive management approach to identifying anomalies in GRSG population trends. The BLM Proposed RMPA establishes that the State's adaptive management analyses must be considered by the BLM when determining if GRSG habitat and population adaptive management thresholds have been met.

Although noted, the BLM has not provided an adequate response as to why the deviation is necessary between the PRMPA and the Wyoming EO. Specifically, regarding Adaptive Management, BLM did not recognize and accept a workable strategy that:

- articulates the authority and expertise of our state wildlife management agency,
- relies on all available best scientific resources, and
- fosters necessary collaboration and essential partnerships across jurisdictions.

BLM must explicitly recognize and defer to the Wyoming state wildlife agency as the premier experts within their jurisdiction regarding all GrSG population and trend data.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: BLM has not provided a sufficient consistency review explaining the compelling reasons why they cannot be consistent with the Wyoming EO. The BLM should continue, in partnership with Wyoming, supporting the state's EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner, all while considering the impacts management decisions will have on all multiple use resources. BLM must adequately address this consistency issue in the Record of Decision.

***American Petroleum Institute et al.
Amy Emmert et al.***

Issue Excerpt Text: The Associations recognize that mitigation, including compensatory mitigation, can play an important role in GRSG mitigation. However, BLM must recognize the limits on its authority to require compensatory mitigation and, as discussed in the Associations' comments, should generally defer to the states. A number of states include compensatory mitigation as part of their programs for conserving GRSG. For example, the State of Wyoming has a detailed compensatory mitigation program for GRSG that includes a debit and credit system (including both conservation and restoration credits) that tailors the compensatory mitigation required to the nature of the impact. These state compensatory mitigation programs are grounded in state authority. The Associations' members have worked with state agencies to implement these compensatory mitigation requirements. However, requiring mitigation to be undertaken in proximity to the impact area interferes with programs such as Wyoming's, where the prevailing method of compensatory mitigation is the use of a mitigation bank located in the middle of the state. The Associations therefore protest BLM's failure to accommodate state mitigation programs.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: Moreover, by creating a separate PHMA + designation for the "Golden Triangle" area in southwest Wyoming, BLM has also ignored other existing multiple uses that need to be considered for a balanced management approach. Sublette County has gone on record expressing serious concerns that a PHMA + designation undermines not only the Wyoming EO but also the Mule Deer and Antelope Migration Corridor Protection Executive Order 2020-1, which provides for community and local government buy-in and is based on extensive scientific research on the big game animals that are exclusively managed by the State of Wyoming. Migration corridors managed under this EO overlap with the PHMA+ designation for GrSG in the "Golden Triangle." Again, it is likely that the PHMA+ restrictions for GrSG will almost certainly force disturbance to more productive habitat on adjacent lands or to big game migration corridors that should also be protected. Sublette County contends that the PHMA+ designation creates major concerns related to implementing the Wyoming EO management direction. Furthermore, the PHMA+ designation is not necessary and will likely be harmful to GrSG habitat and the GrSG itself because it reduces the flexibility to site surface disturbances on lesser-quality or non-existent habitat. By including PHMA+ designations, BLM failed to recognize the priorities and management objectives of the state of Wyoming and her counties and provide consistency with the Wyoming EO

and local county plans to the maximum extent possible. The de facto ACEC, referred to as the “Golden Triangle” PHMA+ designation, must be removed from the Record of Decision.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: For example, in Wyoming, the state manages GrSG according to the management provisions contained in Sage Grouse Executive Order 2019-3 (SGEO). Additionally, certain Wyoming counties have their own land use plans, including some counties calling out opposition to changes to management area designations such as the expansion and reduction of PHMA. PRMPA/FEIS Appendix 23 at 22. As Appendix 23 of the PRMPA/FEIS recognizes, proposed PHMA, PHMA with limitations, and general habitat management areas (GHMA) within the Proposed Alternative are inconsistent with the SGEO and county maps. This particular inconsistency is a common concern across the BLM GrSG planning process in that BLM continues to disregard the state’s primacy, as well as on-the-ground knowledge of GrSG and habitat features of the relevant lands. FLPMA requires BLM to consider and harmonize its land use plans with state land use decisions. Recognizing the state’s land use habitat mapping constitutes the best available data, BLM should utilize such state data as the baseline for coordination.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: The SGEO’s adaptive management metrics, quantification approaches, and threshold levels also differ from the PRMPA. Unlike the BLM’s metrics and quantification tools as newly proposed, the SGEO’s metrics and tools were established based on on-the ground learning and with the knowledge of local wildlife officials familiar with the Wyoming habitat and species’ needs. Further, the State continues to update its metrics and tools through a rigorous stakeholder process, based on anomalies in GrSG population trends. While the PRMPA/FEIS states that BLM must consider the SGEO’s adaptive management analysis when determining if BLM adaptive management thresholds have been met, but the PRMPA/FEIS does not state that it will defer to the state plan or what deference, if any at all, it will give to the state analysis in violation of FLPMA. See *id.* As BLM finalizes the RMPA, it must ensure that it includes a mechanism for minor adjustments to mirror changes that happen to the relevant state plan, such as the management area mapping adjustments that happen within the Wyoming Sage Grouse Implementation Team.

Wyoming Coalition of Local Governments
Eric South

Issue Excerpt Text: The BLM is required to ensure 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.” 43 U.S.C. § 1712(c)(9). BLM must keep apprised of state and local land use plans, consider such plans, and assist in resolving inconsistencies between Federal plans and local government plans. 43 C.F.R. §§ 1610.3-1(a)(1)-(3), 1610.3-2(a). The regulations require federal agencies to address how inconsistencies between a proposed action and local lands use plans are addressed and resolved. *Am. Motorcyclist Ass’n v. Watt*, 534 F. Supp. 923, 936 (D. Cal. 1981). NEPA further requires the BLM to discuss within the FEIS any inconsistencies of a proposed action with State and local plans, and the extent to which such inconsistencies could be reconciled. 40 C.F.R. §§ 1502.16(a)(5), 1506.2(d). It is not enough for the BLM to state that the consistency review will occur after the FEIS has been filed, because NEPA requires that the consistency discussion be included within the EIS. See *Quechan Tribe of Ft. Yuman Indian Reservation v. U.S. Dep’t of the Interior*, 927 F. Supp. 2d 921, 946 (S.D. Cal. 2013) (BLM’s consistency analysis was sufficient due to the FEIS containing a “General Plan Policy Consistency Analysis which addresses the consistency between the Project and local regulations and law.”). The

Coalition appreciates the inclusion of Appendix 23 to the FEIS, which identifies inconsistencies with Federal, state, local and Tribal plans. However, the discussion on inconsistencies with County plans and policies is overall generalized and does not address all the inconsistencies that have been identified in past comments. See Proposed RMPA and FEIS at 23-20, 23-22 – 23-23. In addition, the BLM fails to acknowledge Wyoming Conservation Districts’ plans and policies. See *id.* at 23-22 – 23-23. Conservation Districts are governmental subdivisions of the State that have the power to develop and implement comprehensive resource use and management plans for their district. Wyo. Stat. §§ 11-16-113(c); 11-16-122(b)(xvi). The BLM must recognize this status and include discussions in Appendix 23 on inconsistencies with Conservation District’s plans. See *supra* Section I.

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: State’s Primacy Over Wildlife Must Be Recognized in the Adaptive Management Framework Since Greater Sage Grouse are not a listed species, the States’ have primacy over their management. Under Wyoming State statutes, all wildlife in Wyoming is declared property of the State and managed by the Wyoming Game and Fish Department. Wyo. Stat. §§ 23-1-103, 23-1-302, 23-1-401. Wyoming’s primary strategy to conserve and manage Greater Sage Grouse and its habitat is set forth in Executive Order 2019-3. This includes engaging in an adaptive strategy and monitoring of Greater Sage Grouse populations to ensure permitted activities do not have negative impacts to Greater Sage Grouse. Wy. Executive Order 2019-3 at p.4. The BLM has also acknowledged the states’ wildlife population trend analysis and recognizes it as one of the best available types of information regarding population thresholds. Proposed RMPA and FEIS at 2-44 – 2-45. The BLM has made some changes in the Adaptive Management section between DEIS and FEIS to better acknowledge the States’ data and involve them from the beginning in determinations of whether a threshold has been triggered. But there are still many issues that the State of Wyoming and its Game and Fish Department have commented on numerous times throughout this process surrounding the Adaptive Management strategy, and the Coalition continues to support the State’s position and incorporates by reference the State’s Protest on this issue.

Saratoga-Encampment-Rawlins Conservation District

Arla Strasser and Leanne Correll

Issue Excerpt Text: Lack of consistency with the Wyoming Greater Sage-Grouse Core Area Protection Executive Order (SGEO) 2019-3. The SER CD requests the Record of Decision for the Proposed GRSG RMPA & FEIS be adjusted to be consistent with the current Wyoming SGEO. The SER CD commented numerous times regarding their policy stance on the Wyoming SGEO and the need for consistency with Wyoming’s successful approach for greater sage-grouse conservation. ‘The SER CD asserts that the Wyoming Governor’s Executive Order 2019-3 on Greater Sage-Grouse (GRSG) Core Area Protection (Wyoming Core Area Strategy) should be the standard for all GRSG management in Wyoming when considering decisions to conserve GRSG and their habitats. We support the development of a RMPA for Wyoming that is developed through coordination with the state’s applicable agencies, cooperating agencies, and public input to strengthen and coordinate BLM plan alignment with the Wyoming Core Area Strategy and conservation plan.’”

Montana State Plans and Regulations

Montana Mining Association

Matt Vincent

Issue Excerpt Text: Exceptions to the caps should be permitted at both scales for responsible development, conditional upon meeting the requirements for avoidance, minimization,

compensatory mitigation, buffer, and other best management practices as applicable. This is particularly important for consistency with Montana’s state plans, given that Montana only imposes a disturbance cap at the project scale and not at the habitat scale, (Montana Executive Order 12-2015, Attachment D, paragraph 1) so having a habitat-scale cap on BLM land is already inconsistent with state plans, and not allowing any exceptions to that cap further intensifies the inconsistency.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: However, the “net conservation gain” standard in the Proposed RMP Amendment is inconsistent with Montana state policy for compensatory mitigation, which applies a “no net loss, net gain preferred” standard. While the BLM’s currently effective RMP for Montana imposes a net conservation gain standard, continuing to impose that standard misses an opportunity to create consistency between standards for BLM and state lands. Continuing this inconsistency creates uncertainty and confusion for stakeholders trying to develop and comply with sage grouse across multiple types of land ownership. The Final RMPA/EIS fails to put forth any justification for setting Montana apart and requiring a mitigation standard that is inconsistent with current state policy.

Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC

Michael McCarthy and Hiliary Wilson

Issue Excerpt Text: The Proposed RMPA/FEIS is also inconsistent with the State of Montana’s two-tiered GRSG habitat designation system. Specifically, the State of Montana recognizes only two categories of habitat area: Core Area and General Area. The Proposed RMPA/FEIS, by contrast, includes not only PHMA and General Habitat Management Area (“GHMA”), which are analogous to Core and General Areas, but also creates two additional categories of habitat: Unique Habitat Management Areas (“UHMA”) and “PHMA with limited exceptions.” The Proposed RMPA/FEIS does not sufficiently explain why creating the new UHMA designation is beneficial for regional GRSG management, especially in light of the inconsistency with Montana’s GRSG Strategy. And while BLM’s current approach to categorizing habitat as PHMA has been analogous to the designation of Montana’s Core Areas, the Proposed RMPA/FEIS plans to create a separate and more restrictive subset of PHMA across Montana that recognizes no exceptions to the wind-and-solar exclusion allocation, no exceptions for major rights-of-way (“ROWS”), and no exceptions to the no-surface-occupancy allocation for fluid minerals.

Nevada State Plans and Regulations

Nevada Cattleman’s Association

Hanes Holman and Martin Paris

Issue Excerpt Text: Planning Area and Decision Area (Chapter 1.3): It remains extremely concerning to the Association that the BLM has decided to stay with a rangewide approach as the method of analysis for all 11 states in the West with Sage-grouse habitat and populations. Each of these states included in the BLM’s analysis has its own unique, complex management needs in addition to social and economic factors that can not be fully detailed in one “consistent” approach. It is impossible to provide an adequate amount of detail when each state vastly differs from one another. It is apparent that the BLM did not seriously consider any input from the State of Nevada, the Association, or others which is in direct conflict with FLPMA (43 U.S.C. § 1712(c)(9)).

Nevada Cattleman’s Association

Hanes Holman and Martin Paris

Issue Excerpt Text: Need for Better Integration of Appropriate State Regulations and Plans: Per Federal Land Policy and Management Act (FLPMA) requirements (43 U.S.C. § 1712(c)(9)) for state and local plans and policies, the BLM is required to coordinate with State and local agencies on the preferred alternative so that it is consistent with the appropriate State and local plans to the greatest extent possible, providing it is required and allowable under federal law and executive order. The Association does not believe the Proposed RMPA / FEIS is consistent with the State Plan, nor locally adopted plans such as County Master Plans and/or Public Land Policy Plans. In particular, the BLM’s approach to Adaptive Management, Disturbance Caps and livestock management are not consistent and could result in tangible negative impacts on the public land grazing permittees that the Association represents.

***Nevada Cattleman’s Association
Hanes Holman and Martin Paris***

Issue Excerpt Text: The RMPA will harm public land grazing permittees by encouraging the removal of fencing, encouraging reduction of livestock numbers prior to proactive adaptive management measures prescribed in the State Plan, and by allowing for the permanent retirement of grazing permits or placing permits into “reserve allotments”. These actions will reduce livestock production and create hardship and uncertainty for ranchers. These actions are also inconsistent with the State Plan and nearly every Nevada County Master Plan and/or Public Lands Policy Plan, and adamantly opposed by the Association.

***Lithium Nevada Corp
Colby Prout***

Issue Excerpt Text: The Proposed Plan remains inconsistent with Nevada’s Sage-grouse Conservation Plan and CCS. We explained in our comments on the DEIS/RMPA that, excepting Alternative 2, the alternatives proposed in the DEIS/RMPA are not consistent with the Nevada Sage-grouse Conservation Plan. This contravenes FLPMA and NEPA. See 43 U.S.C. § 1712(c)(9) (FLPMA’s maximal consistency requirement); 40 C.F.R. §§ 1502.16(a)(5), 1506.2(d) (requirements in the Council on Environmental Quality’s (CEQ) NEPA implementing regulations that an EIS analyze inconsistencies between the proposed action and state and local plans). We acknowledge that, in response to our comments on the DEIS/RMPA, BLM’s Proposed Plan makes more detailed mention of the State Plan and CCS than did the DEIS/RMPA.⁶ For example, the Proposed Plan states that BLM may grant an exception to the disturbance cap if a project meets criteria associated with BLM’s project-scale disturbance cap assessment and if it is in compliance with the State Plan and CCS. See FEIS/RMPA at 2-40. As we note below, the FEIS/RMPA’s incorporation of the State Plan and CCS remains insufficient, but it is an improvement on the language in the DEIS/RMPA, which largely omitted mention of the State Plan and CCS and, in particular, how the CCS would work in concert with BLM’s mitigation and disturbance cap framework.

***Lithium Nevada Corp
Colby Prout***

Issue Excerpt Text: We also note BLM’s statement that “[c]ompensatory mitigation is not required by the BLM for operations conducted under the Mining Law of 1872, but operators may always voluntarily engage in compensatory mitigation.” FEIS/RMPA at 2-39. Because Nevada statute requires compensatory mitigation for mining projects, this disclaimer is not relevant to Lithium Nevada’s projects. But the disclaimer suggests that the BLM’s mitigation requirements do not apply to mining projects; instead, only state requirements apply to projects conducted under the General Mining Law. Thus, the inconsistencies between Nevada’s and BLM’s mitigation requirements, described below, may not hamper Lithium Nevada’s projects.

Lithium Nevada Corp
Colby Prout

Issue Excerpt Text: Nonetheless, we note that BLM does not explain or adequately reconcile several inconsistencies between the Nevada Sage-grouse Conservation Plan and the Proposed Plan. We raised these inconsistencies at pp. *11–13 of our comments on the DEIS/RMPA.

- The debit aspect of the CCS calculates functional acres lost due to a new anthropogenic disturbance. Functional acreage depends on habitat quantity and quality—it is not automatically correlated with a particular habitat designation. BLM does not appear to have a similar mechanism for calculating functional acreage. BLM does not note or attempt to reconcile this inconsistency in the FEIS/RMPA. See *id.* at 23-14–15.
- The Service Area, or the area in which credits can be exchanged within the CCS, is defined by the State’s Biologically Significant Unit (BSU) areas. The BSU mapping differs from BLM’s HMA mapping and from the HAF fine scale. BLM does not directly address this inconsistency in the FEIS/RMPA. See *id.*
- The State Plan does not include a disturbance cap; the Proposed Plan does. BLM notes this inconsistency in the FEIS/RMPA, but it does not describe steps it has taken to achieve maximal consistency or to reconcile the Proposed Plan with the State Plan. See *id.* at 23-14.
- Inconsistent with the CCS, the Proposed Plan would mandate compensatory mitigation before project initiation. BLM does not directly address this inconsistency in the FEIS/RMPA. See *id.* at 23-14–15.
- It is unclear how BLM’s definition of “no net loss” intersects with the State’s definition of “net conservation gain,” the State’s fundamental requirement for GRSG habitat conservation. On BLM’s definition, “no net loss” appears to rely on measurement of GRSG population stability. But “net conservation gain” relies on measurement of habitat lost. BLM does not describe, explain, or attempt to rectify this inconsistency. See *id.* Regarding Utah’s Conservation Plan for Greater Sage-Grouse, BLM states that the Proposed Plan “provides for using the State tools for compensatory mitigation, so long as it achieves the BLM’s plans mitigation standard.” FEIS/RMPA at 23-18. But the FEIS/RMPA does not appear to make the same provision for the Nevada State Plan or CCS. Additionally, for major ROWs, the Proposed Plan provides that “the Authorized Officer shall coordinate with the applicable State agencies to ensure compliance with compensatory mitigation required by State policies or regulations that go beyond BLM’s compensatory mitigation requirement.” FEIS/RMPA at 2-32. But the Proposed Plan does not provide for such coordination where other proposed actions are involved.
- Adaptive management in the RMPA does not comport with the State Plan’s framework—or, for that matter, with BLM guidance on adaptive management. The Proposed Plan includes a hard threshold response, which automatically implements allocation or management decisions. See *id.* at 2-47. As we explain further in our comments on the DEIS/RMPA, the State Plan, by contrast, does not include a hard threshold response. Further, the FEIS/RMPA does not address important aspects of BLM’s own Adaptive Management guidance, including its problem, design, monitor, evaluate, and adjust framework.

We protest BLM’s failure to correct or explain each of these inconsistencies between the Proposed Plan and the CCS. As a substantive matter, we also protest each of the departures between BLM’s framework and the State Plan, which, in our experience, is the most effective method of GRSG habitat conservation.

Nevada Mining Association
Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Further, because participation in Nevada’s CCS is mandatory for public land users in the state, Nevada Administrative Code (NAC) 232.460(1), BLM’s rangewide approach was ill-suited for managing GRS in the State. The BLM’s failure to meaningfully coordinate with the State and account for a mandatory GRS conservation program for public lands users in Nevada produced a rangewide effort that ignores Nevada’s unique regulatory position and created a proposed final document that will harm NVMA’s members.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Nevada hosts a unique and well-developed mitigation banking system under the states. Its uniqueness is not limited to its size and success—it is also mandatory for all public land users in the state since 2019. NAC 232.460(1). NVMA’s members have spent millions of dollars on credit projects to comply with this requirement. As a result, the system has conserved more than 30,000 acres of critical sagebrush habitat. Some of the largest credit producers include NVMA’s members. But instead of incorporating this essential aspect of Nevada public land development into the Proposed RMPA/FEIS, BLM failed to meaningfully coordinate with the State of Nevada account for this mandatory program. This failure is not just unfortunate: it will create two separate and conflicting regulatory frameworks that NVMA’s members will need to navigate. Not all approvals that NVMA’s operators require are sought under the mining laws. They also require discretionary authorizations such as rights-of-way for transportation and energy transmission. Under the CCS, these projects may be pursued upon application of the mitigation hierarchy. The CCS then mitigates any residual impacts through credit projects. But under the Proposed RMPA/FEIS, project authorizations in areas subject to an HAF fine-scale or projectscale disturbance cap may be excluded without an exception. If even considered, a disturbance cap exception requires not just compliance with the CCS. It also requires the offsetting compensatory mitigation (i.e., CCS credits) to be performed in the same HAF fine-scale area as the disturbance. These requirements are not just above and beyond the CCS’s requirements—they are likely impossible to comply with given the checkerboard nature of most of Nevada’s public lands, the availability and suitability of private land for credit projects, and where most debit projects are located versus where their corresponding credit projects can be developed.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Consistent with the theme of BLM’s disregard of local stakeholder input, it failed to recognize that Nevada is unique among the state because its delineation of Habitat Management Areas (HMAs) is informed by a science-based modelling process that can be updated as new data becomes available. The Nevada model incorporates several data inputs, including telemetry data and modeled environmental factors to generate a habitat suitability index and space use index. 2019 Nevada GRS Conservation Plan, p. 35. The resulting indices are then intersected to determine HMA boundaries. Id. at p. 37. The BLM updates Nevada’s HMA maps through “plan maintenance actions. See, e.g., BLM Plan Maintenance #5 for the 2015 Nevada and Northeastern California Sub-Region Greater Sage-Grouse Record of Decision and Approve Resource Management Plan Amendment, May 12, 2022. BLM’s RMP regulations clarify that plan maintenance is reserved for changes necessary “to reflect minor changes in data” and “shall not result in expansion in the scope of resources uses or restrictions, or change the terms, conditions, and decisions of the approved plan.” 43 C.F.R. § 1610.5-4. Federal courts have confirmed that in the context of GRS planning, “[t]he decision to designate certain lands as particular kinds of sage-grouse habitat affects subsequent management decisions on those lands.” *W. Expl. LLC v. U.S. Dep’t of Interior*, 250 F.Supp.3d 718, 749 (D. Nev. 2017). But plan maintenance occurs without formal public involvement and interagency coordination or the preparation of an environmental

assessment or environmental impact statement. While a central strength of Nevada’s HMA mapping process is the ability to improve the mapping over time as additional information is collected and new mapping products and techniques become available, this flexibility should not come at the expense of critical public vetting from interested stakeholders.

N-2 State Grazing Board

Hank Dufurrena et al.

Issue Excerpt Text: Per Federal Land Policy and Management Act (FLPMA) requirements (43 U.S.C. § 1712(c)(9)) for state and local plans and policies, the BLM is required to coordinate with State and local agencies on the preferred alternative so that it is consistent with the appropriate State and local plans to the greatest extent possible, providing it is required and allowable under federal law and executive order. The Board does not believe the Proposed RMPA / FEIS is consistent with the State Plan, nor locally adopted plans such as County Master Plans and/or Public Land Policy Plans. In particular, the BLM’s approach to Adaptive Management, Disturbance Caps and livestock management are not consistent and could result in tangible negative impacts on the public land grazing permittees that the Board represents. Concerns Regarding Chapters 2.5.10 Livestock Grazing, Chapter 5 and Appendices 8 and 15, Livestock Grazing Management Best Management Practices (BMPs) and Design Features and Supplemental Information: In previous comments, the Board requested a host of changes to be made regarding management of livestock grazing, best management practices for livestock grazing and “design features” related to livestock grazing. The requested changes were not made to a satisfactory degree in the eyes of the Board. The RMPA will harm public land grazing permittees by encouraging the removal of fencing, encouraging reduction of livestock numbers prior to proactive adaptive management measures prescribed in the State Plan, and by allowing for the permanent retirement of grazing permits or placing permits into “reserve allotments”. These actions will reduce livestock production and create hardship and uncertainty for ranchers. These actions are also inconsistent with the State Plan and nearly every Nevada County Master Plan and/or Public Lands Policy Plan, and adamantly opposed by the Board. The Board is plainly opposed.

Nevada Association of Counties

Vinson Guthreau and Jennifer Berthiaume

Issue Excerpt Text: The state of Nevada has a statewide Sage-grouse conservation plan and an active conservation credit system that was created with extensive interagency involvement, in addition, many of our member counties have their own GRSG conservation measures in line with county Master plans that allow for reasonable development for the purpose of economic and social benefits to the counties. While the BLM acknowledges its obligations under Section 202 of FLPMA and its resource management planning regulations, it is our opinion that the agency has not adequately coordinated with the counties in Nevada or the state itself. This gap communication will negatively affect the public, the natural resources, wildlife viability and could dramatically impact the multiple use mission that guides the stewardship of our public lands.

N-4 State Grazing Board

Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: The RMPA will harm public land grazing permittees by encouraging the removal of fencing, encouraging reduction of livestock numbers prior to proactive adaptive management measures prescribed in the State Plan, and by allowing for the permanent retirement of grazing permits or placing permits into “reserve allotments”. These actions will reduce livestock production and create hardship and uncertainty for ranchers. These actions are also inconsistent with the State Plan and nearly every Nevada County Master Plan and/or Public Lands Policy Plan, and adamantly opposed by the Board. The Board is plainly opposed.

***Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden***

Issue Excerpt Text: We are particularly concerned by the following notable inconsistencies between the Nevada Sage-grouse Conservation Plan (the State Plan) and the proposed RMPA which could affect exploration and development in the Hog Ranch area: 1. Our projects have previously been analyzed using Nevada’s Conservation Credit System’s (CCS) Habitat Quantification Tool (HQT). The focus of the HQT is functional acreage. But BLM does not adopt a functional acreage metric in the FEIS/RMPA. BLM must recognize that loss of “functional acreage,” rather than impact to an arbitrarily determined habitat designation, is the primary issue for mitigation of impacts to GRSG habitat in Nevada. 2. While the CCS permits mitigation via CCS even in PHMA, PHMA with limited exceptions would appear to restrict to surface disturbance, and hence mitigation, in such areas. 3. The Proposed Plan would extend lek buffer restrictions to all active and pending leks. This is inconsistent with the State Plan, which does not contemplate restrictions for pending leks. 4. The DEIS/RMPA includes a disturbance cap; the State Plan does not. BLM should not adopt a disturbance cap, in line with the State Plan. BLM should additionally clarify, as it did in the 2015 LUPAs, that the disturbance cap does not apply to locatable minerals. 5. We noted in our DEIS/RMPA comments that the EIS/RMPA uses a “no net loss” and a “net conservation gain” standard. We stated that it is not clear how these terms overlap (or if they do), and that “no net loss” does not appear to be consistent with the State Plan’s focus on net conservation gain. BLM states in response to our comments that “[t]he terms ‘no net habitat loss’ versus ‘net conservation gain’ have been clarified in Chapter 2 in the Proposed RMP Amendment. The ‘net conservation gain’ terminology is solely from the 2015 and 2019 plans, analyzed in the DEIS as Alternative 1 and Alternative 2, respectively. The Proposed RMP Amendment does not propose ‘net conservation gain.’” This is entirely inconsistent with the State Plan. BLM should adopt, at least for Nevada, a net conservation gain rather than a no net loss metric.

***Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson***

Issue Excerpt Text: The Proposed RMPA/FEIS remains inconsistent with GRSG conservation plans, policies, and strategies in several states. For example, the State of Nevada—where Barrick owns and operates substantial assets—uses a unique and well-developed mitigation banking system. Participation in Nevada’s mitigation banking program, the CCS, is mandatory following a regulatory update in 2019. Any person or entity that proposes an activity or project on public lands subject to state or federal review, approval, or authorization that will cause an anthropogenic disturbance is required to obtain credits (habitat uplift or conservation projects) to offset disturbance (debits). Nevada Administrative Code (NAC) 232.460(1). Barrick has spent millions of dollars on credit projects to comply with this requirement and is one of the largest producers of credits in the CCS. The BLM’s failure to meaningfully coordinate with the State and to account for this mandatory GRSG conservation program for public lands users in Nevada is inexcusable, as the Proposed RMPA/FEIS will create two separate and conflicting regulatory regimes that operators like Barrick will need to resolve if finalized. Not all approvals that Barrick needs to operate are sought under the Mining Law; Barrick also relies on discretionary authorizations such as rights-of-way for transportation and energy transmission. Currently, Barrick may engage in these types of projects by applying the mitigation hierarchy before mitigating any residual impacts through CCS credit projects. Under the Proposed RMPA/FEIS, however, project authorizations in areas subject to HAF fine-scale or project-scale disturbance cap exceedance may be excluded without an exception. The disturbance cap exception criteria in the Proposed RMPA/FEIS will require compliance with the CCS plus additional criteria that are not currently required by the CCS. For instance, offsetting compensatory mitigation generally must occur in the same HAF fine-scale as the disturbance. Proposed RMPA/FEIS, p. 2-39. These requirements are not only above and beyond the CCS’s

requirements, but they are also likely out of reach for many operators—even Barrick. Suitable habitat for credit projects can be difficult to identify and even where it exists, land ownership conditions may make it impossible to bring that habitat into the CCS as a credit project. While the CCS incentivizes use of credits near debit projects by discounting credits that are geographically removed from the project disturbance (therefore making more credits necessary to offset the debit load), it also recognizes the realities of habitat suitability and land-ownership patterns that constrain the credit market. This change will have significant and detrimental impacts on Nevada public lands users, the CCS, and the State of Nevada’s GRSG conservation strategy.

Idaho State Plans and Regulations

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: Idaho’s longstanding and balanced three-tier HMA approach to GRSG habitat conservation has proven to be effective and socio-politically accepted. Inclusion of PHMA+, a fourth HMA tier, in the PRMPA/FEIS adversely affects interests of the State of Idaho by being substantively unnecessary, procedurally deficient, and materially inconsistent with the Idaho State Plan and State Alternative. Moreover, the last-minute and uncollaborative imposing of unneeded and ineffective PHMA+ will adversely affect the State of Idaho by undermining Idaho’s broad-based stakeholder support for the PRMPA/FEIS, which will prevent finalization and implementation of an acceptably balanced ARMPA.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The BLM’s criteria for creating PHMA+ was arbitrarily formulated and inconsistently applied rangewide. In short order, BLM reduced PHMA+ acreage by over 80% between draft versions of the PRMPA, which illustrates its apparent initial arbitrary formulation and raises questions about the efficacy and thereby necessity of the remaining PHMA+ designated acreage. Within Idaho, designated PHMA+ is unduly burdensome because it does not consider existing and well-functioning PHMA protections afforded by Idaho’s Anthropogenic Disturbance Screening Criteria (i.e., MD SSS 29 and MD SSS 30). MD SSS 29/30 have been in practice since the BLM’s 2015 GRSG ARMPA. All new anthropogenic disturbances proposed in PHMA must pass MD SSS 29/30 screening to be authorized by the BLM. Applying to all designated sources of anthropogenic disturbances in all PHMA, MD SSS 29/30 are robustly protective of GRSG habitat state-wide but without the unnecessary complication of PHMA+’s additional fourth HMA tier and associated unwarranted and ineffective bureaucratic ruleset.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: PHMA+ is intended to increase protections from renewable energy infrastructure with an allocation of Exclusion with no exceptions for Utility Scale Solar and Utility Scale Wind projects. The PRMPA/FEIS allocates Utility Scale Solar and Utility Scale Wind in PHMA as Exclusion but allows exceptions. However, exceptions for infrastructure projects (including solar and wind) must already first pass Idaho’s robustly protective and stringently restrictive MD SSS 29/30. To be approved, for example, a solar or wind project in PHMA may only be sited in (1) non-habitat or unsuitable habitat that does not impair GRSG habitat use (pg. 2-23), (2) or not result in net habitat loss or fragmentation, and (3) not be able to be reasonably accomplished outside of PHMA, or (4) collocated. To date, no energy project proposed in PHMA has passed MD SSS 29/30 screening and therefore no energy project has been authorized in PHMA in Idaho after the 2015 GRSG ARMPA, including past energy projects specifically proposed in the designated PHMA+ area. The facts that no solar or wind projects currently occur in PHMA in Idaho

and that several other non-PHMA areas are available in Idaho for solar and wind energy development, demonstrates the highly unlikely eventuality that any future solar or wind energy project could pass MD SSS 29/30. Thus, PHMA+ imposes unneeded bureaucratic regulation in Idaho, at the expense of future ARMPA socio-political stakeholder support, due to the already existing MD SSS 29/30 protections.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: Primarily targeting renewable energy and electrical transmission infrastructure, PHMA+ in Idaho designates 257,472 acres in southern Twin Falls and Owyhee counties as Exclusion, Closed, or No Surface Occupancy for utility scale solar and wind energy, fluid minerals (including geothermal), saleable minerals, nonenergy leasable minerals, and major Rights-of-Way (ROW). By imposing this last-minute PHMA+ and allocation ruleset, the PRMPA/FEIS are patently inconsistent with the Idaho State Plan and Idaho State Alternative.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: The Idaho State Alternative was principally consistent with the Idaho State Plan. The Idaho State Alternative maintained the State's three-tiered HMA approach established in the BLM's 2015 GRSG ARMPA, and did not propose Sagebrush Focal Areas (SFAs) or Areas of Critical Environmental Concern (ACEC). Although the ARMPA/FEIS does not include SFAs or ACECs, the arbitrary new and last-minute designation of PHMA+ is described as overlaying the Shoshone Basin ACEC in DEIS Alternative 6 making PHMA+ appear to be an SFA or ACEC by another name (Chapter 2, Page/Table: Table 2-5, Page 2-53 to 2-55). Irrespective, PHMA+ as either a fourth HMA designation or SFA/ACEC-like designations is materially inconsistent with the Idaho State Plan.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: Idaho's longstanding and balanced three-tier HMA approach to GRSG habitat conservation has proven to be effective and broadly socio-politically accepted. The PRMPA/FEIS eliminates Idaho's three-tier HMA approach by specifying that responses to soft and hard habitat/population thresholds are combined for PHMA and IHMA (See Table 2-8, Page 2-75). This lack of differentiating threshold responses between PHMA and IHMA is inconsistent with the Idaho State Plan and Idaho State Alternative, which specify individual responses for soft and hard triggers/thresholds depending on HMA category. For example, only a hard trigger/threshold being met would automatically require a response to upgrade IHMA management to PHMA (see MD SSS 22). In contrast, the PRMPA/FEIS directs that both a soft and hard threshold would upgrade IHMA management to PHMA, which is inconsistent with the Idaho State Plan.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: Adaptive Management triggers/thresholds are a foundational component of the Idaho State Plan with established baselines that provide a common understanding. The PRMP/FEIS has maintained the concept of measuring existing sagebrush versus the potential sagebrush on the landscape, but it has taken the habitat threshold and substantially changed the baseline in a way that negatively impacts the process. Instead of a 2011 baseline that was established for Idaho in the Idaho State Plan as well as the BLM's 2015 and 2019 ARMPAs, the PRMP/FEIS has changed the habitat threshold metrics to the potential area of sagebrush expected pre-Euro American settlement.

This pre-Euro American settlement baseline is unrealistic to set, does not have a year associated and is speculative in nature.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The PRMP/FEIS has essentially introduced Adaptive Management thresholds to GHMA in Idaho, which is inconsistent with the three-tiered HMA approach in the Idaho State Plan and Idaho State Alternative. The three-tiered approach in the Idaho State Plan is designed to balance GRSG conservation with socioeconomic considerations by prioritizing protection of high/higher quality habitat (i.e., PHMA and IHMA) and directing anthropogenic development to lower quality habitat (i.e., GHMA). Correspondingly, Idaho’s Adaptive Management applies to PHMA and IHMA where 99% of the GRSG population occur. Much of the GHMA in Idaho is lower quality and fragmented habitat. Deviating from the Idaho State Plan and its Adaptive Management approach, PRMPA/FEIS Page 2-48 indicates that if the neighborhood in which a population trend threshold is met is 50% or greater GHMA, then additional restrictions may be placed on new permits depending on Causal Factor Analysis (CFA) results. Placing additional restrictions on GHMA would disincentivize directing development to low quality habitat, thus undermining Idaho’s three-tiered HMA approach to balance GRSG conservation with protecting Idaho’s socioeconomic vitality.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The BLM’s 2015/2019 GRSG ARMPAs allow the opportunity to establish individual-state led Adaptive Management Programs in collaboration among State agencies, BLM, and others. For example, the GRSG Adaptive Management in Idaho is administered collaboratively through the interagency “Idaho Greater Sage-grouse Implementation Team” (Implementation Team) per Memorandum of Understanding (MOU) ID SO-2022-09 (see references to MD SSS 44 in Table 2-8, Page 2-77; Appendix 2, Page 2-ID-23; Appendix 14, Section 14.3.2). The Adaptive Management Section of Table 2-4 (Pages 2-44 to 2-50) should explicitly recognize MOU ID SO-2022-09 as a State-Specific Difference and its purpose for collaboratively implementing Adaptive Management in Idaho. The State of Idaho is aware that other similar collaborative individual-state led Adaptive Management Programs also exist.

- MOU ID SO-2022-09 establishes a Technical Team and Policy Team. Recognizing the State of Idaho’s primacy for GRSG population monitoring and management decisions regarding population status, the MOU states (Paragraph V.A.2.): “The IDFG will annually collect sage-grouse population data, analyze adaptive management population triggers...and provide analysis results to the Technical Team by October 1 each year.” However, the PRMPA/FEIS places final population-related decision-making authority for Adaptive Management, including population status determinations, with the BLM and mandates use of the USGS GRSG Hierarchal Population Monitoring Framework and the Targeted Annual Warning System. The PRMPA/FEIS only allows the State of Idaho an opportunity to refute USGS results, but BLM has final decision authority.
- Consequently, the PRMPA/FEIS adversely affects the State of Idaho by effectively nullifying Paragraph V.A.2 in MOU ID SO-2022-09 and appropriating the State of Idaho’s sovereign authority to manage GRSG populations (including monitoring populations, analyzing population data, and making decisions about population status (e.g., population triggers)). The net result is that the PRMPA/FEIS excludes the opportunity for a truly Idaho-led collaborative Adaptive Management Program that respects individual party authorities, including the Implementation Team’s resolution of habitat-related disagreements with deference to BLM authorities, and resolution of population-related disagreements with deference to the State of Idaho authorities.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS fails to codify an exemption for routine utility ROW operations and maintenance (O&M) consistent with the 2021 Idaho State Plan and BLM Permanent Instructional Memorandum (PIM 2025-03). Failing to incorporate in the PRMPA/FEIS an explicit exemption that provides management direction consistency and facilitates/expedites benefits (e.g., wildfire prevention) of routine utility ROW O&M is inconsistent with the Idaho State Plan and will adversely affect the State of Idaho with increased risks of wildfire and unscheduled service outages.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: In addition to ready access for emergency response, utility companies must have consistent, reliable, and ready O&M access to the infrastructure ROWs supplying crucial societal services. Based on the Idaho State Plan and input from utility stakeholders, the State of Idaho proposed multiple times during the PRMPA/FEIS planning process that the ARMPA exempt routine utility O&M for existing infrastructure/ROWs. However, the PRMPA/FEIS contains no such exemptions and therefore remains inconsistent with the Idaho State Plan. The BLM has newly issued PIM 2025-03 for administering ROW access for utility O&M. PIM 2025-03 is intended to reduce fire risks in electric utility ROWs, including required fire prevention stipulations. The PRMPA/FEIS does not specifically incorporate PIM 2025-03.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: The ARMPA/FEIS's Glossary also clearly indicates that Avoidance/Avoidance area "...does not necessarily prohibit a proposed activity, but may require the relocation of an action..." (see Page Glossary-1). The ARMPA/FEIS should therefore specify the less restrictive "Avoidance" allocation when defining Exception Criteria such as specified for Utility Scale Solar, Utility Scale Wind, Nuclear, and Hydropower development in PHMA. In addition to increasing accuracy and reducing confusion, specifying Utility Scale Solar, Utility Scale Wind, Nuclear, and Hydropower as Avoidance would improve ARMPA/ROD consistency with the Idaho State Plan. Instead of Exclusion, both the Idaho State Plan and Idaho State Alternative allocate solar, wind, nuclear, hydropower, and major ROWs as Avoidance in PHMA, but with the stringent criteria of MD SSS 29/30. MD SSS 29/30 prevents anthropogenic development in PHMA, unless of the utmost societal importance and with required measures to avoid, minimize, and compensate adverse GRSG effects.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS inconsistently and vaguely applies Idaho's state-specific Anthropogenic Disturbance Screening Criteria (i.e., MD SSS 29 and MD SSS 30) to PHMA and IHMA, which creates confusion and uncertainty for future ARMPA implementation. Inconsistent and vague direction, that is also inconsistent with the Idaho State Plan, will adversely affect the State of Idaho by causing confusing and uncertain future ARMPA implementation.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS's Management Direction requiring Idaho's GRSG-protective MD SSS 29/30 is applied inconsistently for PHMA, which will cause uncertain and confusing future ARMPA implementation. For example, neither Table 2-4 nor Table 2-8 explicitly specify an Idaho State-Specific Difference/Circumstance requiring application of MD SSS 29/30

for Utility Scale Solar or Utility Scale Wind in PHMA. In addition, the PRMPA/FEIS confusingly specifies that only MD SSS 29 applies to Fluid Minerals (see Page 2-26) and Major ROWs (see Page 2-31) in PHMA, and MD SSS 30 only applies to IHMA (see Table 2-8, Page 2-75). This PRMPA/FEIS Management Direction is inconsistent with the Idaho State Plan, Idaho State Alternative, and BLM’s existing GRSG 2015/2019 ARMPAs, which all require that anthropogenic disturbances in PHMA must first pass both MD SSS 29 and MD SSS 30 screening to be authorized. However, the PRMPA/FEIS appears to have vaguely and inconsistently changed this longstanding MS SSS 29 and MD SSS 30 requirement for PHMA.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS does not provide Management Direction for Idaho’s MD SSS 30 and its application is vague, which will cause uncertain and confusing future ARMPA implementation. The PRMPA/FEIS’s application of MD SSS 30 implicitly appears now to apply only to IHMA and no longer also to PHMA (see Fluid Minerals, Page 2-26; Major Rights of Way, Page 2-31; and Table 2-8, Page 2-75). This is an important change from the BLM’s existing 2015/2019 ARMPAs and Idaho State Plan, which all require MD SSS 30 apply to both PHMA and IHMA. Such an important Management Direction change must be explicitly stated and defined to insure correct and consistent future ARMPA implementation. However, the PRMPA/FEIS’s State Specific Circumstances for Idaho (Table 2-8) provides only the text for MD SSS 29 but not MD SSS 30, or otherwise does not state explicitly that MD SSS 30 now only applies to IHMA. Furthermore, PRMPA/FEIS Appendix 2 (Page 2-ID-19) only vaguely states that Management Direction in the PRMPA for Idaho’s MD SSS 30 is “Partially revised by state-specific” with no description of what the revision entails. If the PRMPA/FEIS intends that MD SSS 30 now only apply to IHMA, a very clear explicit definition of MD SSS 30 must be provided (i.e., Chapter 2, Page 2-77, and Appendix 2, Page 2-ID-19) to help insure the correct application of Idaho’s MD SSS 29 and MD SSS 30 during future ARMPA implementation. Recommended Resolution – Clearly defining Idaho’s MD SSS 29 and MD SSS 30 in the ARMPA/ROD (with State of Idaho collaboration) as a State-specific Difference/Circumstance and accurately and consistently specifying when, where, and how MD SSS 29 and MD SSS 30 are required will resolve this protest issue by increasing the likelihood of successful future ARMPA implementation, improving consistency with the Idaho State Plan, and avoiding associated adverse effects for the State of Idaho.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS’s specified Management Action for Mitigation has vague direction that is prone to inconsistent and uncertain ARMPA implementation. It is inconsistent with the Idaho State Plan and Idaho State Alternative, and would hinder the establishment and utility of GRSG conservation banks in Idaho. Vague direction, that is also inconsistent with the Idaho State Plan, will adversely affect the State of Idaho by causing uncertain and confusing future ARMPA implementation and hindering GRSG conservation banks in Idaho.

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: Currently, the Compensation subsection within the PRMPA/FEIS Mitigation section directs the following: “Mitigation should be prioritized to occur within the same habitat area as the proposed impact so that it benefits the populations affected by the project (e.g., within the same neighborhood cluster (Coates et al. 2021), or if not possible, same HAF fine scale area (Stiver et al., 2015, as revised), or nearest equivalent HMA (e.g., PHMA, GHMA)).” This PRMPA/FEIS

direction is inconsistent with the Idaho State Plan and Idaho State Alternative, because the process does not explicitly authorize the flexibility to consider adjacent HAF fine scale areas (or further if needed) for appropriate compensatory mitigation if opportunities are unavailable in the affected neighborhood cluster or HAF fine scale area.

***Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson***

Issue Excerpt Text: In a similar fashion, the Proposed RMPA/FEIS is largely inconsistent with the Idaho State Board of Land Commissioners Greater Sage-Grouse Conservation Plan (“2017 IDL Plan”) that implements the Idaho Department of Land’s (“IDL”) endowment-land obligations that are recognized in the Idaho Constitution. The 2017 IDL Plan is specifically tailored to the unique management of state endowment lands, and one of its most unique features is the constitutional responsibility to manage such lands so as “to maximize long-term financial returns to state institutions, mainly public schools.” 2017 IDL Plan, p. 8. The Proposed RMPA/FEIS does not fully consider or accommodate this obligation. Instead, the Proposed RMPA/FEIS prioritizes GRSG conservation above all other uses through the application of restrictive land use policies. And while the 2017 IDL Plan and the Proposed RMPA/FEIS apply to different lands (i.e., state endowment lands versus federal public lands), BLM’s proposed approach will frustrate how state land managers carry out their constitutional mandate. Indeed, where state endowment lands are surrounded by Priority Habitat Management Area (“PHMA”), those lands will effectively become non-productive islands on which economic development can never occur.

County and Conservation District Plans and Regulations

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: BLM Failed to Adequately Address Consistency with Sublette County Federal and State Land Use Plan. Wyoming Counties have created substantive natural resource plans after years of public input. These plans establish policies written to preserve and enhance the beauty, use, and resilience of our natural resources. Beyond just GrSG policies, counties' natural resource plans express the desire to have a healthy environment, maintenance of cultural history and identity, well-paying jobs, and active industries. These carefully crafted local plans complement the BLM's multiple use mission and can serve as a basis for coordinating when the BLM amends its resource management plans (RMPs). Just like RMPs, natural resource plans take a comprehensive look at the resources, lands, and people. While multiple use is modestly described in the current FEIS PRMPA, the narrowed scope of the plan amendment makes capturing the intent of multiple use management difficult, if not impossible. ... 43 U.S.C. § 1702(c). Unlike a RMP revision that looks at the balance of all resources and the needs of the communities that rely on them, the current PRMPA looks at other valuable resources strictly through the lens of GrSG management. This narrow lens creates an unfortunate appearance of resource conflict, pitting the GrSG against grazing, fluid minerals, renewable energy, etc. Beyond creating a scarcity mindset, this lens also affects the way that impacts are described throughout the document.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: Sublette County also contends that the BLM did not sufficiently take into consideration the impacts their decisions would have on the socioeconomics of the County and state. The County’s Federal and State Land Use Plan clearly emphasizes the importance that land management decisions play on the economics of local communities. While the BLM does recognize in section 1.8 “Consistency with State and Local Land Use Plans and Programs and Policies Therein,” Appendix 22 “Draft RMPA/EIS Public Outreach and Response to Substantive Public Comments” and Appendix 23 “Consistency with State and Local Land Use Plans,” that their

management decisions are not consistent with state and local plans, that acknowledgement is not enough. It does not ensure that they have conducted a thorough consistency review. Merely acknowledging that an inconsistency exists between the federal agency and the state or local government simply does not equate to legal compliance. A sufficient explanation must be provided as to why the agency couldn't be consistent. In other words, the BLM could modify management prescriptions to be more consistent with state and local plans, but political goals for desired outcomes override consistency decisions. The BLM failed to adequately provide a consistency review that is reconciled with local plans in their entirety. They neglected to look at the cumulative impact the GrSG management direction would have on all multiple uses, including socioeconomics of the state and County. To address this, the BLM must incorporate these considerations into the ROD, and the only way to achieve this reconciliation is through the preparation of a Supplemental EIS.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: The BLM has disregarded key socioeconomic policy positions identified in Sublette County's Federal and State Land Use Policy. These positions, which reflect the County's expectations for federal coordination and consultation, include the following:

- Encourage federal and state agencies to evaluate, mitigate, and minimize impacts to custom and culture and the economic stability of the County when considering any proposed changes in land use. Sublette County may be forced to appeal or seek other relief if federal and state agencies do not carefully consider economic impacts in land management decisions.
- Request that federal land management agencies notify Sublette County of any actions or regulations that affect the economic base of the County. Sublette County will review and comment on proposed actions significant to the economic base of the County. When a negative impact of a proposed action is unavoidable, request that provisions should be made to mitigation or compensation for those impacts.

Weston County and Converse County, Wyoming
Becky Hadlock et al.

Issue Excerpt Text: The BLM has disregarded key socioeconomic policy positions identified in Weston County's Natural Resource Management Plan. These positions, which reflect the County's expectations for federal coordination and consultation, include the following:

- Early Notification and Engagement: State and federal agencies must notify the County at the earliest point of any proposed actions or regulatory changes that could affect its economic base.
 - Weston County requires consultation and coordination from federal agencies at the earliest time possible for any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic basis of the County.
 - Federal agencies should inform Weston County of all proposed projects, decisions, and actions that may affect the County and allow the County to participate as a cooperating agency and coordinate with agencies at the earliest time in the planning process.
 - Federal agencies should achieve a sustainable land use balance between economic growth, energy development, recreation, agriculture, conservation use of lands, quality of life, Weston County's custom and culture, and the environment by coordinating with the County on all decisions.

- Federal agencies should maintain the culture of open access, multiple use, agriculture, and rural communities within Weston County.
- Federal agencies should inform and encourage those impacted by decisions to substantively participate in scoping processes on a NEPA decision.
- Comprehensive Socioeconomic Analyses: These analyses must address a full range of potential impacts, including population, employment, income, industry activity, tax revenue, public services, housing, transportation, and overall quality of life.
 - A full analysis of the impact each alternative and subsequent ""decision"" will have on the local economy should be conducted by the federal agencies. If it is determined that the alternative will have significant negative impact on the local economy, the alternative/decision is not supported.
 - Federal agencies should support the analysis of social and economic factors at the lowest possible level, such as on a County-wide basis, in addition to consideration on a statewide or national scale.
 - Federal agencies should promote the economic and socioeconomic growth of Weston County and engage in consultation and coordination between federal agencies and the County regarding any issues and activities on public land that affect or influence the County's economic and socioeconomic viability.
 - Weston County supports the achievement of a sustainable balance between economic, recreational, and conservation use of lands for economic growth and quality of life.
 - Weston County requires a full analysis by the federal agencies of the impact each proposed decision or federal action will have on the local economy. If it is determined that the decision will have significant negative impact on the local economy, the alternative/decision is not supported.
- Enforceable Mitigation Plans: Economic mitigation plans must include clear, enforceable measures to address any negative socioeconomic effects and must be adapted over time in response to actual conditions.
 - Federal agencies should include Weston County in all discussions regarding mitigation, if necessary, to protect the economic base of the County.

Baker County, Oregon

Christina Whitham and Doni Bruland

Issue Excerpt Text: Baker County has chosen to include 43 CFR §1610.3-1 because it appears that the BLM has forgotten that it exists, or willingly ignored it. The County requests that this Draft Resource Plan Amendment/Draft Environmental Impact Statement be suspended until proper and lawful use of 43 CFR §1610.3-1 is implemented fully. 43 CFR § 1610.3-1 Coordination of planning efforts (a) In addition to the public involvement prescribed by § 1610.2, the following coordination is to be accomplished with other Federal agencies, state and local governments, and federally recognized Indian tribes. The objectives of the coordination are for the State Directors and Field Managers to: (1) Keep apprised of non-Bureau of Land Management plans; (the Baker County Natural Resources Plan, 2016, was not requested or considered in this Draft RPA/EIS).

Cassia County, Idaho

Kerry McMurray et al.

Issue Excerpt Text: Cassia County's June 2024 comments specifically raised concerns about the impacts to prime agricultural lands within the county caused by forcing utility and energy uses off public lands due to measures ostensibly taken to protect the GRSG. Cassia County pointed out that Cassia and Power counties each have comprehensive county land use plans that prioritize the protection of prime agricultural lands, and that direct utility infrastructure away from those lands. Section 204 of the Federal Land Policy Management Act (FLPMA) directly governs BLM resource management planning. FLPMA section 204(c)(9)4 specifically requires the Secretary of the Interior to consider local land use plans in formulating Resource Management Plans ... As an initial matter, BLM must note that BLM's obligation to coordinate with local land use planning, assure that consideration is given to local plans, and provide for meaningful public involvement of local government officials is independent of the consistency review undertaken at the end of the planning process. Cassia and Power counties comments to the DRMPA/EIS specifically included, and discussed in detail, County land use plans emphasizing preservation of prime irrigated agricultural lands. The comments described how measures for the ostensible protection of GRSG that drive utility siting off public lands has the effect of making those prime lands the only feasible location for utility siting and renewable energy development, in direct opposition to the County plans. In Appendix 23 to the GRSG Proposed RMPA/FEIS, BLM addressed consistency with state and local plans as required by Section 209(c)(4) of FLPMA. Section 23.2.2, pertaining to inconsistencies with Idaho County Plans, Policies, and Procedures, states that: ... This statement in the Proposed RMPA/FEIS is flatly wrong as it pertains to Cassia and Power counties' comments, which directly addressed at pages 11-13 the inconsistency of sage grouse restrictions under all alternatives with the prime agriculture provisions of the respective county plans and ordinances, and requested that the county plans be addressed in the EIS. By failing to do so, BLM has violated FLPMA section 209(c)(4)'s binding requirements for coordination, consideration, and meaningful public involvement.

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: FLPMA requires that land use plans “be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions.” Further, the Council on Environmental Quality’s NEPA implementing regulations provide that “environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.” Appendix 23 to the FEIS/RMPA discusses, in brief, inconsistencies between the FEIS/RMPA, on the one hand, and the State Plan and local land use plans on the other. BLM states that it considered the Eureka County Master Plan, though not that it considered Title 9 of the County Code, another crucial County land use plan, policy, and control. BLM then spends two (short) paragraphs addressing inconsistencies between the FEIS/RMPA and all local land use plans in Nevada and California. It does not discuss any of the specific, numerous instances of inconsistency between the RMPA and Eureka County’s land use plans, policies, and controls that we raised in our comments on the DEIS/RMPA. ... BLM addresses inconsistency with the State Plan in just over a page of text. This is itself inadequate: language from the State Plan applies to each and every section of the FEIS/RMPA—it is a holistic framework governing GRSG habitat conservation—so BLM must address the myriad inconsistencies between the Proposed Plan and the State Plan. Despite this requirement, BLM identifies inconsistencies only regarding (1) the lack of resource allocations in the State Plan vs. their presence in the Proposed Plan, (2) the lack of a disturbance cap in the State Plan vs. its presence in the Proposed Plan, (3) the lack of land health standards for grazing in the State Plan vs. their presence in the Proposed Plan. BLM also makes

confusing reference to an inconsistency between the FEIS/RMPA and the CCS, but the text given does not actually explain the inconsistency BLM has identified.

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: Finally, as we did in our fatal flaw comments, we object to RM-6 as inconsistent with County and Nevada policy; this management direction and should not apply in Nevada. The Grazing Regulations and the grazing provisions under this RMPA are enough to ensure sustainable grazing practices. Moreover, the BLM should not seek to retire grazing on GRSG HMAs in Nevada, as wildfire is the primary cause (87%) of loss of GRSG habitat in the Great Basin, and managed livestock grazing is the sole landscape-scale fine fuels control. Considering conversion of permits is not justified or defensible under this RMPA.

Saratoga-Encampment-Rawlins Conservation District

Arla Strasser and Lianne Correll

Issue Excerpt Text: The SER CD NRM Plan is an officially adopted local government resource plan that was not listed as considered for consistency review and inconsistencies between the Proposed RMPA and the local government SER CD NRM Plan are not listed. The SER CD NRM Plan MUST be reviewed for consistency. The BLM violated the specific Federal Land and Policy Management Act (FLPMA) requirement for consistency with State and Local Land Use Plans. As specifically stated in the introduction of Appendix 23 – Consistency with State and Local Land Use Plans... The SER CD commented numerous times regarding the need for consistency with their NRM Plan. Most recently in the June 13, 2024, Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning comment letter: ‘The National Environmental Policy Act (NEPA) and Federal Land and Policy Management Act (FLPMA) require coordination between federal agencies and local governments in order to achieve management and regulatory consistency between the Proposal and the SER CD NRM Plan whenever possible. The NEPA commands the federal agency to “discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [environmental impact] statement should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law.” (40 C.F.R. §§ 1506.2, 1506.2(d)). Policies in the SER CD NRM Plan outline the District’s expectations for our federal agency partners during a NEPA process. We look forward to hearing from the BLM to discuss inconsistencies with our approved plan.

Humboldt County Board of Commissioners

Jesse Hill

Issue Excerpt Text: We protest BLM’s failure to ensure maximal consistency between the FEIS/RMPA and State and County land use plans, as FLPMA requires, and its failure to explain inconsistencies, as NEPA requires. We have previously addressed this issue at length. See Humboldt County Fatal Flaw Comments at Row 27; Humboldt County DEIS/RMPA Comments at 32–49. Appendix 23 to the FEIS/RMPA discusses, in brief, inconsistencies between the FEIS/RMPA, on the one hand, and the State Plan and local land use plans on the other. BLM states that it considered just one chapter of the Humboldt County Public Lands Resource Management Policy Plan (PLRMPP): chapter on Greater Sage Grouse. Initially, we note that the County referred BLM to several PLRMPP chapters in addition to our GRSG chapter; these included chapters on Livestock Grazing, Fire, and Mining and Mineral Resources. BLM has apparently failed to consider these elements of the PLRMPP—much less to achieve maximal consistency with them. This in itself violates NEPA and FLPMA. BLM has not noted these inconsistencies nor has it attempted to achieve maximal consistency with Humboldt County’s land use plans. We protest BLM’s failure to

do so. Substantively, the County also protests aspects of BLM’s plan that are inconsistent with its PLRMPP because the County plan, coupled with the State Plan, provide the better alternative for GRSG habitat conservation.

N-4 State Grazing Board

Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: The Board is familiar with the Nevada Greater Sage-grouse Conservation Plan as well as the Master Plans and Public Lands Policy for Eureka, Lincoln, Nye, and White Pine Counties. The Board does not believe the Proposed RMPA is consistent with any of those locally adopted plans and policies. As such, the Board fully supports previous comments and Protests filed by these three Counties.

N-4 State Grazing Board

Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: Per Federal Land Policy and Management Act (FLPMA) requirements (43 U.S.C. § 1712(c)(9)) for state and local plans and policies, the BLM is required to coordinate with State and local agencies on the preferred alternative so that it is consistent with the appropriate State and local plans to the greatest extent possible, providing it is required and allowable under federal law and executive order. The Board does not believe the Proposed RMPA / FEIS is consistent with the State Plan, nor locally adopted plans such as County Master Plans and/or Public Land Policy Plans. In particular, the BLM’s approach to Adaptive Management, Disturbance Caps and livestock management are not consistent and could result in tangible negative impacts on the public land grazing permittees that the Board represents.

Summary:

Protesting parties stated that the BLM’s approval of the GRSG PRMPA/FEIS would violate FLPMA because of inconsistencies with Federal, State, County, and Conservation District plans and regulations, including:

- U.S. Forest Services’ September 2015 Land Management Plan Amendments
- Wyoming GRSG Executive Order 2019-3
- Mule Deer and Antelope Migration Corridor Protection Executive Order 2020-1
- Wyoming State statutes
- Wyoming Conservation Districts’ plans and policies
- Wyoming’s Act of Admission
- Montana Executive Order 12-2015
- Montana State policy
- Nevada State Plan
- Nevada Statewide Sage-grouse Conservation Plan
- Nevada County Master Plans
- Idaho State Plan
- Idaho MD SSS 29/30
- Idaho County Plans
- Wyoming Counties’ Land Use Plans
- Weston County’s Natural Resource Management Plan
- Eureka County Master Plan
- Saratoga-Encampment-Rawlins Conservation District Natural Resource Management Plan
- Humboldt County Public Lands Resource Management Policy Plan

Protestors expressed concerns that inconsistencies in the PRMPA/FEIS with State and local plans could infringe on state and privately managed lands and projects, challenge the State’s jurisdiction over wildlife, and undermine the effectiveness of adaptive management strategies. Additionally, Protesters raised issues regarding anthropogenic disturbance screening criteria, ROW operation and maintenance practices, the use of avoidance and exclusion areas, and the adequacy of compensation and mitigation measures.

Protesters claimed the BLM failed to describe the extent to which the RMPA would be reconciled for consistency with local plans. They stated that this failure undermines local planning efforts, threatens rural community development, and compromises the multiple-use mandate of public lands.

Response:

The GRSG planning effort is consistent with the BLM's planning regulations. The BLM’s land use planning regulations allow planning at the appropriate geographic scale. “A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.” 43 CFR 1610.1(b). Also, the BLM Land Use Planning Handbook states “State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.” The planning area here, defined in coordination with relevant BLM state directors, all lands within the boundaries of BLM field offices that contain GRSG habitat, excluding the Bi-state distinct population segment (DPS) and the Columbia Basin DPS, which are addressed in other planning efforts. The planning area includes much of the western United States, comprising portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming (GRSG PRMPA/FEIS pp. 1-2 – 1-3). This planning area facilitates consistency across states and updates the approach taken in the BLM’s 2015 and 2019 planning efforts. Further, FLPMA (at 43 U.S.C. 1712(a)) directs the Secretary of the Interior to develop, maintain, and revise land use plans. While the Secretary has delegated land use planning authority to the BLM, including to BLM Field Managers and State Directors, through the planning regulations (43 CFR 1601.0-4), this delegation does not preclude a supervisor of the delegee (including the BLM Director) from exercising that authority.

The BLM has prepared this PRMPA/FEIS to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency’s multiple use and sustained yield mission, and GRSG management efforts with Federal, State, local, and Tribal partners. The ten-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort.

The BLM's land use plans must be “consistent with officially approved or adopted resource-related plans, and the policies and procedures contained therein, of other Federal agencies, and State and local governments, and Indian Tribes, so long as the guidance and resource management plans are consistent with the purposes, policies and programs of Federal laws and the regulations applicable to the public lands (43 CFR 1610.3-2(a)). The BLM has worked closely with State and local governments throughout the preparation of the EIS. The PRMPA/FEIS lists the cooperating agencies involved in the planning process in Section 5.4, *Cooperating Agencies* (GRSG PRMPA/FEIS, pp. 5-2 – 5-6). As described in Section 1.8, *Consistency with State and Local Land Use Plans and Programs and Policies*, therein, the BLM requested the cooperating agencies assist in the consistency reviews by reviewing the range of alternatives associated with the Draft EIS, and identifying potential inconsistencies between the alternatives and each agency’s applicable plans. This allows the state,

local, and Tribal cooperating agencies to use their special expertise regarding the familiarity with their own state, local, or Tribal plans (GRSG PRMPA/FEIS, pp. 1-9 – 1-10).

All cooperating agencies have been given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative Draft EIS, and identification of issues and data during public scoping and the Draft RMPA/EIS public comment period. Further, coordination with cooperating agencies continued through the development of the PRMPA/FEIS in order to identify consistency issues and to be compliant with the relevant laws and regulations. While the laws and regulations associated with cooperating agencies and coordination with other federal agencies and state, local, and tribal governments, state that coordination must occur, they do not prescribe the methods necessary to meet the legal or regulatory requirements. Based on the coordination efforts described above, the BLM has met the legal and regulatory requirements for coordination to date.

The BLM is aware that there are specific State or local laws relevant to aspects of public land management that are discrete from, and independent of, federal law. However, the BLM is bound by federal law. As a consequence, there may be inconsistencies that cannot be reconciled. FLPMA requires that BLM's land use plans be consistent with State and local plans "to the extent practical" (FLPMA 202(c)(9)). In a situation where State and local plans conflict with federal law, there will be an inconsistency that cannot be resolved. Thus, while State, county and federal planning processes, under FLPMA, should be as integrated and consistent as practical, the federal agency planning process is not bound by or subject to county plans, planning processes, or planning stipulations. To facilitate state and local governments' complete understanding of the impacts of the PRMPA on State and local management options, the BLM has updated known inconsistencies between the PRMPA and Federal, State, local, and Tribal plans was in the PRMPA/FEIS in Section 1.8, *Consistency with State and Local Land Use Plans and Programs and Policies* and in Appendix 23, *Consistency with State and Local Land Use Plans*.

The BLM coordinates with cooperating agencies commensurate with each agency's recognized jurisdiction or expertise. In areas where the states have clear jurisdiction, such as wildlife populations, the BLM has worked closely with that State agency. In cases where a county or agency has expertise, such as local county socioeconomic information, the BLM has worked closely with the group to incorporate the information into the EIS.

Finally, within the range of alternatives analyzed in the Draft and Final EIS, state-specific management direction was proposed and analyzed (refer to Section 2.5 in Chapter 2, *State-Specific Circumstances*). Each BLM state will issue their own ROD which will identify RMPA decisions within that State, including those that are State-specific. The State-specific management direction identified in the PRMPA addresses geographically unique situations while still ensuring overall rangewide GRSG conservation goals.

Regarding Federal agencies, the USFWS and U.S. Forest Service were cooperating agencies throughout the planning process and were provided opportunities to review and provide comment on the EIS. Neither agency identified any concerns regarding the compatibility of the GRSG PRMPA/FEIS with their agency plans. Consistency with U.S. Forest Service regulations is also outlined in GRSG PRMPA/FEIS Appendix 23 Section 23.1.1. For more information regarding Cooperating Agency participation in development of the GRSG PRMPA/FEIS, please see the *NEPA - Cooperating Agencies* section of this Protest Report.

Also, information related to monitoring and mitigation can be found in the *Monitoring and Mitigation* section of this Protest Report. Information related to how the GRSG PRMPA/FEIS meets FLPMA's multiple-use mandate can be found in the *FLPMA – Multiple Use* section of this Protest Report.

The BLM satisfied FLPMA’s requirements in preparation of the GRSR PRMP/FEIS to work with state and local planning authorities and ensure consistency with their policies and plans. Accordingly, this protest issue is denied.

FLPMA – Multiple Use

Ur-Energy USA Inc.

Ryan Schierman

Issue Excerpt Text: The creation of a lawful and durable plan, that withstands legal challenges is imperative to provide the regulatory certainty needed for continued operations on federal lands. Adherence to the well established legal framework consisting of but not limited to the Federal Lands Policy Management Act, the General Mining Law (the Mining Act of 1872, as amended), and the Mining and Material Policy Act of 1970 is critical to a successfully implemented resource management plan. The legal framework is based on multiple uses for public lands which appear to be in contradiction with the proposed RMPA that puts increased priority on single use or conservation through the use of Areas of Critical Environmental Concern (ACEC). The use of ACEC management should be structured to minimize the impingement of the multiple use mandate to the extent possible.

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: Multiple-use and sustained yield require the Secretary to manage public lands to balance the various resources on public lands to best meet the present and future needs of the American people in a manner that recognizes the Nation’s need for domestic sources of minerals including implementation of the Mining and Minerals Policy Act it pertains to public lands.⁴³ U.S.C. 1701(a)(12). This balancing requirement puts wildlife and minerals (as well as the other listed resource values) on equal footing. Many of the FLPMA § 202 land use planning requirements contain explicit provisions to ensure that the Secretary’s land use plans achieve an appropriate balance of resource values consistent with FLPMA’s multiple-use and sustained yield mandate. The proposed alternative fails to comply with FLPMA’s multiple use and sustained yield mandate under § 102(a)(7), and in the land use planning title of FLPMA at §202(c)(1), and the directive under § 102(a)(12), to recognize the Nation’s need for domestic sources of minerals. Further, the multiple and cumulative restrictions on surface use including: travel and transportation restrictions, allowable surface disturbance, ROW restrictions, and the constraint related to VERs creates widespread, and cumulative de facto withdrawals across the entire planning, which violates the multiple-use mandates under FLPMA §102(a)(7), and the directive under § 1732(b) and §528 of MUSYA, that clearly establishes that FLPMA does not “amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including but not limited to, rights of ingress and egress.

National Mining Association

Katie Sweeney

Issue Excerpt Text: Section 302 of FLPMA provides that “[t]he Secretary shall manage the public lands under principles of multiple use and sustained yield.” Furthermore, FLPMA requires management of the public lands “in a manner which recognizes the Nation’s need for domestic sources of minerals.” In response to NMA’s and similar comments, BLM merely states that the RMPA will be in compliance with FLPMA and all other applicable laws, regulations and policies. This assertion is inadequate to fully explain the BLM’s compliance. FLPMA’s multiple use mandate requires 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. 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. As explained in these comments, the proposed restrictions in the RMPA on domestic mining operations are not in the national interest.

Summary:

Protestors claim that the BLM's approval of the GRSG PRMPA/FEIS would violate FLPMA's multiple use and sustainable yield mandate, the General Mining Law (the Mining Law of 1872, as amended), and the Mining and Minerals Policy Act of 1970 in development of the GRSG PRMPA/FEIS by:

- Placing increased priority on a single use, the protection of GRSG, through the designation of ACECs that impinge on other multiple uses.
- Creating de facto withdrawals across the planning area by limiting travel and transportation, applying restrictions to allowable surface disturbances and ROWs, and constraining valid existing rights.
- Undermining FLPMA and national policies that require management of the public lands to recognize the Nation's need for domestic sources of minerals and maintaining these lands as open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest.

Response:

FLPMA (Section 103(c)) 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 does not mandate all uses be allowed on all areas of the public lands. Instead, it requires the BLM to evaluate and choose an appropriate balance of resource uses which involves tradeoffs between competing uses. FLPMA also directs the BLM to develop and periodically revise or amend its resource management plans, which guide management of BLM-administered lands, and provides an arena for making decisions regarding how public lands would be managed and used.

BLM's planning processes allow for analysis and consideration of a range of alternatives that identify and incorporate appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat, and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was recommended. This includes alternatives that provide a greater and lesser degree of restrictions in various use programs, in accordance with applicable law, and would not eliminate or invalidate any valid existing rights. The BLM has wide latitude 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, to prevent unnecessary or undue degradation (UUD). Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses.

All alternatives considered in the GRSG PRMPA/FEIS, as described in GRSG PRMPA/FEIS Chapter 2 and Appendix 21, provide reasonable balances of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable

statutes, regulations, and BLM policy. The BLM is striving to slow or stop the decline of GRSG on BLM-administered lands with this planning amendment. The goal to conserve and manage GRSG habitats to support persistent, healthy populations is consistent with BLM’s special status species policy (BLM-M-6840) and is in conformance with inventory requirements found in Section 201 of FLPMA.

This amendment effort recognizes the importance of including RMP actions that address GRSG threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions. This effort also recognizes the legal and functional imperative of coordinating management with state, federal, tribal, and local plans and policies. Many actions from the 2015 and 2019 efforts already accomplish this. As a result, the purpose of the GRSG PRMPA/FEIS is to amend a sub-set of the GRSG management actions to ensure management actions on BLM-administered lands support GRSG conservation goals, respond to changing land uses in GRSG habitats, improve the efficiency and effectiveness of GRSG management actions, provide for consistent conservation outcomes in GRSG habitat, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals (GRSG PRMPA/FEIS, pp. 1-4 – 1-6). The purpose of this amendment is focused on cross-cutting management actions and topics that are applicable throughout the planning area. Land use plan revisions will be completed on an individual basis as specific land use plan evaluations warrant.

The BLM considered ACECs as within the scope of the GRSG PRMPA/FEIS as it is the mechanism by which relevant and important GRSG habitat attributes could be identified and protected and is consistent with BLM ACEC and RMP regulations. Due to the GRSG conservation-specific purpose and need for this planning effort, the BLM initiated an extensive internal review of updates to scientific data to identify potential ACECs (GRSG PRMPA/FEIS Appendix 5.5 p. 5-5). In the GRSG Draft RMPA/EIS, 32 areas were analyzed as potential ACECs under Alternatives 3 and 6. In the GRSG PRMPA/FEIS, ACEC acreages were refined in some States four ACECs were removed from consideration in Idaho, and one ACEC was removed from consideration in Nevada as result of updates and refinements in data. The identification, evaluation, and analysis of the effects of the alternatives on the nominated and proposed ACECs are described in Appendix 5 (GRSG PRMPA/FEIS Appendix 5 pp. 5-1 – 5-99). GRSG PRMPA/FEIS Chapters 3 and 4, Appendix 10, and Appendix 5 were updated and clarified in response to comments between the GRSG Draft RMPA/EIS and GRSG PRMPA/FEIS. Specific analysis for each externally nominated ACEC can be found in Appendix 5, Section 5.4.2 (GRSG PRMPA/FEIS, pp. 5-11 – 5-85). Rationale for ACEC designation, including demonstration of compatibility, will be published in the GRSG ROD/Approved RMPA.

The Mining Law of 1872 authorizes exploration and development of certain minerals on federal lands. Under this law, as amended by FLPMA, the BLM has the obligation to ensure that such exploration, development, and related uses and occupancy do not cause UUD, as defined in the applicable regulations. Through a land use planning process such as the GRSG PRMPA/FEIS, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting mining operations or otherwise using or occupying public lands under the Mining Law (BLM Handbook H-1601-1, Appendix C, p. 25). Only the Secretary of the Interior, through a separate process, can withdraw lands from location and entry under the Mining Law of 1872. Accordingly, the BLM applied management actions in the GRSG PRMPA/FEIS only to the extent that they are consistent with the Mining Law of 1872, as amended by FLPMA, and the BLM’s regulations. The GRSG PRMPA/FEIS is clear in stating that no RMP decision can affect the applicability of the U.S. mining laws or uses thereunder on BLM-managed public lands (GRSG PRMPA/FEIS Appendix 10 p. 10-96). However, under all alternatives, the BLM would request operators proposing to use or occupy public lands and conduct exploration or mining operations under the Mining Law to apply design features to benefit GRSG. Measures voluntarily implemented

by the operator would become enforceable when incorporated in an approved plan of operations. To the extent a design feature or best management practice to benefit GRSG is required to comply with applicable state or federal law or is otherwise required to prevent UUD as defined in the applicable regulations, the BLM may require the operator to incorporate the design feature or best management practice in its plan of operations. Where disturbance caps are applied, surface disturbance from operations and uses under the Mining Law would be counted towards the disturbance cap, but the BLM may not prevent or unduly restrict operations under the Mining Law in areas where the disturbance cap was exceeded (GRSG PRMPA/FEIS p. 4-83). Additionally, any recommendations for withdrawal from location and entry under the U.S. mining laws in land use plans do not restrict mineral exploration or development. The BLM is correct in analyzing the impacts of any future separate withdrawal actions under separate NEPA analyses.

As stated in Chapter 2, Table 2-1, *Alternatives Considered but Not Analyzed in Detail*, this planning effort is not considering any travel and transportation management decisions (GRSG PRMPA/FEIS p. 2-4). The existing management direction that limits off-highway vehicle (OHV) use to existing roads in GHMA and PHMA as identified in the 2015 GRSG RMPA remains in place. The BLM's existing 2015 GRSG RMPA management direction does not propose OHV closures and none is proposed in the GRSG PRMPA/FEIS. BLM's existing OHV management direction is fully compliant with existing laws, policies, and regulations. In the analysis the BLM recognizes that restrictions to major ROWs or other development could limit future creation of roads or ancillary facilities, however there is no proposal to close any current areas (GRSG PRMPA/FEIS, pp. 4-23).

No management action under the GRSG PRMPA/FEIS undermines policies that support the national interest of fostering and encouraging private enterprise across public lands, such as the Mining and Minerals Policy Act of 1970. The recommendations for withdrawal in Alternatives 1, 2, and 3 would not affect mineral exploration or development unless or until the Secretary of the Interior, the President, or Congress formally withdraws the areas from operation of the U.S. mining laws. Impacts to locatable minerals from management outlined in the alternatives are analyzed in Section 3.10.4 (GRSG PRMPA/FEIS, p. 3-41) and 4.10.4 (GRSG PRMPA/FEIS, pp. 4-82 – 4-84), with additional information in Appendix 10 (GRSG PRMPA/FEIS, Appendix 10, pp. 10-96 – 10-99), to a level that would allow for an informed decision among alternatives. The separate EIS effort that is considering a withdrawal of the 2015 sagebrush focal areas (SFAs) from operation of the U.S. mining laws is independent of any SFA decisions associated with this planning process. As ordered by the United States District Court for the District of Idaho, the consideration of whether the withdrawal is needed for GRSG conservation has been remanded to the BLM, including the completion of that NEPA process. This separate proposed withdrawal is considered in the GRSG PRMPA/FEIS in the Cumulative Effects analysis (GRSG PRMPA/FEIS, pp. 4-83 – 4-84).

The GRSG PRMPA/FEIS is consistent with FLPMA's direction to manage the public lands under principles of multiple use and sustained yield. Accordingly, this protest issue is denied.

FLPMA – Unnecessary or Undue Degradation

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: Proposed RMPA and FEIS at 2-39. With all due respect to each state/s own mitigation standards, the BLM's adoption of such standard is problematic and exceeds its authority under FLPMA if it requires overall Greater Sage Grouse habitat to be increased. States have primacy over wildlife, but only a federal agency may manage federal land. Section 302 of FLPMA, speaks to the discrete issue of what standard may or may not be applied to federal land management. Aside from Wilderness Study Areas, FLPMA provides that public lands shall be

managed to avoid “undue and unnecessary degradation.” 43 U.S.C. § 1732(b). The courts have found FLPMA to inherently allow some degradation. See *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 76-78 (D.C. Cir. 2011) (FLPMA’s unnecessary or undue degradation standard must be read in light of BLM’s responsibility under FLPMA to ensure public lands are managed under multiple use and sustained yield.); *Gardner v. U.S. Bureau of Land Mgmt.*, 638 F.3d 1217, 1222-23 (9th Cir. 2011) (Section 1732(b) does not mandate BLM to adopt restrictions that would completely exclude off-road vehicle use in a specific area.). Moreover, past policies and directives show that the BLM has no additional authority to implement a “net benefit,” “net gain,” or other standard that requires improvement of Greater Sage Grouse habitat as a condition of a permit or lease. See BLM Instruction Memorandum 2019-018 (Dec. 6, 2018); see also U.S. Fish and Wildlife Service Mitigation Policy, 83 Fed. Reg. 36472 (July 30, 2018) (“In light of the change in national policy . . . and concerns regarding the legal and policy implications of compensatory mitigation, particularly compensatory mitigation with a net conservation gain policy, the Service has concluded that it is no longer appropriate to retain references to or mandate a net conservation gain standard . . .”). Thus, the BLM may not “commit” or otherwise require mitigation that would “improve” or “expand” habitat without also violating FLPMA. In addition, Congress granted BLM the authority to manage public lands for multiple use and sustained yield to prevent undue and unnecessary degradation. [43 U.S.C §§ 1701(a)(7), 1732(b). FLPMA provides the BLM with the authority to inventory resources and adopt land use plans to effectively manage the public lands. *Rocky Mtn. Oil & Gas Ass'n v. Watt*, 696 F.2d 734, 739 (10th Cir. 1982). However, FLPMA does not grant BLM the power to delegate its planning or management authority to another state or federal agency. See *G.H. Daniels III & Associates, Inc. v. Perez*, 626 F. Appx. 205, 210-211 (10th Cir. 2014) (A statutory requirement to consult allows an agency to seek advice from another federal agency, but not supplant the agency as final decision-maker.); see also *Save the Bay, Inc. v. U.S. Corps of Eng’rs*, 610 F.2d 322, 325 (5th Cir. 1980) (Similarly, NEPA coordination requirements “should not be understood as allowing the [lead agency] to base [its] determination solely on the comments of other agencies.”). Thus, when the BLM states that compensatory mitigation amounts must comply with the state’s framework, the BLM incorrectly assumes that it may defer to that framework when the state has no authority over federal lands and the state’s standard may conflict with federal law.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The greater sage grouse is a Bureau-designated Sensitive Species. According to the Special Status Species Manual (2008), the objective for such species is “[t]o initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” the Bureau Manual 6840.02(B). As discussed elsewhere in this protest, habitat conservation measures proposed for adoption would be considered inadequate regulatory mechanisms under the ESA, cannot be relied upon to either reverse downward population trends or maintain viable populations of sage grouse, and therefore are in conflict with the Special Status Species Manual. Furthermore, when engaging in the planning process, “land use plans shall be sufficiently detailed to identify and resolve significant land use conflicts without deferring conflict resolution to implementation-level planning.” Manual 6840.2(B). As detailed below, various provisions of the PRMPA cause a greater degree of sage grouse habitat degradation than is necessary, and/or result in levels of impact that will cause continued population declines toward regional extirpation or rangewide extinction, failing to reduce or eliminate threats to levels that prevent the need to list the species under the ESA, and failing to apply provisions that will resolve significant conflicts, each representing an undue level of degradation. The PRMPA would eliminate the Douglas Core Area in eastern Wyoming. FEIS at Map 2.5. We raised the issue of the inadequate analysis of Wyoming boundary changes, and the

potential negative effects of boundary reductions, including specifically boundary reductions in the Douglas Core Area, on ongoing sage grouse population declines in the Douglas Core Area, in comments incorporated by reference into our 2024 DEIS comments. See WWP et al. 2018 comments on Greater Sage Grouse RMP at 70. Under the proposed RMPA, the boundary reductions for the Douglas Core Area would completely eliminate PHMA-level habitat protections for this sage grouse population. Based on the most recent available science (Doherty 2008 at 125, Attachment F), the lands that became the Douglas Core Area were among the most important habitats based on sage grouse population densities, the genesis for the original Wyoming Core Areas (including the Douglas Core Area). Threats are very real, as the Douglas Core Area already has a cumulative surface disturbance in excess of 15% (See Attachment G [Wyoming Core Area Disturbance Totals]), far above the 3% threshold required by the Bureau, and even exceeding the 5% threshold specified in the proposed RMPA. The elimination of the Douglas Core Area will strip this sage grouse population of virtually all of its current habitat protections, resulting in the likely extirpation of this population of the Bureau Sensitive wildlife. This constitutes both unnecessary (because the Core Area birds previously enjoyed PHMA protections without impairing allocations for other land uses) and undue (because the impacts will result in industrial habitat destruction at levels likely to completely eliminate the Douglas Core Area sage grouse population) degradation, a clear substantive violation of FLPMA. It also violates the requirement to ensure that renewable resources (in this case, sage grouse) are not permanently depleted (43 CFR § 6101.4(aa)), which violates FLPMA’s sustained yield mandate.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The PRMPA/FEIS authorizes unnecessary or undue degradation to sage grouse breeding and nesting habitats through applying biologically inadequate lek buffers. As clearly outlined in our comments (Advocates for the West et al. 2024 at 10) and elsewhere in this protest, these lek buffer differences are clearly inadequate to prevent affected sage grouse population from declining to extirpation, a level of impact that constitutes undue degradation.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: Surface disturbance caps in the PRMPA/FEIS authorize unnecessary and/or undue degradation to sage grouse habitats. In Wyoming, disturbance caps are set at 5% at the project level, well above the maximum 3% levels. See Advocates for the West et al. 2024 at 13, 15. This is unnecessary because only Wyoming and Montana have a higher cap at the project level (e.g. 5%) than other states and undue (because it would result in population declines toward extirpation, see, e.g., Advocates et al. 2024 at 13). Other elements of the PRMPA/FEIS also authorize unnecessary and/or undue degradation to sage grouse habitats. These include the elimination of meaningful conservation measures related to livestock grazing and the inadequacy of conservation measures in GHMA, as described elsewhere in this protest.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The management of GHMAs fails to prevent unnecessary impacts to general sage grouse management areas. The FEIS states that GHMAs generally are “lands that are or have the potential to become occupied seasonal or year-round habitat outside of PHMA or IHMA, managed to sustain GRSG populations.” Despite this definition, the PRMPA provides scant protections in GHMA that are desperately inadequate for sustaining greater sage grouse populations. Protesters stressed that “The Bureau must strengthen GHMA management to meet its stated intent of sustaining GHMA populations. The Bureau must more aggressively limit

discretionary surface disturbances within the lek buffer zone and across the GHMA to minimize unnecessary fragmentation and disturbance.” Advocates et al. 2024 at 74. The PRMPA still fails to provide adequate protections for GHMA to meet BLM’s stated goals. GHMA cannot become “sacrifice” areas for GRSG. A few examples include:

- Fluid Minerals objective: The PRMPA eliminates prioritization of leasing and developments outside of GHMA.
- Fluid Minerals Allocation: PRMPA opens GHMA with state variations vs. being “largely closed” under Alternative 1.
- Locatable Minerals: PRMPA designates GHMA open, unless currently withdrawn, vs. SFAs recommended for withdrawal in ID, MT/DK, NV/CA, OR, UT, WY.
- Major ROWs: all states are now open, with minimization measures, changed from avoidance, but open in ID, UT and WY.
- Solar (utility scale): NV/CA, SD, UT are now open, they were designated as exclusion under Alternative 1, CO, MT, ND and OR, are now open subject to minimization measures, they were designated as avoidance under Alternative 1.
- Wind: CO, MT/DK, NV/CA and OR were allocated as avoidance areas under Alternative 1, PHMA are now open with minimization measures.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: Under FLMPA, the Bureau must prevent both unnecessary and undue degradation. Unnecessary degradation is defined as harm to resources or values that is not needed to accomplish stated goals (in this case, land-use planning). See 43 CFR § 6101.4(aa). Undue degradation is defined as harm to land resources or values that is excessive or disproportionate. *Id.* Neither unnecessary nor undue degradation are permissible. Similarly, FLPMA provides that the Secretary “shall manage the public lands under principles of multiple use and sustained yield,” which means, *inter alia*, “without permanent impairment of the productivity of the land and the quality of the environment.” 43 U.S.C. §§ 1702 (c), 1732(a) (emphasis added). The Bureau has failed to consider or adhere to these mandates.

Summary:

The BLM’s approval of the GRSG PRMPA/FEIS would violate FLPMA because it provides protections in excess of those necessary to meet the BLM’s obligation to prevent UUD, or, alternatively, it fails to prevent UUD and is inconsistent with policy direction in the BLM’s Special Status Species Manual. Specifically, the PRMPA/FEIS:

- Exceeds the BLM’s authority under FLPMA by requiring a “net benefit” or “net gain” in GRSG habitat, which goes beyond the mandate to prevent UUD, and it impermissibly delegates BLM authority to another agency by requiring mitigation to comply with state-approved frameworks..
- Allows degradation to continue in areas of important habitat for GRSG. Specifically, it does not incorporate more protective lek buffers and disturbance caps or universally prohibit activities that, if approved through a separate decision-making process, would affect sage grouse breeding and nesting habitats.

Response:

Section 302(a) of FLPMA directs the BLM to manage public lands under the principles of multiple use and sustained yield, unless otherwise required by law. Additionally, Section 302(b) requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take

any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). When managing the public lands under the principles of multiple use and sustained yield, the BLM has substantial discretion to protect resources and their values, including the Greater Sage-Grouse and its habitat; the BLM is not limited only to preventing UUD. The GRSG PRMPA/FEIS would not authorize any on-the-ground actions or activities that would result in degradation of public lands, much less unnecessary or undue degradation. Additionally, the BLM retains discretion to condition future project approvals on the implementation of mitigation measures to prevent UUD or to deny project applications.

The GRSG PRMPA/FEIS provides for the balanced management of the public lands in the planning area. The GRSG PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. That the PRMPA does not allow grazing in certain areas, does not recommend withdrawals, or does not designate ACECs does not result in UUD. Nor does the disclosure of impacts to certain resources in the GRSG PRMPA/FEIS amount to UUD with respect to that resource, as the GRSG PRMPA/FEIS would not authorize any projects. Authorization for the use of public lands would occur through a separate decision on a specific application and would be subject to future, site-specific NEPA to assure no UUD occurs.

Under all GRSG PRMPA/FEIS action alternatives in all GRSG habitat management areas, and consistent with valid existing rights and applicable law, the BLM will utilize the mitigation hierarchy (avoidance first, then minimization, compensation last) when authorizing actions resulting in GRSG habitat loss and degradation to achieve minimum standards. The BLM’s consideration and implementation of the mitigation hierarchy to achieve either “no net loss” or “net conservation gain” is consistent with CEQ regulations (40 CFR 1508.1(s) (2022)), the Federal Land Policy and Management Act’s (FLPMA’s) direction to manage public lands under the principles of multiple use and sustained yield, and is designed to promote consistency with State regulatory requirements. Management actions related to mitigation in the GRSG PRMPA/FEIS are also in conformance with Executive Order (EO) 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021) and Secretarial Order 3398, *Revocation of Secretary’s Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (April 16, 2021) and IM 2021-038. The BLM will adhere to its own mitigation policy as outlined in BLM-MS-1794 but has deferred to state agencies regarding additional mitigation requirements. Operators are required to comply with other relevant laws which may include mitigation required by the state. Table 2-2 through Table 2-4 of the GRSG PRMPA/FEIS outlines the application of that mitigation hierarchy, including compensation (GRSG PRMPA/FEIS pp. 2-20 – 2-52). Table 2-5 provides additional, state-specific management direction organized by the state (GRSG PRMPA/FEIS pp. 2-53 – 2-55).

FLPMA gives BLM broad authority to conduct land use planning, including considering special status species as outlined in Manual 6840, *Special Status Species*, which states that the BLM shall “engage in coordinated reviews across BLM state, district, and field levels and jurisdictional boundaries to identify conservation and recovery strategies at landscape- and ecosystem-levels that may preclude the need to list sensitive species under the ESA....”

The BLM worked with the state wildlife management agencies to identify habitats for conserving GRSG. Areas identified by those agencies, and by the most recent scientific studies, helped delineate where BLM will apply the most restrictive limits to conserve GRSG habitats, and other areas where greater opportunity is available for meeting the multiple-use mandate. Areas at highest threat for energy development were identified and exceptions to development in those areas were mostly eliminated. As described in Section 2.2, the Proposed Plan Amendment “identifies PHMA as exclusion for solar and wind and NSO for fluid minerals with exceptions... PHMA remains an avoidance area for major rights of way... [and] areas within PHMA requiring additional protections have also been identified” (GRSG PRMPA/FEIS p. 2-3). These protections provide adequate

protection for GRSG habitat which the BLM increased from the preferred alternative (Alternative 5) in the GRSG Draft RMPA/EIS to the Proposed Plan Amendment in the GRSG PRMPA/FEIS.

Lek buffers are one management tool to conserve GRSG nesting and brood-rearing habitat. Any appropriate adjustments to management within the buffer based on local conditions and allowable exceptions will be made at the implementation level. To ensure consistency with state wildlife management agencies BLM has adopted the lek buffers supported by the Western Association of Fish and Wildlife Agencies (WAFWA) and their state members (GRSG PRMPA/FEIS Appendix 4 p. 4-1). The differences in lek buffers within the GRSG PRMPA/FEIS are to allow for conformance with state wildlife agency management strategies for GRSG. The BLM adopted new lek definitions developed by WAFWA, which are being used in all sage-grouse states that address this concern. The lek definitions developed by WAFWA were applied in the GRSG PRMPA/FEIS and will not be applied to projects already approved and underway. Tables 2-8, 2-9, 2-10, and 2-12 provide detailed discussion on the application of lek buffer distances when approving subsequent actions (GRSG PRMPA/FEIS, p. 2-77; 2-86; 2-91; 2-100, respectively).

The GRSG PRMPA/FEIS identifies 3 percent as the maximum disturbance cap and provides detailed discussion on how the 3 percent disturbance cap is calculated, also providing details on state-specific differences (GRSG PRMPA/FEIS, p. 2-40). This planning effort does not consider any changes to the density caps from the prior land use plan amendments, and as such, comments on the density cap are not within the scope of this planning effort. Those actions would remain in the plans as described in the prior planning efforts, unchanged by this amendment. Exceptions are only allowable if compensatory mitigation is implemented and functions as habitat before the exception is granted (GRSG PRMPA/FEIS Table 2-4 p. 2-42). In addition, the compensation must benefit the GRSG population being impacted by the disturbance. These requirements ensure that any exceptions to the cap will not occur unless the compensatory mitigation is in place and documented to offset the impacts from the disturbance, eliminating the concern that the restoration/compensation would take decades to offset the immediate impacts of disturbance. Because the GRSG FEIS/PRMPA would not authorize any uses of the public lands, and the alternatives evaluated in the FEIS comply with all applicable statutes, regulations, and policy, the GRSG FEIS/PRMPA will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA . Therefore, this protest issue is denied.

Mining Law of 1872

Montana Mining Association Matt Vincent

Issue Excerpt Text: MMA nevertheless remains concerned that the Proposed RMP Amendment’s proposed habitat designations and several aspects of their management—such as density and disturbance caps, buffers, mitigation, and rights-of-way management—could, if not amended, significantly restrict mineral development in a way that: (i) could harm state and local economies and the aforementioned Biden Administration goals; (ii) is inconsistent with the statutory mandates of the Mining Law of 1872, FPLMA, the MMPA, and National Materials and Minerals Policy, Research and Development Act of 1980; and (iii) could even constitute impermissible de facto withdrawals.

Montana Mining Association Matt Vincent

Issue Excerpt Text: Additionally, the BLM should clarify that buffers and other similar NSO provisions do not apply to activities permitted under the Mining Law of 1872. To preclude locatable

mining activities for miles (or fractions thereof) around sage-grouse leks would constitute a de facto mineral withdrawal outside of permissible withdrawal procedures. While BLM did not respond to this comment directly, it responded to the general comment that “[t]he BLM should provide more exceptions for locatable mining activities throughout the mitigation requirements” by again simply referring to its general statement that “all proposed actions will be subject to valid existing rights, including those associated with leases issued under the Mining Law of 1872 as amended.

Accordingly, the BLM will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law of 1872 and the BLM’s regulations.”¹³⁰ As discussed above this statement does not adequately respond to this need for clarification and will result in inconsistency, violations of the Mining Law of 1872, and/or litigation over what it means to impose requirements “consistent with the Mining Law of 1872.”

Montana Mining Association

Matt Vincent

Issue Excerpt Text: The Final RMPA/EIS exacerbates confusion about whether disturbance and density caps apply to locatable mineral projects. These caps cannot apply to locatable mineral projects without violating the 1872 mining law. Accordingly, the BLM still needs to expressly clarify that such caps do not apply to locatable mineral projects. With respect to disturbance caps, the 2015 Approved Resource Management Plan Amendments (“ARMPAs”) state that even though “locatable mine sites are included in the degradation calculation [for the disturbance caps], mining activities under the 1872 mining law may not be subject to the ... disturbance cap[s].”⁴⁸ As for the density caps, the 2015 ARMPAs opaquely state that application of density caps is “subject to applicable laws and regulations, such as the 1872 Mining Law, valid existing rights, etc.”⁴⁹ Use of the terms “may” and “subject to applicable laws and regulations” insert undue vagueness because it is open to multiple interpretations (i.e., “might not be subject” versus “cannot be subject”).

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: Furthermore, FLPMA expressly provides that none of its land use planning provisions, among others “shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress” (43 U.S.C. § 1732(b), emphasis added). The last sentence of 43 U.S.C. § 1732(b) provides that BLM may “take any action necessary to prevent unnecessary or undue degradation of the lands.” Id.; see 43 C.F.R. § 3809.5 (defining “unnecessary or undue degradation”). Thus, in passing FLPMA, Congress granted BLM only limited authority to infringe on the rights granted by the Mining Law. As relevant here, that authority is limited to “prevent[ing] unnecessary or undue degradation.” 43 U.S.C. §1732(b). Throughout AEMA’s involvement in the GRSG planning process we have repeatedly highlighted that the numerous restrictions imposed on surface-disturbing activities and the limitation on mineral exploration and development in the future are unlawful under a variety of land use statutes. In our comments, AEMA informed BLM that the land use restrictions in the amended LUPAs cannot substantially interfere with mining claimants’ rights pursuant to the Mining Law (20 USC 21a et seq as amended) and FLPMA Section 302(b) to explore and develop its mining claims or to enter and occupy public lands for mining purposes.

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: As previously discussed, the Mining Law authorizes and governs the exploration, discovery and development of valuable minerals, and allows citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits (30 U.S.C. §22). Except as otherwise

provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase...(Id.). 30 U.S.C. Section 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development. Prohibiting or restricting mineral exploration and development on lands co-located with sage-grouse habitat, like those associated with buffers, disturbance caps, compensatory mitigation, ROW exclusion/avoidance restrictions, and travel restrictions is contrary to the rights granted by Section 22 of the Mining Law. To that end, BLM should have clarified that certain restrictions such as surface use restrictions and compensatory mitigation do not apply to locatable minerals. Again, BLM's discretionary authority to regulate locatable mineral operations is limited to preventing unnecessary or undue degradation. See 43 U.S.C. §1732(b).

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: The Proposed RMPA/FEIS fails to account for the full suite of locatable mineral rights under the Mining Law of 1872 and other federal mining laws, an omission that NVMA has repeatedly criticized during BLM's GRSG planning efforts. Rights under the Mining Laws are not limited only to valid and existing rights; rather, mining rights include pre-discovery and ancillary use rights, such as the right to explore for valuable mineral deposits and to utilize claims for other uses reasonably incident to mining. Accordingly, BLM must revise language in the Proposed RMPA/FEIS to recognize the full rights under the Mining Laws.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: As explained in NVMA's Comments, the Mining Law guarantees the right to use and occupy federal lands that are open to mineral entry—with or without “valid existing rights”—for prospecting, mining, and processing, and all uses reasonably incident thereto, including but not limited to, ancillary use rights and rights of ingress and egress to mining properties. These rights were affirmed by Congress in Section 302(b) of the Federal Land Policy and Management Act (“FLPMA”), that which declares that “no provision ... of this Act [except as specifically enumerated and not including Section 202 on resource management planning] shall in any way amend the Mining Law of 1872 or impair the rights of locators or claim.” However, the Proposed RMPA/FEIS acknowledges only “valid existing rights” and makes only occasional, parenthetical reference to the Mining Law of 1872. See, e.g., Proposed RMPA/FEIS, p. 2-49. These provisions not only fail to recognize the full scope of the rights embraced by the Mining Law but their obvious lack of clarity risks delaying review and approval of NVMA's members' mineral exploration and development projects. This lack of clarity is readily apparent in section of the Proposed RMPA/FEIS's that outlines the disturbance cap protocol. There, BLM says that if direct habitat disturbance exceeds the 3 percent cap at either the project-scale or the Habitat Assessment Framework (“HAF”) fine-scale, then “[n]ew infrastructure projects would be deferred to the extent allowable under applicable laws (such as the Mining Law of 1872), or valid existing rights.” Proposed RMPA/FEIS, p. 2-40. “[T]o the extent allowable” incorrectly implies that there is discretion or room to partially authorize or to indefinitely delay approval of a locatable minerals project. Rights under the Mining Law of 1872, however, are not discretionary so long as the operator complies with the law. See 30 U.S.C. § 22 (“all valuable mineral deposits in lands belonging to the United States ... shall be free and open ...” for exploration and occupation) (emphasis added). As part of that compliance with the law, the agency must ensure it prevents “unnecessary or undue degradation,” see 43 U.S.C. 1732(b). BLM's careless language related to the disturbance cap appears to exceed its legal authority or, at bare minimum, will create significant confusion and uncertainty in its implementation.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: On the wildlife front, BLM’s definition of “unnecessary or undue degradation” in its surface management regulations only requires operators to “prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.” 43 C.F.R. § 3809.420(b)(7). Greater sage-grouse are not listed as a threatened or endangered species. And application of the disturbance cap or temporary deferral of a project approval would constitute an impermissible de facto withdrawal of public lands from entry under the Mining Law. See 43 U.S.C. § 1714. The BLM’s Proposed RMPA/FEIS—and all future GRSG plans—must unequivocally and definitively state that disturbance caps do not apply to any locatable mineral activities authorized by the Mining Law of 1872, FLPMA, or BLM’s regulations at 43 C.F.R. subpart 3809, including development and operation of existing mine projects, exploration for and development of new mining claims, and all activities reasonably incident thereto.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Finally, BLM’s removal of any discussion of locatable mineral exploration and development as “nondiscretionary” activities remains unexplained. For example, the 2015 LUPA/FEIS describes “exploration and the development of locatable mineral deposits” as “nondiscretionary actions allowed under the General Mining Law of 1872.” 2015 NV/CA LUPA/FEIS, pp. 3-139; 5-218. The Proposed RMPA/FEIS omits this important recognition of mineral rights under the Mining Law. See, e.g., p. 3-41. Both BLM’s impact analysis and the approved RMPA must expressly emphasize that locatable minerals exploration and development are nondiscretionary actions in order to preserve the rights of NVMA’s members. BLM should clarify that activities authorized under the mining laws, related surface management regulations, and caselaw are not subject to any disturbance cap without regard to their status as “valid existing rights”.

National Mining Association

Katie Sweeney

Issue Excerpt Text: The NMA also pointed out the importance of the Mining Law of 1872 (Mining Law) in establishing the right to access public lands to explore and develop mineral deposits. Congress further recognized the importance of the Mining Law in FLPMA by reiterating mineral development of federal lands as an important component of its multiple use mandate. Importantly, rights under the Mining Law limit the imposition of certain conservation provisions, such as restrictions on new projects in areas where the disturbance caps are exceeded. In the haste to finalize the RMPA, the text does not uniformly acknowledge these limits. For example, a few places in the RMPA assert that approvals of mining projects pursuant to the Mining Law can be deferred in areas where the disturbance caps are exceeded while other sections properly acknowledge the special status of mining law projects. This language inappropriately assumes deference where the law is clear that these rights are nondiscretionary. The RMPA must be revised to account for the limits of the agency’s authority to impose certain RMPA restrictions on valid existing claims under the Mining Law.

Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC

Michael McCarthy and Hiliary Wilson

Issue Excerpt Text: The Proposed RMPA/FEIS fails to account for the full suite of locatable mineral rights under the Mining Law of 1872 and other federal mining laws, an omission that Barrick has repeatedly criticized during BLM’s GRSG planning efforts. Rights under the Mining Laws are not limited only to valid and existing rights; rather, mining rights include pre-discovery

and ancillary use rights, such as the right to explore for valuable mineral deposits and to utilize claims for other uses reasonably incident to mining. Accordingly, BLM must revise language in the Proposed RMPA/FEIS to recognize the full rights under the Mining Law. As explained in Barrick's Comments, the Mining Law guarantees the right to use and occupy federal lands that are open to mineral entry—with or without “valid existing rights”—for prospecting, mining, and processing, and all uses reasonably incident thereto, including but not limited to, ancillary use rights and rights of ingress and egress to mining properties. These rights were affirmed by Congress in Section 302(b) of the Federal Land Policy and Management Act (“FLPMA”) which declares that “no provision ... of this Act [except as specifically enumerated and not including Section 202 on resource management planning] shall in any way amend the Mining Law of 1872 or impair the rights of locators or claim.” However, the Proposed RMPA/FEIS acknowledges only “valid existing rights” and makes only occasional, parenthetical reference to the Mining Law of 1872. See, e.g., Proposed RMPA/FEIS, p. 2-49. These provisions not only fail to recognize the full scope of the rights embraced by the Mining Law but their obvious lack of clarity risks delaying review and approval of mineral exploration and development projects. Nowhere is this lack of clarity more apparent than in the Proposed RMPA/FEIS's disturbance cap section. There, BLM says that, if direct habitat disturbance exceeds the 3 percent cap at either the project-scale or the HAF fine-scale, then “[n]ew infrastructure projects would be deferred to the extent allowable under applicable laws (such as the Mining Law of 1872), or valid existing rights.” Proposed RMPA/FEIS, p. 2-40. “[T]o the extent allowable” wrongly implies that there is discretion to partially authorize or to indefinitely delay approval of a locatable minerals project. Rights under the Mining Law of 1872, however, are generally viewed as non-discretionary. See 30 U.S.C. § 22 (“all valuable mineral deposits in lands belonging to the United States ... shall be free and open ...” for exploration and occupation) (emphasis added). The agency's sole responsibility in approving mining projects is preventing “unnecessary or undue degradation.” See 43 U.S.C. § 1732(b).”

Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson

Issue Excerpt Text: On the wildlife front, BLM's definition of “unnecessary or undue degradation” in its surface management regulations requires only that the agency “prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.” 43 C.F.R. § 3809.420(b)(7). Greater sage-grouse are not listed as a threatened or endangered species. And application of the disturbance cap (or density caps) or temporary deferral of a project approval would constitute an impermissible de facto withdrawal of public lands from entry under the Mining Law. See 43 U.S.C. § 1714. The BLM's Proposed RMPA/FEIS—and all future GRSG plans—must unequivocally and definitively state that neither disturbance caps nor density caps apply to any locatable mineral activities authorized by the Mining Law of 1872, FLPMA, or BLM's regulations at 43 C.F.R. subpart 3809, including development and operation of existing mine projects, exploration for and development of new mining claims, and all activities reasonably incident thereto.

Summary:

Protestors claim that the BLM's approval of the GRSG PRMPA/FEIS would violate the statutory mandates of the Mining Law of 1872, FLPMA, and the Mining and Minerals Policy Act of 1970 by including language in the GRSG PRMPA/FEIS that suggests that the BLM may require exploration and mining operations under the Mining Law to comply with disturbance caps, density caps, buffers, compensatory mitigation, rights-of-way management, and other similar NSO provisions. Protestors state the GRSG PRMPA/FEIS could constitute a de facto withdrawal of lands from operation of the U.S. mining laws by only acknowledging “valid existing rights” and not consistently stating that the

agency may only prevent UUD when approving mining projects and related uses reasonably incident to mining under the Mining Law.

Response:

The Mining Law of 1872 authorizes exploration and development of certain minerals on federal lands. The BLM has the obligation to prevent UUD when authorizing mineral exploration, development, and other related uses.

Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting mining operations or otherwise using or occupying public lands under the Mining Law (BLM Handbook H-1601-1, Appendix C, p. 25).

The BLM applied management actions in the GRSG PRMPA/FEIS only to the extent that those actions are consistent with the Mining Law, as amended by FLPMA, and the BLM's regulations. The GRSG PRMPA/FEIS is clear in stating that no RMP decision can affect the applicability of the U.S. mining laws or uses thereunder on BLM-managed public lands (GRSG PRMPA/FEIS Appendix 10 p. 10-96). However, under all alternatives, the BLM would request operators proposing to use or occupy public lands or conduct exploration or mining operations under the Mining Law to apply design features to benefit GRSG. Measures voluntarily implemented by the operator would become enforceable when incorporated in a plan of operations approval. To the extent a design feature or best management practice to benefit GRSG is required to comply with applicable state or federal law or is otherwise required to prevent UUD as defined in the applicable regulations, the BLM may require the operator to incorporate the design feature or best management practice in a plan of operations. Where disturbance caps are applied, surface disturbance from locatable operations would be counted towards the disturbance cap, but the BLM may not prevent or unduly restrict operations or uses under the Mining Law in areas where the disturbance cap was exceeded (GRSG PRMPA/FEIS p. 4-83).

The GRSG PRMPA/FEIS does not include any withdrawal recommendations or suggest de facto withdrawals. As stated in Section 4.10.4 of the GRSG PRMPA/FEIS: "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts. However, the BLM could ask the Secretary of the Interior to propose and make a withdrawal of the land from location and entry under the Mining Law of 1872 pursuant to Section 204(a) of FLPMA" (GRSG PRMPA/FEIS p. 4-82). Withdrawals are considered under a separate process by the Secretary consistent with FLPMA and applicable regulations. Should the Secretary propose a withdrawal, the proposal would require environmental and other analysis under NEPA and other applicable authorities before the land could be withdrawn.

The PRMPA/FEIS does not withdraw public lands from location or entry under the U.S. mining laws or exceed BLM's authority to apply measures necessary to prevent UUD from mineral exploration or development operations under the Mining Law. Accordingly, this protest issue is denied.

Monitoring and Mitigation

Western Watersheds Project et al. Greta Anderson et al.

Issue Excerpt Text: The PRMPA/FEIS states that "Compensatory mitigation is not required by the BLM for operations conducted under the Mining Law of 1872." BLM has not provided a reasoned justification for its decision to exempt operations conducted under this law—much less analyzed that change under NEPA. We ask that the Bureau provide its rationale. If the rationale is that BLM lacks

authority to require compensatory mitigation for operations under the Mining Law of 1872, we disagree and protest that issue. Compensatory mitigation provides a means to “prevent unnecessary or undue degradation of the lands.”

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: Compensatory Mitigation: the PRMPA would increase the use of compensatory mitigation relative to current management, allowing operators relief from various plan measures if they implement offsetting compensatory mitigation. However, available data indicates that compensatory mitigation has failed to live up to the Bureau’s promises thus far. See Advocates et al. 2024 at 82-89 (documenting problems). The Bureau must take a hard look at existing data which undermines its assumption about the ability of compensatory mitigation to offset habitat loss and degradation.

Western Energy Alliance et al.

Charlotte Sawyer et al.

Issue Excerpt Text: Also, as a part of FLPMA, BLM is directed to prevent “unnecessary or undue degradation of the public lands,” which does not mean no impacts are allowed, or a no net loss standard, but that unnecessary and undue impacts should be restricted. Indeed, oil and natural gas development within GrSG habitat provides certain benefits to the species through reclamation. Recent studies cited by the Associations in their DRMPA/EIS comments show increased forb diversity and abundance on reclamation sites as well as drastic increases in insect diversity and abundance, providing important protein sources for GrSG chicks. Through reclamation and mitigation measures, the oil and gas industry is working with local and state experts to improve habitat for GrSG. In accordance with NEPA, BLM must recognize these efforts and the science supporting improved sagebrush -steppe ecosystems through reclamation and mitigation efforts. Further, BLM must manage for multiple use, and must acknowledge that FLPMA’s goal of no unnecessary or undue degradation does not mean no impact, does not mean no net lost, and does not authorize a compensatory mitigation standard that requires established habitat benefit prior to impacts.

Wyoming Mining Association

Travis Deti

Issue Excerpt Text: WMA Comment Summary: BLM should not use compensatory mitigation because FLPMA does not authorize it. BLM Response: In all GRSG habitat management areas and consistent with valid existing rights and applicable law, BLM will apply the mitigation hierarchy (avoidance first, then minimization, compensation last) when authorizing third-party actions resulting in GRSG habitat loss and degradation to achieve minimum standards. The mitigation hierarchy is designed to comply with CEQ regulations (40 Part 1508.20) and State regulatory requirements while conforming with the basis of multiple use and sustained yield in a manner that provides for habitat, ecological and environmental protection. Management actions related to mitigation are also in conformance with Executive Order (EO) 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021) and Secretarial Order (SO) 3398, Revocation of Secretary’s Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (April 16, 2021) and IM 2021-038. The BLM’s multiple use and sustained yield mission as defined under FLPMA supports policy direction to: • Implement consistent principles and procedures for mitigation in the BLM's authorization of public land uses; • Apply mitigation to address reasonably foreseeable impacts to resources (and their values, services, and/or functions) from public land uses; and • Follow the mitigation hierarchy by first avoiding damage to the public lands and resources; second,

minimizing damage that cannot be avoided; and third, compensating for any residual impacts to important, scarce, or sensitive resources or resources protected by law. PROTEST COMMENT: IM 2021-038 expired on 9/30/2024 and should not be referenced. Because this interim policy expired the previous IM 2019-018 should be properly referenced. The FEIS and response must align with the current compensatory mitigation policy, not with one that is expired. All responses regarding compensatory mitigation must be revised accordingly.

***Wyoming County Commissioners Association
Bill Novotny***

Issue Excerpt Text: The BLM's vague mention of "potential restrictions" is also problematic. According to 43 C.F.R. S 46.145, "The NEPA analysis conducted in the context of an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring and should analyze the effects of such options". The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis. This analysis of potential management options is noticeably absent from the PRMPA.

Summary:

Protestors claim the BLM's approval of the GRSG PRMPA/FEIS would violate NEPA by not providing a justification for exempting mineral exploration and development operations under the Mining Law of 1872 from conducting compensatory mitigation, stating this method as a means of offsetting habitat loss is not supported by existing data. Another protestor noted that while FLPMA directs the BLM to prevent "unnecessary or undue degradation of the public lands," it does not mean no impacts are allowed, and there have been documented benefits to GRSG through reclamation efforts by oil and gas companies. Protestors also claim that BLM must include an analysis of the environmental effects of any adaptive management strategy in this or subsequent NEPA documents.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(e), 1502.16(a)(9) (2022)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.1(s) (2022)).

At the RMP-level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of an RMP does not directly result in any on-the-ground impacts. The BLM would also look at all appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area.

Compensatory mitigation would be specifically targeted to areas where key resources would receive the greatest benefits. Compensatory mitigation may involve the use of mitigation banks and identifies the need to provide mitigation in the area of impact. However, in some areas, mitigation would not necessarily be geographically bound to areas of impacts based on local situations. Although the BLM is not required to follow state programs or requirements that conflict with federal law and policy, all applicable state mitigation requirements will be met. While presenting detailed information on or responding to the past success of specific mitigation methods is not within the scope of the GRSG PRMPA/FEIS, mitigation measures are selected based on peer-reviewed science and demonstrated

efficacy. The citation provided by the protestor, Advocates et al. 2024, is a comment document that a group of organizations submitted on the GRSG Draft RMPA/EIS. The GRSG PRMPA/FEIS was developed taking into consideration comments that were made on the GRSG Draft RMPA/EIS. Substantive comments made on the GRSG Draft RMPA/EIS can be found in GRSG PRMPA/FEIS Appendix 22, including how the BLM responded to comments on mitigation (pp. 22-63 – 22-66), GRSG habitat disturbance caps (pp. 22-24 – 22-29), and best available science (pp. 22-15 – 22-18). Literature used in the analysis and cited throughout the document provides a comprehensive list of studies and resources used in the preparation of the GRSG PRMPA/FEIS (GRSG PRMPA/FEIS, pp. Lit-1 – Lit-46).

The protestor is correct that FLPMA directs the BLM to prevent “unnecessary or undue degradation of the public lands,” but does not require that there be no impacts. BLM has both the authority and the measures in place to avoid UUD that cannot be mitigated. In addition, if an impact cannot be mitigated and the circumstances support accepting an application, BLM will require an EIS be prepared to analyze any substantial impacts. The GRSG PRMPA/FEIS provides for the balanced management of the public lands in the planning area. The GRSG PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. That the PRMPA does not recommend withdrawals does not result in UUD. Nor does the disclosure of impacts to certain resources in the GRSG PRMPA/FEIS amount to UUD with respect to that resource. That is because the Proposed Plan Amendment would not authorize any actual projects, much less any that would result in UUD. Authorization for the use of public lands would occur through a future separate decision on a specific application and would be subject to future, site-specific NEPA.

Regarding adaptive management, previous adaptive management strategies were inconsistent across the range of GRSG, were often based on political and not biological boundaries, and frequently resulted in conflicting data because of these inconsistencies, compromising a meaningful response. After extensive discussions with state wildlife agency biologists regarding these inconsistencies, the BLM selected to use the hierarchical population monitoring tool in the GRSG PRMPA/FEIS to remove these inconsistencies, using the results as an agreed-upon starting point for future discussions with state wildlife agencies when a population anomaly is detected. Monitoring GRSG populations provides a useful tool for identifying habitat conditions. GRSG PRMPA/FEIS Appendix 7 provides the GRSG monitoring framework and leverages data, information, and assessments to monitor land use plan implementation. GRSG PRMPA/FEIS Appendix 8 establishes GRSG habitat objectives, indicators, and benchmarks that are utilized in the Habitat Assessment Framework (HAF), which informs the wildlife and/or sensitive species component of the Land Health Standards evaluation process (43 CFR 4180.2). The GRSG monitoring framework provides a consistent format for reporting if the land use plan objectives are being met or making progress to being met (GRSG PRMPA/FEIS Appendix 7 p. 7-1). Should GRSG habitat and any resource use prove to be in conflict, adaptive management will provide detail on how to address low population numbers, reversal or retention of thresholds, differential scales, and coordination between agencies on assessing population trends. See Table 2-4 for details regarding how adaptive management strategies would be used in future management actions (GRSG PRMPA/FEIS, pp. 2-44 – 2-50).

In terms of exploration and development operations under the Mining Law, and related uses and occupancy, the BLM will apply management actions in the GRSG PRMPA/FEIS, including compensatory mitigation, only to the extent that they are consistent with the Mining Law of 1872, as amended by FLPMA, and the BLM’s regulations.

The GRSG PRMPA/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP. Accordingly, this protest issue is denied.

NEPA – Best Available Science

Wildlands Defense

Katie Fite

Issue Excerpt Text: We Protest failure to carefully assess and incorporate Sagebrush Reserves and ACECs, and to take a science-based hard look at the positive benefits of ACEC designation where BM would be required to protect the sagebrush and Sage-grouse from irreversible harm. BLM irrationally and arbitrarily claims “Alternative would not respond to the purpose and need”. We Protest BLM’s great failure to protect habitats in an integrated way for Sage-grouse and sagebrush species survival in its rejection of ACEC designation. Instead, BLMs 2015 EIS and now this even worse 2024 plan, continues “death by a thousand cuts” to habitats – ignoring the sagebrush and species preservation science of the 2004 Sage-grouse Conservation Plan, the USFWS COT report, and basic tenets of ecology and population biology.

Wildlands Defense

Katie Fite

Issue Excerpt Text: BLM abandoned new ACECs in the Draft EIS alternatives, claiming :“the area did not meet the ACEC relevance and importance criteria (1610.7-2 (d)) because the BLM believes the PAC criteria utilized in identifying the Sagebrush Sea nomination no longer reflects the most up to date science on habitat connectivity, populations, effects to habitat from climate change, and genetic information across the range of the species”. We Protest BLM failing to detail with sound science-based current analysis and data, why protecting PACs is suddenly not needed. If BLM has some revelatory new info showing what are the most essential lands and landscapes to protect – the FEIS fails to produce it. Is BLM abandoning their whole concept of populations – which have only become MORE isolated -since the USFWS 2013 COT report and PAC delineation?

Wildlands Defense

Katie Fite

Issue Excerpt Text: We Protest that there’s no science-based rationale for significant differences in lek buffers in different state game management fiefdoms across Sage-grouse range, as shown in the FEIS Appendix B Buffers. We Protest the failure to apply sound scientific information and management requirements in the 2024 plan.

Wildlands Defense

Katie Fite

Issue Excerpt Text: We Protest the lack of baseline data needed to understand the plight of Sage-grouse habitat and populations in 2024 populations. This includes:

- Extent of habitat degradation and fragmentation existing and foreseeable (given all the accelerating threats – including from BLM’s Solar EIS, mining claim free-for-alls, new transmission lines carving up the sagebrush biome, etc. There is no specific plan for reducing fragmentation, or reducing existing harmful facilities and development.
- A science-based rationale for axing instead of expanding the Focal habitat category. As habitat is lost to weeds and development, the remaining better condition lands become even more essential to the species – so what does BM do – downgrade them in the 2024 plans.
- Scientific basis for the scattershot and arbitrary differences between states in protections, differences in habitat category names, etc.
- Population status and habitat and genetic connectivity.
- Actual Population numbers. Bizarrely, BLM backs away from the population information in the USFS COT report.

- Lek counts, and intensity of agency counts and analysis of how lek search and count intensity has changed over time.
- Areas where leks have blinked out.
- Leks vulnerable to blinking out.
- Locations and number of leks and their current 2024 status across all populations
- Ecological condition of seasonal habitat areas. This includes recent land health assessments.
- Gaps between populations, and actions needed to restore connectivity.

We Protest all these FEIS baseline information gaps that are needed for a hard look analysis and development of a reasonable range of alternatives.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: Not only has BLM inexplicably modified the denominator inputs for habitat-scale disturbance cap calculations, it has also changed the denominator approach for project-scale disturbance cap calculations, which creates confusion and complications for project planning. Under current management reflected in Alternative 1, the project-scale denominator is calculated using the Disturbance Density Calculation Tool (“DDCT”)—comprising of all PHMA within a 4-mile buffer around the project’s proposed disturbance area plus a 4-mile buffer around each affected active lek in PHMA. By contrast, under the Proposed RMP Amendment, the project level cap denominator includes all PHMA that is “used by” and “supports the GRSG population potentially affected by the proposed project,” including seasonal habitats and transition zones between habitats, though the project-level denominator calculation methods from Alternative 1 may be used if insufficient information is available to “identify the portions of PHMA used by potentially affected local GRSG population.” While the current management structure is complex, it is comparatively more applicable than the proposed changes, which invites inconsistent interpretation. In addition, this shift is inconsistent with the way Montana state calculates project-scale disturbance cap assessment areas using the DDCT. The BLM must provide more objective standards to guide implementation of the “used by” and “supports” language if it is going to apply these changes, and it must also analyze and explain how shifting to a system that is inconsistent with the state of Montana’s will impact sage-grouse and stakeholders. The BLM must also consider how changes may further shrink the denominator of these calculations, thereby creating scenarios where the cap is hit after minimal development activity. BLM failed to respond to our previous comments on this issue, and lacking better justification for such a significant change, the BLM should revisit this decision in the Record of Decision.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: Finally, as explained in more detail above (see comments on disturbance cap protocol), BLM also fails to properly explain how it delineated the HAF fine- and mid-scale units, and the Habitat Assessment Framework Technical Reference (TR2710-1) (Stiver et al., 2015) does not clearly describe how to undertake this process. The BLM must describe how these areas were delineated and give the public an opportunity to comment on its methodology as part of its consideration of the location of compensatory mitigation. Similarly, BLM does not provide mapping data for the lek neighborhood cluster units from Coates et al., 2021, which would be used for both adaptive management and compensatory mitigation. These technical errors violate NEPA.

Nevada Cattleman’s Association

Hanes Holman and Martin Paris

Issue Excerpt Text: Recent science has determined that properly managed grazing is not harmful to Sage-Grouse, rather has found that is a useful tool in Sage-Grouse conservation and fire management. In Chapter 5, Environmental Consequences (pages 4-30 to 4-32) the BLM’s documentation of the impacts of grazing on Sage-Grouse cites 35 studies; 19 of these studies predate 2010 and only one is less than five years old. Given the preponderance of recent studies available demonstrating the negligible impacts and often positive effect of grazing on Sage-Grouse the BLM’s persistent use of outdated data appears to be cherry picking at best and biased at worst. It is fundamentally inconsistent with the BLM’s own purpose and need in the RMPA, which includes “...the need to respond to updated scientific information...” (page 1-4). The BLM also attempts to link livestock grazing with the spread of wildfire (page 4-52) without any supporting evidence. Given the availability of newer and better “science”, the Association believes that the BLM may be in violation of the Data Quality Act “...for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies...” (Sec. 515 of Public L. No. 106-554).

American Petroleum Institute et al.
Amy Emmert et al.

Issue Excerpt Text: The Associations’ June 12 comments also raised issues regarding BLM’s reliance on studies that use genetics to attempt to demonstrate a purported threat to GRSG associated with a lack of gene flow among populations. As the Associations noted, papers such as those by Oyler-McCance (2022), Cross et al. (2018 and 2023) and Row et al. (2018) assume rather than demonstrate that lack of gene flow is currently a significant issue for GRSG populations. However, all of the analyses from these papers are based upon selectively-neutral genetic markers (microsatellites) that occupy non-transcribed sections of DNA between functional genes, and therefore have no role in survival of the organism, are not subject to natural selection, nor of adaptive importance. Moreover, the genetic networks and connectivity analyses are presented as if they are describing very recent gene flow, but all they actually show is the genetic similarity between their sampling sites. The authors do not present any data, or reference any radio-tracking studies, to support their assertions. In addition, the studies on which BLM relies do not take into account translocations of thousands of GRSG which occurred decades ago. BLM made no attempt in the Proposed RMPA/Final EIS to acknowledge the Associations’ detailed comments on these data and methodological issues or the hypothetical nature of the genetic threats of inbreeding and loss of genetic connectivity. The Proposed RMPA/Final EIS did not incorporate any of the suggested scientific literature provided in the Associations’ comment letter, leading to a selective citation of information by the Final EIS preparers. Nor does the Proposed RMPA/Final EIS acknowledge the fact that “none [of the cited studies] has provided any data or reference to other studies that may have identified current genetic issues in any of the sage grouse populations studied.” These are significant issues for the Proposed RMPA/Final EIS because BLM has used the four papers listed above to justify a wide variety of additional land use restrictions and habitat protection designations in the Proposed RMPA/Final EIS, including PHMA with Limited Exceptions.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: The Associations protest BLM’s failure to address mapping concerns from the DRMPA/EIS to the PRMPA/FEIS. The GIS mapping layers for the PRMPA are arbitrary and capricious, and not supported by best available data as they continue to appear to be based on resources unrelated to GrSG leks and habitat. BLM cannot create restrictions on habitat use for the protection of GrSG when some habitat designations are based on non-GrSG uses. For example, when comparing GIS layers for GrSG leks and habitat from the PRMPA/EIS to GrSG habitat

identified by the Wyoming Game and Fish Department, there is some correlation. However, there are additional habitat designations presented in the PRMPA/FEIS which do not include known GrSG habitat at all. In the Wyoming maps, there are several polygon features that do not correlate with any known lek or habitat data but appear to be based on raptor nests such as golden eagles and burrowing owls. Likewise, there are line features that include major stipulations that correlate to historic trails. Both are presented as if they were GrSG habitat, which is not factually accurate and inappropriate for inclusion in the PRMPA/FEIS. Further, a proposed NSO stipulation seems to have been applied randomly to the boundaries of permitted oil and natural gas EIS project areas. These boundaries do not warrant habitat being deemed GrSG in all instances and may be devoid of leks. BLM must use best available science directly related to actual GrSG data. BLM cannot arbitrarily designate GrSG habitat based on unrelated species.

N-2 State Grazing Board

Hank Dufurrena et al.

Issue Excerpt Text: Recent science has determined that properly managed grazing is not harmful to Sage-grouse, rather has found that is a useful tool in Sage-grouse conservation and fire management. In Chapter 5, Environmental Consequences (pages 4-30 to 4-32) the BLM’s documentation of the impacts of grazing on Sage-Grouse cites thirty-five studies; nineteen of these studies predate 2010 and only one is less than five years old. Given the preponderance of recent studies available demonstrating the negligible impacts and often positive effect of grazing on Sage-grouse the BLM’s persistent use of outdated data appears to be cherry picking at best and biased at worst. It is fundamentally inconsistent with the BLM’s own purpose and need in the RMPA, which includes “...the need to respond to updated scientific information...” (page 1-4). The BLM also attempts to link livestock grazing with the spread of wildfire (page 4-52) without any supporting evidence. Given the availability of newer and better “science”, the Board believes that the BLM may be in violation of the Data Quality Act “...for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies...” (Sec. 515 of Public L. No. 106-554).

State of Idaho - Idaho Governor's Office of Species Conservation

Michael Edmondson

Issue Excerpt Text: The PRMPA/FEIS fails to adopt the best available science updated since 2015, which negated the need of a 7-inch stubble height benchmark for Nest/Early Brood Rearing (i.e., nest concealment) and inconsistently applies the 7-inch stubble height benchmark among adjacent states with generally similar GRSG habitat. Imposing a scientifically unsupported and inconsistently applied 7-inch perennial grass benchmark to regulate Idaho’s livestock grazing permittees is inconsistent with the Idaho State Plan and will adversely affect the State of Idaho by undermining Idaho’s broad-based stakeholder support for the PRMPA/FEIS thereby delaying finalization and implementation of an acceptably balanced ARMPA.

Recommended Resolution – Replacing the 7-inch Perennial Grass Height benchmark for Idaho with “adequate nesting cover” (see BLM’s 2019 GRSG ARMPA, Idaho State Plan, and 2023 Idaho State Alternative) in the ARMPA/ROD will resolve this protest issue by aligning with current best available science, providing consistency among adjacent states, and avoiding associated adverse effects for the State of Idaho.

White Pine County, Nevada

Nichole Stephey and Laurie Carson

Issue Excerpt Text: The RMPA / Final EIS negatively impacts the County by failing to sufficiently address predation and predator management. The BLM also fails to consider recent, ""best available"" science regarding corvid predation of Sage-Grouse in areas of intact sagebrush

habitat, despite the County's repeatedly having brought this research to the BLM's attention. Raven predation is a major cause of SageGrouse decline in Nevada. While the County appreciates that the BLM does not manage ravens directly, the BLM is required under the Data Quality Act to use the best available science in documenting potential impacts within NEPA. In the RMPA / Final EIS, the BLM has not done so, choosing instead to use outdated science, and falsely suggest that raven predation is not at this stage, but reliant on anthropogenic disturbance and livestock grazing. Further, the BLM's reluctance to recognize that Nevada's massive overpopulation of ravens must be controlled directly impacts the County by falsely shifting the burden of raven predation to livestock grazing and surface disturbing activities (e.g. locatable minerals). The BLM's failure to recognize that raven overpopulation is now self-perpetuating will not only lead to further decline of the SageGrouse but will likely result in future restrictions on multiple uses (grazing, mining, etc.) that support the County's economy and community character.

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: NEPA requires that BLM “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” and “make use of reliable existing data and resources.” An agency’s NEPA analysis must provide “high quality information and accurate scientific analysis.” Moreover, in Nevada, BLM treats GRSG as a sensitive species, and “[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act.” BLM’s Information Quality Guidelines state that “BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements.” In cooperating agency comments, the County repeatedly stated that BLM must engage in ground-truthing to achieve accurate habitat designations based on best available science and information. Nonetheless, BLM has not ground-truthed its designations. Like the DEIS/RMPA, the FEIS/RMPA includes the disclaimer that “HMA boundaries are not identified using surveygrade assessments (e.g., comprehensive on-the-ground surveys and edge verifications) and, in some states, are the result of large-scale modeling.”

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: The County heavily relies on ranching conducted on or in concert with federally managed land, and our Land Use and Natural Resources Plan supports “increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control.” As we noted in the our DEIS/RMPA comments, BLM’s own analysis in this planning process indicates that livestock grazing is not a principal factor in GRSG habitat loss. We continue to suggest that the Proposed Plan include measures to allow for and streamline Temporary Non-Renewable (TNR) or other nonrenewable allocation of forage for fuels reduction in general and, specifically, to include measures that allow for targeted cheatgrass control or other fine fuels control through TNR-type measures. More broadly, BLM should address in the FEIS/RMPA best available science related to livestock grazing, including all of the studies we recommended to BLM.

Western Exploration

Darcy Murad

Issue Excerpt Text: WEX protests (1) BLM's decision not to ground-truth the mapping on which it relies for habitat designations and (2) BLM's inadequate process for de-designating non-habitat that has been erroneously mapped as HMA. This is contrary to NEPA's requirements and BLM's

Information Quality Guidelines which require BLM to use the best available information in its NEPA and planning processes.

Western Exploration

Darcy Murad

Issue Excerpt Text: BLM's habitat designations must be ground-truthed and must comport with the best available science or reliable information. We protest BLM's failure to ground-truth habitat designations and provide for an adequate de-designation process BLM acknowledges in the FEIS/RMP A that "site-specific conditions on the ground may vary from the landscape scale modelling" that comprises BLM's current mapping of habitat management areas (HMAs). It also clarifies that "PHMA management would not be applied to non-habitat." But BLM's "process for identifying non-habitat" is inadequate. Making no change from the DEIS/RMPA, BLM provides: "If during consideration of a proposed action (project level authorization) within GRSG PHMA, GHMA [general habitat management area] .. and OHMA [other habitat management area] ... potential non-habitat is identified by the BLM, a project-specific review should be conducted by a BLM biologist (or reviewed and accepted for confirmation)." BLM, that is, does not appear to require ground-truthing. By contrast, the State Plan requires ground-truthing: "At the onset of a proposed project, habitat evaluations or 'ground-truthing' of the project site and its surrounding areas shall be conducted by a qualified biologist with sage-grouse experience using [specified] methods ... or other mutually agreed to scientifically valid techniques, to confirm habitat type." The DEIS/RMPA is inconsistent with this requirement. BLM's supposed ground-truthing has three cardinal flaws. First, instead of completing accurate habitat mapping at the RMP A stage, it presumes that habitat exists and then establishes a process to determine that habitat does not. Second, the process of de-designation is flawed because it is not mandatory: areas designated habitat are presumed habitat until BLM takes the initiative to identify "potential non-habitat." Third, BLM does not provide a process for dedesignation outside of the project approval process, which may hamper investment in exploration and/or mining projects where BLM and the proponent have not yet begun the NEPA process. The FEIS/RMP A must be significantly revised to comply with federal requirements for using accurate information and to be consistent with the State Plan, by ground-truthing mapping and providing sufficient process for de-designating HMA.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: For example, the FEIS says, "Intense 'flash' grazing during the winter or early-late spring, while it is still green, may control cheatgrass..." (emphasis added, PRMPA/FEIS at 4-31), while ignoring that cheatgrass infestations are less likely in the absence of livestock disturbance in the first place, a point we have consistently made that the Bureau again failed to consider (Advocates et al. 2024 at 30; WWP et al. 2023 at 32-33). We urged the Bureau to reject the idea of targeted grazing for managing cheatgrass to reduce fire risk because targeted grazing could actually exacerbate the problem by eliminating native bunchgrasses and destroying sage grouse habitat effectiveness in the near term, at the expense of increased fire risk and invasive weed dominance (and therefore lowered sage grouse habitat effectiveness) in succeeding years. See Advocates et al. 2024 at 30. The Bureau continues to ignore this science-based recommendation, and touts the efficacy of livestock as a targeted vegetation management tool for reducing fine fuel loads such as cheatgrass (PRMPA/FEIS at 4-31; PRMPA/FEIS at 4-54)."

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: The PRMPA/FEIS admits that the 2024 analysis reviewed new science about key populations that were not previously included in planning efforts. PRMPA/FEIS at 22-7. This

science wasn't incorporated into the existing 2019 plans, despite some of it being published and provided to the Bureau prior to those plans' development. Thus, the PRMPA/FEIS admits that the 2019 analysis was not based on the best available science. We protest that the 2024 plans maintain this flaw, and we note that the Bureau neglected to consider some of the literature we provided, including Arkle et al (2014), which reviewed the effectiveness of sagebrush restoration, Baker (2006) which discussed the role of fire in sagebrush ecosystems, and numerous others incorporated here by reference. It's unclear why the Bureau refused to review the science we provided, and we protest on this basis.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The proposed RMPA arbitrarily declined to change vegetation management direction in the PRMPA; indeed, an alternative to alter vegetation management strategies was rejected. PRMPA/FEIS at 2-6. The Bureau argues that “in the context of new science, existing RMP management actions for vegetation/habitat management strategies are sufficient....” PRMPA/FEIS at 2-7. The 2015 ARMPAs lack management direction that preclude sagebrush habitat treatments year-round. See, e.g., Nevada-California ARMPA at 2-14, Oregon ARMPA at 2-12 (and see esp. MD-VEG-3 and MD-VEG-14), Wyoming ARMPA at 38 (and see esp MD-VEG-2 and -3) and include direction for woodland removal. However, new science (Smith et al. 2023, Attachment H) shows that sagebrush habitat treatments, including prescribed fires, are not effective and can be detrimental. The study authors found, “that sage-grouse using Wyoming big sagebrush vegetation communities do not respond positively to sagebrush manipulation treatments. Management practices that focus on the maintenance of large, undisturbed tracts of sagebrush will best facilitate the persistence of sage-grouse populations and other species reliant on the sagebrush steppe.” Similarly, new studies on woodland removal projects (efficacy and suggested sideboards) are not incorporated into the PRMPA (e.g., Shineman et al. 2023 and Redmond et al. 2022). This is a key part of taking a hard look and violates NEPA for that reason as well. We provided this information in Advocates et al. 2024 at pages 83-87 and Defenders DEIS comment letter at 42-46. Under the Purpose and Need, the agency should have taken this new science into account and altered the management direction in the RMPAs to preclude (or at least sidebar) sagebrush and woodland treatments, but did not. This failure is arbitrary and capricious.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: An indispensable part of the Bureau's science-based response to help reverse the sage grouse's decline in Oregon is new research to be conducted in 15 specially identified “Key” Research Natural Areas (“RNA”), which the 2015 ARMPA closed to livestock grazing. 2015 Oregon Approved Resource Management Plan Amendment (hereafter “2015 Oregon ARMPA”) at 2-18. The Bureau determined these areas to be critical for sage-grouse conservation both because of their high habitat value for the bird and their high scientific and management value as reference areas to gauge the plan's effectiveness. 2015 Oregon Greater Sage-Grouse Proposed RMPA/Final EIS (hereafter “2015 Oregon FEIS”) at 2-44 to -45. The closures responded directly to the Conservation Objections Team's determination that grazing is a threat to sage-grouse persistence, and that “key research projects that will address uncertainties associated with sage-grouse and sagebrush habitat management [are] essential.” COT Report (2013) at 35. Under PRMPA, the Bureau would reverse course, abandon this science-based management strategy, and partially or entirely return livestock grazing to all but one (East Fork Trout Creek) of the 13 newly closed Key RNAs (two of the Key RNAs were already closed to grazing prior to the 2015 ARMPA). The Bureau fails to provide a rational explanation for why reducing or eliminating scientific research areas, and re-allocating those areas to livestock grazing, is scientifically justified. The Bureau's

proposed plan amendment also is inconsistent with the Bushue court’s finding that “the need for scientific management of grazed lands to promote the survival of sage-grouse” is “a significant public good.” Or. Nat. Desert Ass’n v. Bushue, 644 F. Supp. 3d 813, 842 (D. Or. 2022) (internal quotation marks omitted). In fact, the Bureau fails to even mention the existence of the Bushue case including the in-force Stipulated Remedy that currently requires the agency to implement the closures “without delay.” Or. Nat. Desert Ass’n v. Bushue, 672 F. Supp. 3d 1101, 1107 (D. Or. 2023) (adopting stipulated remedy in which the Bureau agreed to “a detailed plan for immediate, intermediate, and permanent actions to carry out the key RNA closures”).

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: We protest BLM’s failure to use the best available science regarding disturbance caps. The BLM has retained 3% disturbance caps at the HAF and project scale, while also allowing a 5% disturbance cap for Wyoming and Montana at the project scale (including fire and agricultural conversion at the project scale.) We also protest inadequate lek buffers/NSO for oil and gas and other anthropogenic disturbances, including significant exceptions to allow for even weaker standards in Wyoming and Montana. Protesters raised these issues in comments. Advocates et al at 13-19, Center for Biological Diversity Ltr to BLM 8.12.2024 and Advocates et al at 44-53.

BLM states that the purpose of this PRMPA is “to appropriately address[ed] existing threats to GRSG habitat, continued population decline, and updated scientific findings...” FEIS 22-76 And to use best science, stating, “One of the primary purposes of this current RMPA/EIS is to update GRSG management using the best available science FEIS 22-82.

Best science (Kirol et al 2020), was raised by protesters in our DEIS comments. BLM cited Kirol et al 2020 to support 3% disturbance caps. But ignored findings from Kirol and Knick regarding:

- Lekking: 78% of leks were in the 0 to 0.5% developed category, while less than 10% of leks were in areas with greater than 1% development. (Knick et al. 2013)
- Nesting: 70% of nests were in habitats with 0-1% press disturbance for energy development. Press disturbance is the on-going disturbance resulting from authorized uses. Importantly, in areas with <1% press disturbance, the frequency of nest locations was greater than available habitat. But when press disturbance exposure reached 1-2%, the frequency of available habitat exceeded the frequency of nest locations. (Kirol et al 2020)
- Brood rearing: Brood rearing locations exhibited the same trend as nest selection with the frequency of available habitat surpassing the frequency of brood-rearing locations when press disturbance exposure reached 1-2%. These figures bring to light that grouse exhibit significantly higher preferences for surface disturbance rates in the 0-1% range with far fewer grouse selecting areas with disturbance in the 2% to 3% range. (Kirol et al, 2020)

With regard to lek buffers/NSO, Kirol et al 2020 found: “nest survival suggested that the likelihood of a successful nest was negatively associated with the amount of press disturbance within an 8-km² area. Broods exposed to any press disturbance within a 1-km² area were less likely to survive compared to broods not exposed to press disturbance.” Protesters raised the inadequacy of lek buffers/NSO for oil and gas development in Wyoming. Advocates et al. 2024 at 52-53. In the DEIS BLM acknowledged the inadequacy of this approach being contrary at best science, yet failed to correct this in the PRMPA. CSU provisions in the RMPA are also inadequate. Similarly, Protesters raised the inadequacy of density of well development within Wyoming Core Areas. Advocates et al 48-50. The Bureau’s response to comments stated: “This planning effort is not considering any changes to the density caps from the prior land use plan amendments, and as such, comments on the density cap are not within the purpose of this planning effort.” PRMPA/FEIS 22-29. This statement

contradicts the purpose and need and requirement to use best science and should have been analyzed in at least one of the alternatives.

Oregon Natural Desert Association

Peter Lacy et al.

Issue Excerpt Text: ONDA observed that the Bureau, in the DEIS earlier this year, had provided no explanation for why introducing livestock grazing in currently ungrazed Key RNAs is scientifically justified in 2024 when it was not in 2015—that is, why less baseline information and less scientific research is appropriate today when this was a key conservation management direction identified a decade ago. The Bureau fails to address and answer this criticism in the FEIS and PRMPA. This is a textbook instance of a failure to make a rational connection between facts found and choices made. See *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989); see also *Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1023 (9th Cir. 2011) (an agency must “consider[] the relevant factors and articulate[] a rational connection between the facts found and the choices made”). Unless addressed, the Bureau’s final decision would be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). Related, the Bureau also failed to consider (1) replacement RNAs for the five Key RNAs proposed to be completely re-allocated to livestock grazing and (2) replacement acreages for the seven other RNAs proposed to be dramatically reduced in size. Again, ONDA pointed out the Bureau’s own statement that the 15 ungrazed Key RNAs are “the minimum number of sites and areas necessary” to provide statistically significant data. See Oregon 2018 FEIS at 2-4, 4-7, 4-8.[T]he Bureau completely fails to address this issue. It appears nowhere in Appendix 17 (“Proposed RMP Amendment and Analysis for Key Research Natural Areas in Oregon”), and nothing in the lone paragraph mentioning Oregon, at FEIS page 1-8 (fifth bullet point in section 1.5.2 listing “topics considered but not analyzed in detail”), provides any indication whatsoever that the Bureau considered this comment. Nor is there any discussion or analysis of this topic in the remaining body of the FEIS. The Bureau “failed to consider an important aspect of the problem” and (to the extent it can point to any explanation claiming to respond to this comment, though we believe it cannot) “offered an explanation for its decision that runs counter to the evidence before the agency”—hallmarks of arbitrary and capricious agency action. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

Oregon Natural Desert Association

Peter Lacy et al.

Issue Excerpt Text: [T]he Bureau’s proposed prescriptions for forb cover in early and late brood-rearing habitats in Oregon fall short of the most relevant, best available scientific information in Oregon and will not provide sufficient density and diversity of forbs in these critical habitat types. The FEIS proposes habitat indicators that include percentage cover for forbs in breeding and early brood-rearing habitat and a combination of forb and grass cover in late brood-rearing and summer habitats in Oregon. 2024 FEIS 8-14, Table 8.1E. ...In short, the Bureau must revisit its proposed management for forb cover, apply the best available science—most of which in fact derives from Oregon—and adopt directives, objectives and/or habitat indicators promoting a greater percentage of forb cover in sage-grouse brood-rearing habitat to support the species’ production. As it stands in the FEIS and PRMPA, the Bureau has “failed to consider an important aspect of the problem” and “offered an explanation for its [proposed] decision that runs counter to the evidence before the agency.” *State Farm*, 463 U.S. at 43.

Humboldt County Board of Commissioners

Jesse Hill

Issue Excerpt Text: We have repeatedly cited and asked BLM to analyze recent scientific studies showing that properly-managed grazing is not harmful to GRSG, and is a useful tool in GRSG

conservation and fire management. BLM has ignored these recommendations, choosing instead to use outdated science, including, but not limited to, the HAF, developed in 2010. BLM's only response to our comment refers to "grazing data which has yet to be scientifically published (e.g., Bartholdt 2023)" and states that "the Draft RMPA/EIS does not preclude implementation level decisions to utilize different grazing strategies to address GRSG habitat goals." This response is insufficient: BLM's data is clearly outdated and must be updated. At FEIS pp. 4-30–32, for example, BLM's documentation of the impacts of grazing on GRSG cites 35 studies; 19 of these studies predate 2010 and only one is less than five years old. In light of the preponderance of recent studies, which we have cited to BLM, that demonstrate the negligible impacts and often positive effect of grazing on GRSG, BLM's persistent use of outdated data is tantamount to scientific cherry picking and is demonstrably biased. It is fundamentally inconsistent with BLM's own purpose and need in the RMPA, which includes "the need to respond to updated scientific information." BLM also attempts, falsely, to link livestock grazing with the spread of wildfire without any supporting evidence. Given the ready availability of newer and better data, we find that the BLM may be in violation of the Data Quality Act, DOI Information Quality Guidelines and Policies, the BLM Information Quality Guidelines, and CEQ's NEPA regulations at 40 CFR § 1506.5(a). All of these laws require BLM to ensure that its documents are prepared with professional and scientific integrity and use reliable data and resources.

Humboldt County Board of Commissioners
Jesse Hill

Issue Excerpt Text: We protest BLM's failure to consider in the FEIS/RMPA recent science regarding impacts of corvid (raven and crow) predation on GRSG. BLM has ignored our input and continues to frame predator control, based on outdated science, as primarily a development/disturbance issue. We have previously addressed this issue, including by citing relevant studies. See Humboldt County Fatal Flaw Comments at Rows 39, 46; Humboldt County DEIS/RMPA Comments at 69. As we have explained, BLM fails to consider recent science regarding corvid predation of GRSG in areas of intact sagebrush habitat, irrespective of Humboldt County's having brought this research to BLM's attention. Raven predation is a major cause of GRSG decline in Nevada. While Humboldt County appreciates that BLM does not manage ravens, BLM is required under the Data Quality Act to use the best available science in documenting potential impacts within NEPA. In the FEIS/RMPA the BLM has not done so, choosing instead to use outdated science, and to falsely suggest that raven predation is not at this stage sui generis but instead results from anthropogenic disturbance and livestock grazing.

N-4 State Grazing Board
Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: Recent science has determined that properly managed grazing is not harmful to Sage-grouse, rather has found that is a useful tool in Sage-grouse conservation and fire management. In Chapter 5, Environmental Consequences (pages 4-30 to 4-32) the BLM's documentation of the impacts of grazing on Sage- Grouse cites thirty-five studies; nineteen of these studies predate 2010 and only one is less than five years old. Given the proponderance of recent studies available demonstrating the negligible impacts and often positive effect of grazing on Sage-grouse the BLM's persistent use of outdated data appears to be cherry picking at best and biased at worst. It is fundamentally inconsistent with the BLM's own purpose and need in the RMPA, which includes "...the need to respond to updated scientific information..." (page 1-4). The BLM also attempts to link livestock grazing with the spread of wildfire (page 4-52) without any supporting evidence. Given the availability of newer and better "science", the Board believes that the BLM may be in violation of the Data Quality Act "...for ensuring and maximizing the quality, objectivity,

utility, and integrity of information, including statistical information, disseminated by Federal agencies..." (Sec. 515 of Public L. No. 106-554).

***Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden***

Issue Excerpt Text: Contrary to BLM’s FEIS/RMPA habitat designation, the GRSG habitat baseline field survey found that “[v]egetation in the Bells Survey Area consists largely of sagebrush communities that offer potential habitat to GRSG” but BLM did not note any GRSG occupation there. And “[t]he Grass Valley lek had no GRSG observed in 2020 or 2021.” BLM’s designation of most of the Hog Ranch Project area as PHMA thus is not based on best available science. This contravenes NEPA and BLM policy. Under NEPA, BLM must “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” and “make use of reliable existing data and resources.” Additionally, in Nevada, BLM treats GRSG as a sensitive species, and “[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act.” BLM’s Information Quality Guidelines provide that “BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements.

***Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden***

Issue Excerpt Text: We also note that the FEIS/RMPA still appears to consider potential habitat or non-habitat as PHMA by defining PHMA as “[a]reas that have the highest value to maintaining sustainable GRSG populations”—but not necessarily areas that are GRSG habitat or presently host members of the species. But BLM’s own Glossary of Common Terms states that habitat is “[a]n environment that meets”—not just has the highest value to maintaining—“a specific set of physical, biological, temporal, or spatial characteristics that satisfy the requirements of a plant or animal species or group of species for part or all of their life cycle.” BLM must provide a “reasoned analysis” justifying its departure from this definition of habitat. Further, BLM cannot manage an area for habitat where that area is not habitat. The Supreme Court recently rejected the US Fish and Wildlife Service’s (USFWS’s) decision to manage habitat for the dusky gopher frog where the area could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized “to designate the area as critical habitat unless it is also habitat for the species.”

***Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson***

Issue Excerpt Text: The Proposed RMPA/FEIS would maintain the 3% disturbance cap in PHMA in all states (and the 5% disturbance cap at the project-scale in Montana and Wyoming). Proposed RMPA/FEIS, p. 2-122. However, BLM still does not justify this cap in light of its inconsistency with the rate of anthropogenic disturbance in rangewide PHMA and does so without sharing the studies and sources of information upon which it claims to rely. Justification for the 3% disturbance cap was based on a study conducted before the 2015 LUPAs, which showed that “[a]nalyses of disturbance thresholds found GRSG began negatively responding to disturbances at approximately 4.5% disturbance and did not use habitats when surface disturbance exceeded 8% (Kirol et al. 2012).” Proposed RMPA/FEIS, p. 4-25. While a conservative factor-of-safety (i.e., 1.5% below the 4.5% threshold identified in Kirol 2012) may have been reasonable in 2015, the Proposed RMPA/FEIS fails to justify continuing to implement the 3% disturbance cap from the 2015 LUPAs and 2019 ARMPAs (see, e.g. Proposed RMPA/FEIS, App’x 2, 2-ID-15, 2-DILLON-8, 2-NVCA-4) in light of the fact that, in PHMA and IHMA, anthropogenic disturbance increased by only 0.03% rangewide

between 2015 and 2020. See BLM, 2015-2020 Monitoring Report, p. viii; Proposed RMPA/FEIS, App’x 22, p. 22-26. Furthermore, the BLM’s additional responses with respect to comments urging it to reconsider the disturbance cap neglect to cite or name the studies and sources of information upon which BLM claims to rely. For example, BLM states that “[l]imiting disturbance is supported by the scientific literature” but then fails to specifically cite any scientific literature. Nor does the agency provide support for the assertion that: “If a project results in loss of greater than 3%, habitat function for GRSG in the area may also be lost, and thus it may be difficult for BLM management to be responsive to changing land uses, improve efficiency and effectiveness of GRSG habitat management, provide for consistent conservation across state lines, and provide the BLM with locally relevant decisions that accord with range-wide GRSG conservation goals.” Proposed RMPA/FEIS, App’x 22, p. 22-27. And BLM’s discussion of the scientific findings about negative impacts on GRSG related to disturbance at various thresholds in Section 4.2.1 fails to mention “habitat function,” “changing land uses,” “efficiency and effectiveness” of habitat management, “consistent conservation across state lines” as a result of a 3% threshold, “locally relevant decisions,” or any related factors. Id., p. 4-25.

Summary:

Protestors claimed the BLM’s approval of the GRSG PRMPA/FEIS would violate the Data Quality Act, Department of the Interior Information Quality Guidelines and Policies, the BLM Information Quality Guidelines, and CEQ’s NEPA regulations by:

- Failing to include the best available science related to livestock grazing. Some protestors cite studies demonstrating the negligible impacts of livestock grazing on GRSG, including information that suggests properly managed grazing is a useful tool in GRSG conservation and wildfire management. Other protestors cite studies that claim sagebrush habitat treatments including livestock grazing are not effective in protecting sage-grouse habitat.
- Failing to use the best available science regarding delineations of management areas such as disturbance caps, lek buffers, Research Natural Areas (RNAs), ACEC designations, and HAF units, as well as relying on processes for identifying non-habitat designations that are not rooted in science. Protestors stated the BLM failed to ground-truth habitat designations resulting in inaccurate maps.
- Failing to consider recent science regarding corvid predation of GRSG in areas of intact sagebrush habitat.
- Failing to provide sufficient baseline data regarding GRSG populations and habitat.
- Failing to address concerns regarding best available science expressed by the public between the GRSG Draft RMPA/EIS and the GRSG PRMPA/FEIS.

Response:

NEPA requires the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document” (42 United States Code [U.S.C.] 4332(d)). The CEQ regulations implementing NEPA further require that agencies use information that is reliable and accurate (40 CFR 1502.23 (2022)).

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).

Before beginning preparation of the GRSG Draft RMPA/EIS, and throughout the planning effort, the BLM considered the availability of data from all sources, the adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The BLM has incorporated the latest science into the discussion of impacts in Chapter 4 (GRSG PRMPA/FEIS, pp. 4-1 – 4-144) and Appendix 10 (pp. 10-1 – 10-196), including an analysis of both the potential for beneficial and adverse effects on GRSG habitat. For example, GRSG PRMPA/FEIS Section 4.2 and Appendix 10 Section 4.2 discuss the potential impacts of the proposed management under each alternative to GRSG including potential impacts from livestock grazing (pp. 4-25 – 4-47 and Appendix 10 pp. 10-3 – 10-28). Sections 4.8 and Appendix 10 Section 10.8 discuss the potential impacts of proposed management under each alternative to livestock grazing (GRSG PRMPA/FEIS pp. 4-65 – 4-70 and Appendix 10 pp. 10-56 – 10-66) and Section 4.4 and Appendix 10 Section 4.4. include the analysis on the impacts of grazing on wildfires (GRSG PRMPA/FEIS pp. 4-54 – 4-55 and Appendix 10 pp. 10-39 – 10-40). BLM made several changes to Section 4.2 in the PRMPA/FEIS to clarify the potential for beneficial effects from livestock grazing on GRSG. For example, in this section BLM states "Livestock grazing can be a management tool to aid in the management or maintenance of vegetation communities within GRSG habitat. Well managed livestock grazing may change plant community composition, increase productivity of selected species, increase forage quality, and alter structure to increase habitat diversity" (GRSG PRMPA/FEIS p. 4-31). The BLM will continue to comply with all existing laws related to livestock grazing, including 43 CFR 4100 and the Taylor Grazing Act. While administering livestock grazing cannot be addressed through an RMPA, habitat indicators will be periodically reviewed to incorporate the best available science in coordination with applicable federal, state, local, and tribal agencies.

The BLM has provided detailed analysis and supporting literature for land management delineations related to GRSG for disturbance caps, lek buffers, RNAs, ACECs, and HAF units. GRSG PRMPA/FEIS Appendix 6 details how the BLM considered and incorporated information from the National Technical Team (NTT), Conservation Objectives Team, and U.S. Geological Survey Science into the GRSG PRMPA/FEIS analysis (GRSG PRMPA/FEIS Appendix 6 pp. 6-1 – 6-4). For more information related to RNAs, refer to the *Special Designations* section of this Protest Report.

Rangewide changes in lek buffers are not proposed in the GRSG PRMPA/FEIS. The BLM's PRMPA would adopt the lek buffers identified by individual state wildlife agencies for GRSG, as described in Sections 2.4 and 2.5 of the GRSG PRMPA/FEIS, and would adopt the lek definitions developed by the Western Association of Fish and Wildlife Agencies to ensure consistency across RMPs.

GRSG PRMPA/FEIS Appendix 17 explains the background of BLM Oregon key RNAs and management direction for the key RNAs under the PRMPA. The BLM is aware of the litigation in the District of Oregon (*Or. Nat. Desert Ass'n v. Bushue*, Case No. 3:19-cv-1550-SI) and considered the court's decision and the ongoing litigation in this planning process. In the GRSG PRMPA/FEIS, the BLM updated the description of the affected environment for key RNAs and the PRMPA would clarify and modify management direction for key RNAs compared to current management direction (GRSG PRMPA/FEIS Appendix 17). The proposed management direction for BLM Oregon key RNAs is based on reliable high-quality information (GRSG PRMPA/FEIS Appendix 17).

The BLM's planning effort included an evaluation of potential ACECs to protect GRSG habitat attributes. The BLM reviewed updated scientific data to identify potential ACECs and solicited external nominations for areas that have relevant and important GRSG values. While the PRMPA does not include any ACEC designations, the BLM considered ACEC designations in detail under Alternatives 3 and 6, and several other alternatives including ACECs were considered but dismissed from detailed analysis (GRSG PRMPA/FEIS pp. 2-15 – 2-18). The BLM's ACEC evaluation is described in GRSG PRMPA/FEIS Appendix 5. The BLM will consider future ACEC nominations consistent with 43 CFR 1610.7-2 and BLM's ACEC Manual 1613.

The Habitat Assessment Framework (HAF; BLM TR 6710-1, as revised) provides a standardized, scientifically based methodology to assess sage-grouse habitat suitability at multiple scales (broad, mid, fine, and site-scales, Levels 1, 2, 3 and 4 respectively) (GRSG PRMPA/FEIS Appendix 8). Regarding HAF units, delineation of the units themselves are not RMP decisions. HAF units are boundaries informed by the best available science to reflect the characteristics of the scale described in the HAF. As GRSG data continue to be collected, the fine scale areas could be refined and updated in coordination with the applicable state agencies to reflect the scale of habitat use described in the HAF.

Although ground-truthing data was not within the scope of this planning effort, the BLM acknowledges that site-specific conditions on the ground may vary from the landscape scale modelling and that those conditions change over time. As such, the GRSG PRMPA/FEIS explains how the BLM may further evaluate site-specific conditions and verify the presence of GRSG habitat during project-specific reviews. If the BLM finds that a proposed project is located in potential non-habitat, the BLM should use up-to-date high-quality information, including through field investigations, where appropriate, to review the potential non-habitat (GRSG PRMPA/FEIS, pp. 2-50 – 2-51). If the BLM confirms that the project is proposed in verified non-habitat, and subject to the additional criteria described in the PRMPA, PHMA management direction would not apply (GRSG PRMPA/FEIS, pp. 2-50 – 2-51).

GRSG PRMPA/FEIS Section 3.2.1 includes a discussion of predation as a threat to GRSG. This section has been revised from the GRSG Draft RMPA/EIS to include additional discussion about the threat of predation from corvids on GRSG as well as a discussion of several additional GRSG predators (GRSG PRMPA/FEIS pp. 3-4 – 3-6). The BLM considered the information provided by commenters on the GRSG Draft RMPA/EIS regarding threats to GRSG populations (GRSG PRMPA/FEIS Appendix 22 pp. 22-71 – 22-73). While BLM has no management authority over predators, the GRSG PRMPA/FEIS does include best management practices and Required Design Features for corvid minimization, requiring proponents/applicants to create predator management plans, and considers the USFWS 2023 publication on raven conflict management (USFWS 2023), which is cited in GRSG PRMPA/FEIS Section 3.2.1 (p. 3-5).

Land use plan-level analyses are typically broad and qualitative rather than focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13 and Chapter IV, B at 29). As such, the GRSG PRMPA/FEIS presents baseline data and impacts analysis at a land use plan scale to guide informed land use plan-level decisions. The BLM maintains a national GRSG conservation website (<https://www.blm.gov/programs/fish-and-wildlife/sage-grouse>) as part of its efforts to maintain and restore GRSG habitat on public lands. The site is intended to help the public learn how the BLM is working on maintaining and restoring GRSG habitat. It includes background information related to government and BLM roles in GRSG conservation. In addition to the national GRSG conservation website, the BLM established a National NEPA Register website with information related to this planning effort at <https://eplanning.blm.gov/eplanning-ui/project/2016719/510>. Throughout the planning process, the BLM maintained both websites to include the most current information, and share background documents, information on public meetings, contact information, and all relevant planning and NEPA-related documents.

The BLM considered relevant and available published scientific information up to the date of publication of the GRSG PRMPA/FEIS and considered all information provided during the comment period on the GRSG Draft RMPA/EIS. The BLM is required to assess, consider, and respond to all substantive comments received during the public comment periods under NEPA (40 CFR 1503.4 (2022)). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM NEPA Handbook H-1790-1, pp. 65-66). In compliance with NEPA, the BLM considered all public comments submitted on the GRSG Draft RMPA/EIS including data sources that had not been included in the GRSG Draft RMPA/EIS. GRSG

PRMPA/FEIS Appendix 22 summarizes and provides BLM’s responses to all substantive public comments received on the GRSG Draft RMPA/EIS. The BLM complied with CEQ’s NEPA implementing regulations (40 CFR 1503.4 (2022)) by performing a detailed comment analysis that assessed and considered all substantive comments received (GRSP PRMPA/FEIS, Appendix 22, pp. 22-1 – 22-138). More information related to how the BLM addressed public comments can be found in the *NEPA – Responses to Comments* section of this Protest Report.

The BLM relied on high quality information in preparing the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA – Cooperating Agencies

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: First, on Monday, November 22, 2021, BLM published the NOI to prepare an EIS and RMPA to address the management of GrSG and sagebrush habitat on BLM-managed public lands through a land use planning initiative in ten (10) western states including Wyoming. Prior to the NOI being filed, BLM had made no effort to reach out to state and local governments inviting them to participate in the NEPA process as a CA as provided by law. It was then that the Counties and other CAs in the ten western states contacted BLM expressing interest in becoming a CA and expressed concern in not being notified before the NOI was released to the public. The NEPA requires that federal agencies take an interdisciplinary approach and work alongside state, tribal, and local governmental partners to develop and draft environmental and socioeconomic analysis for a range of alternatives. The Council on Environmental Quality, which provides the regulatory framework for NEPA compliance, clearly provides how a Lead Agency is to engage with cooperating agencies. 40 CFR § 1501.7(h) and (i) provides ... As outlined, the BLM was well down the road in drafting the alternatives and the DEIS before Wyoming counties became engaged in the process as CAs. More appropriately and required by law, BLM should have reached out to CA long before the NOI was filed so that we could have completed the MOU process, engaged with the federal agency up front in the identification of alternatives, identified timelines and milestones for the NEPA process and assisted with providing the appropriate level of information necessary to create alternatives. BLM failed to engage cooperating agencies at the appropriate time which would have been prior to the NOI being issued in the federal register.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: Sublette County continues to be concerned with the lack of BLMs recognition of county CAs in the planning process. Allowing CAs the opportunity for greater involvement and further review is not only in the best interest of the BLM, it also conforms to the best practices outlined in the BLM's Desk Guide to Cooperating Agency Relationships, MOUs, and the law (Footnote 12: CFR § 46.230 provides the lead bureau is to collaborate, to the fullest extent possible, with all CAs concerning those issues relating to their jurisdiction and special expertise throughout the development of an environmental document.). As BLM HQ is aware, Wyoming Counties formally requested multiple times to have the BLM follow the MOUs and work in good faith to provide more consistent involvement in the development RMPA. Unfortunately, the BLM HQ missed the mark on sufficient engagement with CAs throughout the process as CAs were relegated to a “check-the-box” exercise. Finally, this latest iteration of the FEIS PRMPA, with the creation of an entirely new management area (PHMA+) at the eleventh hour, is just the latest example of how failing in the process has generated substantive issues with the PRMPA. Instead of leaning into the decades of partnership in GrSG management to co-develop the plans and analyses, CA counties

have largely been downgraded to an editorial position. The BLM failed in its duty to adequately engage with Sublette County throughout the entirety of the RMPA process.

Weston County and Converse County, Wyoming
Becky Hadlock et al.

Issue Excerpt Text: The WCCA again issued another letter to BLM expressing concern that Wyoming Counties were being excluded from parts of the cooperating agency process and that BLM was " .. ignoring its obligations under our MOUs and its disregarding its own guidance for successful cooperation under the National Environmental Policy Act. .. " The WCCA itemized specific areas where the BLM failed in its responsibilities to work with Counties as provided by the existing MOUs to perform certain tasks within the NEPA process. As documented, there were multiple requests sent to the BLM asking them to allow cooperating agencies, particularly counties, the opportunity to meaningfully engage in the process as Wyoming Counties have expended substantial resources to ensure that communities socioeconomic and cultural values were taken into consideration and adequately considered in the EIS.

State of Utah Public Lands Policy Coordinating Office
Redge Johnson and Sindy Smith

Issue Excerpt Text: For most of the planning process, the BLM identified only two habitat management areas, with a third designation for Idaho – PHMA, GHMA, and IHMA (Idaho only). The BLM developed and disclosed management allocations for those HMAs and the States spent months evaluating and commenting on those designations and allocations. Despite these efforts and without prior vetting, the BLM released a Draft Proposed Greater Sage-grouse Plan Amendment Management Allocations and Management Direction (“Management Direction”) document on August 9, 2024, that introduced a new designation – PHMA with limited exceptions. Communications from BLM suggested the Management Direction documents were designed to inform the States and cooperating agencies of the proposed changes to the RMPA and allow for feedback on any “fatal flaws” in those documents. However, the BLM requested all feedback be received by August 19, 2024, only ten days after receipt of the Management Direction. As an initial matter, this did not provide the State with adequate time to review the proposed changes with all interested stakeholders and develop meaningful comments. More importantly, the PHMA with limited exceptions designation included more extensive management prescriptions, beyond those previously evaluated by the State for PHMA. Additionally, the boundaries for these areas were drawn up without state involvement and without proper vetting of the designation process. The State was therefore deprived of any meaningful involvement in this part of the planning process.

State of Idaho - Idaho Governor's Office of Species Conservation
Michael Edmondson

Issue Excerpt Text: By adding a fourth HMA tier, PHMA+ undermines Idaho’s well-established, broadly accepted, and effective three-tier HMA designation and allocation approach. Idaho’s existing three-tier HMA approach is consistent with BLM’s 2015 and 2019 ARMPAs, the Idaho State Plan, and the Idaho State Alternative analyzed in the DEIS. Procedurally inappropriate and anti-collaborative, the BLM unexpectedly created PHMA+ as a rangewide amendment without Cooperating Agency knowledge and very late in the planning process after public release of the DEIS. Moreover, the BLM did not subsequently make PHMA+ available for public review. The BLM informed Cooperating Agencies after-the-fact during a draft ARMPA “Fatal Flaw” Review, which was for an inadequately brief period of one week. The State of Idaho is deeply invested in the ultimate success and implementation of an acceptable PRMPA that aligns well with the Idaho State Plan. This NEPA procedural flaw in how PHMA+ was added to the PRMPA/FEIS without Cooperating Agency input or a public review opportunity imposes undue litigation risks that will

adversely affect the State of Idaho by delaying finalization and implementation of an acceptably balanced ARMPA.

Wyoming County Commissioners Association

Bill Novotny

Issue Excerpt Text: The BLM's decision to conduct a multi-state range-wide planning has diluted our membership's ability to meaningfully participate as cooperating agencies as required under the Federal Land Policy and Management Act (FLPMA). Further, the west-wide planning effort made FLPMA's requirement to achieve integrated consideration of social and economic science to understand specific effects on our counties impossible. 43 U.S.C. 1712(c)(2); 42 U.S.C. 4332 Section 102(A)

Wyoming County Commissioners Association

Bill Novotny

Issue Excerpt Text: As the BLM states its "goal is to provide all the BLM states with GRSG habitat Management with consistent, updated management direction where it is needed while also allowing for state-specific differences and variation." (22-76) The PHMA+ designation was not analyzed with cooperating agencies in Wyoming, commented on by the public, is not necessary to prevent irreparable harm to GrSG habitat in Wyoming, and therefore should be removed from the Record of Decision to allow for specific differences and variation.

Wyoming County Commissioners Association

Bill Novotny

Issue Excerpt Text: Lastly, the WCAA remains concerned that the BLM's approach to developing the PRMPA Adaptive Management strategy lacked the collaboration necessary for lasting durability. After months of not having an opportunity to co-create a workable Adaptive Management strategy, the State of Wyoming submitted its own alternative. Unfortunately, the BLM did not evaluate the State of Wyoming's proposal for Adaptive Management in a cooperating agency meeting or in the DRMPA. This prompted the State of Wyoming to include pertinent sections and concerns in its DRMPA comment letter. The BLM's sole response to Wyoming's alternative was that "most of the actions were already evaluated among other alternatives, were substantially similar to the language already being considered, would result in substantially similar effects, were not consistent with the BLM's purpose and need, included recommendations that were not consistent with BLM policy, or would be addressed during the implementation process." (22-80)

Summary:

Protestors stated that the BLM's approval of the GRSG PRMPA/FEIS would violate FLPMA and NEPA because the BLM failed to properly coordinate with Cooperating Agencies in the following ways:

- The BLM did not timely invite state and local governments to participate in the NEPA process as a Cooperating Agency.
- The BLM failed to follow the Memoranda of Understanding (MOUs) and work in good faith to provide more consistent opportunities for Wyoming counties to meaningfully engage in the process and development of the RMPA.
- The BLM introduced the PHMA with limited exceptions designation without informing Cooperating Agencies or providing an opportunity for Cooperating Agencies to comment on the new designation. The introduction of the PHMA with limited exceptions designation was introduced following the formal public comment period for the Draft RMPA/EIS and

Cooperating Agencies were only granted a ten-day “fatal flaw” review which was not an adequate amount of time to review the proposed changes with all interested stakeholders and develop meaningful comments.

- The BLM’s decision to conduct this effort on a multi-state, rangewide scale diluted agencies’ ability to meaningfully participate as cooperating agencies.
- The BLM did not meaningfully consider or evaluate the State of Wyoming’s proposed alternative and Adaptive Management strategy.

Response:

Both NEPA, including DOI and CEQ NEPA implementing regulations, and BLM planning regulations include provisions describing the role of cooperating agencies in NEPA reviews and planning processes (see, e.g., 43 CFR 46.225, 46.230; 40 CFR 1501.7, 1501.8, 1508.1(e) (2022); 43 CFR 1601.0-5, 1610.3). These regulations direct lead agencies to request the participation of cooperating agencies “at the earliest practicable time” (40 CFR 1501.7(h) (2022)), but do not prescribe specific methods for coordination with cooperating agencies.

The BLM published a Notice of Intent to amend an RMP and prepare an EIS in the *Federal Register* on November 22, 2021. The BLM appropriately sent invitations to potential cooperating agencies to participate in the planning process in December 2021 and January 2022, which was during the scoping period that closed on February 8, 2022 (GRSG PRMPA/FEIS p. 5-6). The list of cooperating agencies is provided in GRSG PRMPA/FEIS Table 5-1 (GRSG PRMPA/FEIS, pp. 5-3 – 5-5). Some additional entities that were invited either did not reply or chose not to participate. In addition, the BLM engaged the U.S. Forest Service, USFWS, and Environmental Protection Agency at the national level to identify and receive feedback on specific issues under the jurisdiction of those agencies.

In addition, the BLM participated in the Western Governors’ Association (WGA) Sage-Grouse Task Force. The Task Force is comprised of Governor designees who advocate for the interests of their state, including the interests of the counties. BLM met regularly with the WGA Task Force during the planning effort, sometimes weekly, to discuss options for management decisions. Those fruitful discussions helped frame both the preferred alternative in the GRSG Draft RMPA/EIS and the GRSG PRMPA/FEIS, particularly relative to adaptive management mitigation, energy development, and transmission.

The GRSG PRMPA/FEIS describes the participation of cooperating agencies in Section 5.4, *Cooperating Agencies*, including the timeline for engagement, engagement strategy, and a list of cooperating agencies by state (GRSG PRMPA/FEIS pp. 5-1 – 5-6). All cooperating agencies were given opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative Draft RMPA/EIS, and identification of issues and data during public scoping and the Draft RMPA/EIS public comment period. Further, coordination with cooperating agencies continued through the development of the GRSG PRMPA/FEIS. Neither NEPA nor BLM planning regulations include specific requirements for responses or review periods for cooperating agencies, including for opportunities to review PHMA with limited exceptions. The BLM provided a public geospatial interface in conjunction with publication of the GRSG Draft RMPA/EIS and PRMPA/FEIS and is committed to providing tools, data, and assistance to help implement the plan. The BLM appreciates the input from cooperating agencies and considered it in developing the GRSG PRMPA/FEIS. In addition, the BLM will modify elements of the Approved RMPA regarding PHMA with limited exception in consideration of feedback received from various states during the governor’s consistency review process. The BLM will provide further explanation in the BLM’s Record of Decision (ROD) cooperating agencies. Based on the coordination efforts described above, the BLM has met the legal and regulatory requirements for coordination to date.

As discussed under *FLPMA – Consistency with Other Plans*, the scale of the GRSG planning effort is consistent with the BLM's planning regulations. The BLM's land use planning regulations allow planning at any appropriate geographic scale (43 CFR 1610.1(b); BLM Land Use Planning Handbook H-1601-1 p. 14). The planning area here, defined in coordination with relevant BLM state directors, includes all lands within the boundaries of BLM field offices that contain GRSG habitat, excluding the Bi-state distinct population segment (DPS) and the Columbia Basin DPS, which are addressed in other planning efforts. The planning area includes much of the western United States, comprising portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming (GRSG PRMPA/FEIS pp. 1-2 – 1-3). This planning area facilitates consistency across states and updates the approach taken in the BLM's 2015 and 2019 planning efforts. Further, FLPMA (at 43 U.S.C. 1712(a)) directs the Secretary of the Interior to develop, maintain, and revise land use plans. While the Secretary has delegated land use planning authority to BLM Field Managers and State Directors through the planning regulations (43 CFR 1601.0-4), this delegation does not preclude a supervisor of the delegee (including the BLM Director) from exercising that authority.

The BLM has prepared the GRSG Draft RMPA/EIS and GRSG PRMPA/FEIS to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission, and GRSG management efforts with Federal, State, local, and Tribal partners. The ten-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort.

This planning effort recognizes the importance of including RMP actions that address GRSG threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions. This effort also recognizes the legal and functional imperative of coordinating management with state, federal, tribal, and local plans and policies. The purpose of this land use planning process is to amend a sub-set of the GRSG management actions to ensure management actions on BLM-administered lands support GRSG conservation goals, respond to changing land uses in GRSG habitats, improve the efficiency and effectiveness of GRSG management actions, provide for consistent conservation outcomes in GRSG habitat, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals. The purpose of this amendment is focused on cross-cutting management actions/topics that are applicable throughout the planning area with variations for local and state-specific conditions, as appropriate. RODs will be issued using a state-by-state approach that further accounts for site-specific variation.

Regarding the Wyoming-proposed alternative, as detailed in Section 2.3, *Alternatives Considered but Not Analyzed in Detail*, the BLM considered the alternative proposed by the State of Wyoming to develop a "state alternative" and determined most of the actions were already evaluated among other alternatives the BLM analyzed in detail (GRSG PRMPA/FEIS p. 2-5, Appendix 22 p. 22-80). In some instances, the exact language was already in the range of alternatives or was incorporated in Alternative 5. In other instances, the proposed language was substantially similar to language already being considered, or that would result in substantially similar effects. In very few instances, the BLM determined the proposed alternative was not consistent with the purpose and need (e.g., removing the disturbance cap), and included recommendations that were not consistent with BLM policies. The RMP-level actions in the alternative proposed by Wyoming are already considered in the range of alternatives. Therefore, the BLM did not separately analyze the alternative proposed by the State of Wyoming.

The BLM properly involved all cooperating agencies in the development of the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA – Cumulative Effects

Wildlands Defense

Katie Fite

Issue Excerpt Text: We Protest that BLM’s 2024 FEIS fails to provide a solid science-based baseline of threats from recent, planned and ongoing federal agency projects – from Greenlink North opening the door to immense industrial “green” energy projects and green colonialism in central NV Sage-grouse habitats to Lava Ridge wind farm that would be certain to wipe out the struggling sage-grouse population in this area, and perforate Sage-grouse range in Idaho. Note – that despite overwhelming public opposition, BLM’s Stone-Manning approved the Lava Ridge ROD. So much for BLM “collaboration” with the Congressional delegation, state and local parties as the in opposition – including the entire Idaho legislature the three counties, local communities and even BLM’s own RAC opposed Lava Ridge.

Cassia County, Idaho

Kerry McMurray et al.

Issue Excerpt Text: BLM's is required to take a ""hard look"" and analyze the impacts of the RMPA, including the requirement of NEPA to evaluate both direct and indirect foreseeable impacts. Uncertainty is inherent in predicting the future but 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 is reasonably foreseeable,s 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. "" While agencies are: ... Similarly, BLM may not refuse to evaluate direct and foreseeable impacts without the refusal being deemed 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. ' Here, the BLM failed to consider an important aspect of the problem, and also arbitrarily limited its analysis, by failing to consider known adverse impacts to Cassia County.

Western Exploration

Darcy Murad

Issue Excerpt Text: BLM does not include analysis of cumulative impacts to mining activities and the economy in northern Nevada if the management decisions in the FEIS/RMP A are finalized. Given WEX's current relationships with vendors, contractors, and employees in Mountain City, Elko, Winnemucca, Reno, and neighboring areas, data exists to complete such an analysis and such an analysis must be completed in order for BLM to have taken a "hard look" at the impacts to mining interests and local economies relying on those interests. Restating economic data in its Socioeconomic Baseline Report does not constitute a hard look at these impacts.

State of Wyoming, Office of Governor Mark Gordon, et al.

Sara DiRienzo, et al.

Issue Excerpt Text: The BLM needs to analyze the cumulative effects of the proposed South Wind River ACEC, as required by NEPA, to consider the real environmental impacts of its management actions. See *Sierra Club v. FERC*, 827 F.3d 36, 49 (D.C. Cir. 2016) ("cumulative-impact analysis must identify ... (iii) those 'other actions - past, present, and proposed, and reasonably foreseeable' that have had or will have impact 'in the same area'") (citation omitted). The borders of this Priority Habitat Management Areas with limited exceptions designation almost directly align with the South Wind River ACEC and must be analyzed if Priority Habitat Management Areas with limited exceptions are retained.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The cumulative effects analysis continues to be based on an incomplete list of past, present, and foreseeable future projects in Appendix 14. The Bureau claims it updated the appendix to include projects identified by commenters, but it excluded most of those we identified. The Bureau has not included any oil and gas leases or drilling permits for most states, and for Wyoming, gave only an incomplete picture. The Bureau disclosed the number of leases offered in Wyoming since 2018, which encompass 2,123,417 acres, but excluded the some 5,400,000 acres of older existing oil and gas leases in Wyoming which will also foreseeably be drilled in future years. The impacts of new drilling on older existing leases is thus excluded entirely, as they are not embedded in Chapter 3 either. Appendix 14 is also incomplete as to mining. The Bureau failed to include the Baltazar Geothermal Project, Jindalee Hi-Tech Lithium Project in Oregon, the Hog Ranch Mineral Exploration Project, and other proposed plans of operation. The Bureau also entirely failed to consider the cumulative impacts of drought; of the SFA mineral withdrawal; and of projects approved before 2018 but not yet fully built. Finally, for the projects or categories of projects the Bureau has actually listed, the table fails to include information essential to evaluating their impacts, such as whether they are located in PHMA, the number of affected leks, and acres of habitat disturbance. This information is essential to evaluating cumulative impacts and is readily available from existing NEPA documents.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The cumulative effects analysis is also far too cursory to satisfy NEPA. Proper consideration of cumulative impacts requires “some quantified or detailed information,” and general statements about possible effects “do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Klamath-Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 387 F.3d 989, 993–94 (9th Cir. 2004); see also *Neighbors of Cuddy Mountain*, 137 F.3d 1372, 1379 (9th Cir. 1998); 43 C.F.R. § 46.115 (“When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality”). The Bureau still fails to include any quantified or detailed information about cumulative impacts. In response to comments, the Bureau claims that it “prepared a cumulative impact analysis to the most detailed extent possible.” That is false. Using reasonably foreseeable development scenarios as well as the NEPA documents for past, present, and proposed projects, it was readily possible for the Bureau to provide some type of quantified or detailed information. At a bare minimum, the Bureau could have forecast the number of habitat acres these projects will cumulatively destroy, and should have provided some information on the number of affected leks and geographic concentration of impacts. The Bureau also failed to provide even a qualitative analysis of likely cumulative impacts on genetic and habitat connectivity; on lek or population viability in particular regions; on the “three r’s” (resilience, redundancy and representation); and the probability of continued rangewide population declines. As raised in *Advocates et al.* 2024 (p. 64), the cumulative effects analysis also inadequately considers the cross-jurisdictional impacts of actions on private, states, or Forest Service lands. In 2015, the Bureau and Forest Service attempted to plan together; this coordination has not been achieved since, and the Bureau basically ignored what the Forest Service has done (or not) in the interim 9 years. The cumulative effects analysis must evaluate how the actions of the Forest Service and non-federal actors will affect sage-grouse populations in the cumulative effects area.

Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden

Issue Excerpt Text: The recommendation to withdraw the 10-million acre SFA in the 2015 RMPA/Final EIS is not a separate action from this Draft RMPA/EIS because Alternative 1 is the 2015 approved RMPAs. “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and action thereby fails to address the true scope and impact of activities that should be under consideration.” Here, BLM has improperly segmented review of the DEIS/RMPA by pretending that the withdrawal is a future possibility that may not occur. But this analysis is not entirely factual: the withdrawal is not a “future possibility” but a current reality: the Secretary is considering a mineral withdrawal recommended by the 2015 LUPAs—that is by Alternative 1. In its analysis of Alternative 1, BLM must assess the effects of the mineral withdrawal that Alternative 1 inaugurates.

Summary:

Protestors state that BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA because the BLM failed to adequately analyze cumulative effects in the GRSG PRMPA/FEIS by:

- Failing to provide a science-based baseline of threats from recent, planned and ongoing federal agency projects with regards to GRSG populations across the planning area, including in Idaho and Nevada.
- Providing an incomplete list of past, present, and foreseeable projects in Appendix 14. Protestors state that the cumulative effects analysis must evaluate how Forest Service and non-federal actions will affect sage-grouse populations in the cumulative effects area.
- Not including analysis of cumulative impacts of GRSG management on mining activities and the economy in northern Nevada. Protestors claim the BLM has not taken a "hard look" at the impacts on mining interests and local economies relying on those interests.
- Failing to assess the effects of the recommendation to withdraw lands under Alternative 1.

Response:

The BLM is required to consider the environmental impacts of a proposed action and any reasonable alternative when preparing an EIS, which includes the cumulative effects (40 CFR 1502.16(a)(1) (2022) and BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 CFR 1508.1(g)(3) (2022)).

Chapter 3 of the GRSG PRMPA/FEIS includes a description of the affected environment throughout the planning area, including a discussion of past and present trends and threats to GRSG habitat and populations, including climate change (GRSG PRMPA/FEIS Section 3.2). The BLM has analyzed the environmental effects associated with all alternatives of the GRSG PRMPA/FEIS, including cumulative impacts, which can be found in each specific resource or resource use section of GRSG PRMPA/FEIS Chapter 4. The BLM has prepared a cumulative impact analysis consistent with the broad nature and scope of the proposed alternatives 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 to GRSG, including potential cumulative impacts to GRSG habitat, use patterns, and demographics, can be found in GRSG PRMPA/FEIS Section 4.2.3 (pp. 4-42 – 4-47). Cumulative impacts to mineral resources and mining interests are described in GRSG PRMPA/FEIS Section 4.10 (pp. 4-73 – 4-88).

In GRSG PRMPA/FEIS Appendix 14, *Environmental Consequences Supporting Information*, Table 14-25 (pp. 14-58 – 14-75) lists the past, present, and reasonably foreseeable actions that are analyzed

in the Chapter 4 cumulative impacts sections for each resource. Between the GRSG Draft RMPA/EIS and the GRSG PRMPA/FEIS, BLM worked with the Wyoming Oil & Gas Conservation Commission (WOGCC) to update oil and gas well information from Wyoming. To demonstrate the difference between the data sources, the FEIS clarified that the WOGCC data are considered more accurate but also note that activities such as workovers, recompletions, and wells which were spud but then abandoned, may have some impact on GRSG from the preparation of the drill site and mobilization of the workover or drill rig. BLM has clarified data sources and information used in the GRSG PRMPA/FEIS Appendix 12. In addition, the BLM did consider planned energy and mining projects throughout the planning area, including the Lava Ridge Wind Project, Greenlink North Transmission Project, Greenlink West Transmission Project, Jindalee Hi-Tech Lithium Project and Hog Ranch Mineral Exploration Project (GRSG PRMPA/FEIS Appendix 14, Table 14-25).

The BLM analyzed the potential effects of the plan on mineral resources and associated socioeconomic effects, including information about mineral potential for oil and gas and other leasable minerals (GRSG PRMPA/FEIS Sections 3.10, 3.12, 4.10, and 4.12). Additional information related to BLM's analysis of impacts to mineral resources and socioeconomics can be found in the *NEPA – Impacts Analysis – Socioeconomics* section of this Protest Report.

The BLM considered the potential direct, indirect, and cumulative effects of withdrawals under Alternatives 1, 2, and 3. The BLM is analyzing SFA withdrawals in a separate EIS. The potential cumulative effects of the SFA Withdrawal EIS in concert with this RMPA are analyzed described in GRSG PRMPA/FEIS Chapter 4. The GRSG PRMPA/FEIS does not include any recommendations for locatable mineral withdrawals or suggest de facto withdrawals. As stated in Section 4.10.4 of the GRSG PRMPA/FEIS: "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts. However, the BLM could ask the Secretary of the Interior to propose and make a withdrawal of the land from location and entry under the Mining Law of 1872 pursuant to Section 204(a) of FLPMA" (GRSG PRMPA/FEIS p. 4-82). Withdrawals are considered under a separate process by the Secretary consistent with FLPMA and applicable regulations. Should the Secretary propose a withdrawal, the proposal would require environmental and other analysis under NEPA and other applicable authorities before the land could be withdrawn. The PRMPA/FEIS does not withdraw public lands from location and entry under the U.S. mining laws.

While the BLM found that no changes to the GRSG PRMPA/FEIS were necessary as a result of the protest issues, the BLM nonetheless will modify elements of the Approved RMPA regarding PHMA with limited exception in consideration of feedback received from various states during the governor's consistency review process. The BLM will provide further explanation in the BLM's Record of Decision (ROD). The BLM adequately analyzed cumulative effects in the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA - Impact Analysis - Non-Energy Leasable Minerals

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: The FEIS further incorporates the 3% (or state specific) disturbance cap under the Proposed RMP Amendment for the entire decision area. Although the DEIS at pg. 4-99 notes that the disturbance cap would not be applied in a manner that would eliminate all reasonable opportunities to develop an existing lease, it further clarifies that application of the 3% disturbance cap in PHMA and lek buffers in PHMA and GHMA could impact both new and existing nonenergy solid leasable minerals activities by preventing or restricting new surface development: Based on the disturbance cap and these other restrictions, it is unlikely that the existing phosphate and

gilsonite mines could expand or that new phosphate or gilsonite mines would be approved on federal mineral estate in the decision area. Comments to the DEIS pointed out that a quantitative economic impact analysis was only conducted for three resources, which did not include nonenergy leasable minerals, reportedly due to the limited availability of data on production and quantity of market activities and analyses for nonenergy leasable minerals, (see Appendix 18 of the FEIS). This is incorrect. There is a plethora of data available for phosphate resources that could be utilized to develop more than a qualitative assessment. Comments have been consistently provided throughout the GRSG planning process documenting the failure of BLM to determine the effects on local economies and the loss of phosphate mineral resource due to prohibiting access to this valuable mineral. There is no discussion in the FEIS of the economic impacts of implementing the Proposed RMP Amendment on the four existing federal phosphate leases in Utah as noted on pg. 3-39, or where those leases exist in relation to GRSG HMA. Likewise, the DEIS at pg. 4-99 mentioned the potential of phosphate production increasing in Utah due to the opening of a new phosphate mine, but there is no discussion in the FEIS of where the mine is located or the relevant impacts of the proposed management alternative on the ability of it to produce.

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: The FEIS fails to take the hard look required by NEPA of the impacts to non-energy leasable minerals from implementing the Proposed RMP Amendment, particularly regarding the new habitat designation of PHMA with limited exceptions. For example, the proposed RMP Amendment’s inclusion of PHMA with limited exceptions restricts new nonenergy leasable mineral leases at pg. 4-80: ““However, under the Proposed RMP Amendment PMHA with limited exceptions would be closed to new leases including fringe acreage leasing, this would prevent expansion of existing operations in these areas which could reduce the availability of some nonenergy leasable minerals.” There is no discussion or analysis of restricting access to resources within the PHMA limited exception HMA areas. In fact, the FEIS ignorantly notes that “new sites” may have to be found in order to expand operations within those areas on pg. 4-78: ““By not allowing expansion of existing leases in PHMA with limited exceptions, the Proposed RMP Amendment would limit nonenergy leasable mineral extraction and could increase costs for some operators who would have to find new sites to develop in order to expand operations””. Mineral resources can only be mined where they exist. Prior to enacting any land management decision that may eliminate recovery of mineral resources, a detailed analysis of the impacts would be required not only at the national level, but also to local economies. An analysis of the effects of the selected management action is critical for the analysis to inform decisions that are “locally relevant”, consistent with the BLM’s purpose and need identified in the March 2024 NOA. Due to the inconsistent description of the alternatives as described below, the impact analysis is flawed and meaningless, again failing the hard look required by NEPA.

Summary:

A protestor stated that the economic impact analysis in the GRSG PRMPA/FEIS was inadequate because it did not include detailed and quantitative assessment of potential impacts on development of non-energy leasable minerals. Further, the protestor stated that the BLM failed to analyze the economic impacts of implementing the GRSG PRMPA on existing federal phosphate leases and a potential new phosphate mine in Utah.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and that NEPA documents must concentrate

on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMPA/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

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 analysis provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground implementation actions, the analysis was conducted at a regional level. 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 GRSG PRMPA/FEIS describes the affected environment for non-energy leasable minerals in Chapter 3, *Affected Environment*, Sections 3.10, *Mineral Resources* and Section 3.12, *Social and Economic Conditions (Including Environmental Justice)* (GRSG PRMPA/FEIS pp. 3-34 – 3-42; 3-46 – 3-54). Specifically, Subsection 3.10.2, *Nonenergy Leasable Minerals*, discusses non-energy solid leasable minerals present in the planning area including sodium, phosphate, potassium, sulfur, and gilsonite; how stakeholders could obtain a mineral lease for non-energy solid leasable minerals; and the existing conditions for non-energy leasable minerals within the planning area (GRSG PRMPA/FEIS pp. 3-37 – 3-39). The GRSG PRMPA/FEIS states “Phosphate mining in Utah occurs primarily in the Meade Peak Member of the Phosphoria Formation ... There are currently four federal phosphate mining leases in the state... Currently, 10 unmined leases and one mine in permitting, encompassing 4 of the unmined leases, are located in GRSG HMA” (GRSG PRMPA/FEIS, p. 3-39). In addition, Subsection 3.12.2, *BLM Land and Resource Use Revenue*, provides information on the current conditions of non-energy mineral extraction, royalty rates, and disbursements by state within the planning area (GRSG PRMPA/FEIS pp. 3-48 – 3-49).

The GRSG PRMPA/FEIS analyzes the potential impacts to non-energy leasable minerals from management proposed under the PRMPA in Chapter 4, *Environmental Consequences*, Section 4.10, *Mineral Resource*, and Section 4.12, *Social and Economic Conditions (Including Environmental Justice)* (GRSG PRMPA/FEIS pp. 4-73 – 4-87; 4-90 – 4-109). Specifically, Subsection 4.10.2, *Nonenergy Solid Leasable Minerals*, discusses the nature and type of impacts that changes to non-energy solid mineral leasing under the PRMPA could have, the state-specific and rangewide effects on non-energy leasable mineral development under the PRMPA, and a comparison of cumulative effects of past, present, and reasonably foreseeable actions and conditions by alternative (GRSG PRMPA/FEIS pp. 4-78 – 4-80). Furthermore, Subsection 4.12.1, *Nature and Type of Effects* discusses the potential economic and social impacts from changes in development of non-energy leasable minerals under the heading “Nonenergy Leasable Minerals Management” (GRSG PRMPA/FEIS pp. 4-92 – 4-93).

Additionally, GRSG PRMPA/FEIS Appendix 10 Section 10.10.2, *Nonenergy Leasable Minerals*, provides more information about the BLM’s analysis of direct and indirect impacts from Alternatives 1 through 6 on non-energy leasable mineral development, including methodology, indicators, and assumptions of impacts on non-energy solid minerals, along with environmental consequences by state, alternative, and mineral type (GRSG PRMPA/FEIS Appendix 10 pp. 10-86 – 10-93). Appendix 10 also includes information about the assumptions and methodology for the analysis of economic impacts, including to non-energy leasable mineral development (GRSG PRMPA/FEIS Appendix 10 Section 10.12). Additional detailed economic information can be found in Appendix 13, *Socioeconomic Baseline Report*, and a detailed discussion of the specific methodologies used in the

impact analysis is provided in Appendix 18, *Social and Economic Impact Analysis Methodology* (GRSG PRMPA/FEIS, Appendix 13, pp. 13-1 – 13-296; Appendix 18, pp. 18-1 – 18-68).

The BLM analyzed the potential economic effects that could result from changes to non-energy leasable mineral development under the PRMPA. Accordingly, this protest issue is denied.

NEPA - Impact Analysis - NTT/COT Reports

Western Watersheds Project et al. Greta Anderson et al.

Issue Excerpt Text: The 2019 plans were enjoined on the basis that they failed to take a “hard look” at the opinions of experts that expressed concern about the changes. In fact, the court ruled that weakening protections from the science of the NTT and COT reports was not adequately analyzed or justified in the 2019 plans. See *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319 (D. Idaho 2019). Still, and like the 2019 plans, the 2024 PRMPA weakens the protections of the 2015 plans without adequate justification or analysis. The justification provided in Appendix 6 of the PRMPA/FEIS simply deemphasizes the significance of the scientific recommendations of these reports but fails to measure the current plans against their findings or explain what more updated science contradicts them. We protest on this basis.

Summary:

A protestor stated that the BLM failed to adequately consider the science of the NTT and Conservation Objectives Team (COT) reports and failed to provide justification for weakening protections compared to the 2015 GRSG plans.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and that NEPA documents must concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMPA/FEIS.

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

The science included in the NTT Report (NTT 2011) and Greater Sage-grouse Conservation Objectives: Final Report (COT Report; USFWS 2013) was considered in the GRSG PRMPA/FEIS and was updated with more recent research. As stated in Section 2.3 of the GRSG PRMPA/FEIS, the BLM, the USFWS, States, and other federal agency partners prepared the NTT and COT reports to identify rangewide GRSG conservation objectives and conservation measures. These conservation objectives and measures informed the USFWS 2015 Endangered Species Act decision and provided guidance for the BLM’s 2015, 2019, and current land use planning efforts. While the reports provide relevant information, they are not compendiums that, standing alone, represent best available science. Further, the NTT and COT reports do not address how the implementation of their GRSG conservation measures would affect other uses of the public lands such as recreation, fluid mineral

development, mining, and livestock grazing. Moreover, the NTT and COT reports do not quantify the GRSG conservation benefits of each respective conservation measure (GRSG PRMPA/FEIS p. 2-3).

Additional context related to the COT and NTT reports and rationale for why they were not included as specific alternatives in this effort is provided in GRSG PRMPA/FEIS Appendix 6. As indicated in this appendix, conservation measures from the NTT and COT reports were taken into consideration in prior GRSG planning efforts although neither the NTT nor BLM's policy intended that conservation measures in the NTT Report were to be automatically applied across the range without intervening consideration through detailed land use planning and NEPA analysis. BLM complied with IM 2012-044 by utilizing the reports to inform development of alternatives.

The GRSG PRMPA/FEIS compares the potential effects of the PRMPA with the implementation of applicable decisions from the 2015 ARMPA (Alternative 1) and the applicable decisions from the 2019 ARMPA (Alternative 2). The comparison of potential effects to each resource or resource use is outlined for the Proposed Plan Amendment in Chapter 4 and for the other alternatives in Appendix 10 of the GRSG PRMPA/FEIS. Therefore, the BLM analyzed how the effects to GRSG (and other resources) under the PRMPA may differ from effects under the 2015 plans.

The BLM considered relevant, available, published scientific information up to the date of publication of the GRSG PRMPA/FEIS, including the NTT and COT reports. The BLM also adequately analyzed the impacts of the GRSG PRMPA compared to the 2015 and 2019 plans. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Baseline Information

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: We protest the FEIS's failure to include adequate information about the baseline conditions and trends of sage grouse habitat. See Advocates et al. 2024, p.4. This is an essential part of the hard look. We specifically requested that the Bureau disclose baseline data that included habitat disturbance, grouse populations and trends on leks, seasonal habitat, and land health evaluations for the habitat. Id. The Bureau does not dispute that it possesses such baseline information. However, it declines to provide it by stating, "A land use planning-level decision is broad in scope and therefore does not require an exhaustive presentation of baseline data or impacts analysis." PRMPA/FEIS at 22-15. It claims that the baseline information we requested would "not help differentiate between the impacts of the alternatives." Id. We respectfully disagree, for three reasons. First, agency rules and case law demand such baseline data for land use planning purposes. See Advocates et al. 2024 at 4-5 (collecting authorities). We do not demand "exhaustive" information but rather as much baseline information as the Bureau can reasonably provide, such as data on existing habitat loss and fragmentation, lek counts and status trends, and population estimates. This is all within the Bureau's possession. Second, differentiating between the impacts of various alternatives is just one goal of NEPA. Another purpose is to simply to inform the agency and public of the environmental consequences of the action being proposed. It is entirely unclear how agency decision makers and the public can evaluate the nature and magnitude of impacts from the PRMPA without basic information on the current state of sage grouse populations and habitat. For example, sage grouse are highly susceptible to cumulative disturbances to their habitat. How can one assess the impacts of a plan that authorizes yet more habitat loss and fragmentation without information on baseline habitat conditions? Sage grouse are also highly dependent on particular habitat types, such as winter habitat. How can the public understand how this plan will affect sage-grouse where the Bureau has not disclosed the existing acres of existing and lost winter habitat or how its planning decisions will affect the availability of winter habitat going forward? Third, for

similar reasons, we also disagree that the information is not relevant to distinguishing between the alternatives. As just one example, the baseline information we requested would be highly relevant to understanding the effectiveness of the management paradigm under the 2015 Plans (Alternative 1), which has been in place for nearly a decade now. Understanding whether the Bureau's assumptions about that plan have proven true would be very helpful to evaluating the impact of the various alternatives which maintain, or alter, the protections adopted in the 2015 Plans/Alternative 1. We commented specifically as to the Bureau's failure to evaluate the acreage of sage grouse habitat that has or has not had land health evaluations completed, and we mentioned the outdated nature of the data the Bureau was using for its table in the DEIS. Advocates et al. 2024 at 24. This is an important baseline for understanding if the proposed action to assess all suitable GRSG habitat at multiple scales is feasible or likely, as the PRMP proposes (p 2-121.) The "analysis" is limited to Table 3-5 in Appendix 9, but none of the data are scaled to time. The Bureau claims that 52 percent of the allotments in PMHA that were evaluated are meeting or making significant progress towards meeting the land health standards, but fails to indicate how many of those LHE have been evaluated since the 2015 plans provided habitat objectives for sage grouse habitat. In essence, the Bureau is providing a generalized view of LHE categories without tying it down to a time frame that helps the reader understand whether the evaluation is decades old and irrelevant, or when the LHE might be reevaluated so that the objectives of this PRMPA/FEIS can be adopted. These data are also important to evaluate the Bureau's claim, "grazing management has been improved by a variety of actions. PRMPA/FEIS at 3-32. Where the Bureau claims that this kind of information doesn't help to differentiate between the impacts of the alternatives (e.g. PRMPA/FEIS at 22-15), it is incorrect. These are precisely the details the public needs to know whether the impacts of livestock grazing are being addressed, or when they will be addressed in the future. This is part of a truly "hard look."

Summary:

A protester claimed the GRSG PRMPA/FEIS would violate NEPA because the BLM failed to adequately include information about the baseline conditions and trends of GRSG habitat. The protestor emphasized the importance of providing clear baseline data so agency decision makers and the public can accurately evaluate the nature and magnitude of impacts from the GRSG PRMPA/FEIS.

Response:

An EIS must include a succinct description of the affected environment, including the reasonably foreseeable trends and planned actions in the area (40 CFR 1502.15 (2022)). The description of the affected environment should be no longer than necessary to understand the relevant affected environment and the effects of the alternatives. Regulations implementing NEPA further explain that data and analyses supporting an EIS shall be commensurate with the importance of the effect, with less important material summarized, consolidated, or simply referenced (40 CFR 1502.15 (2022)). "Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues" (40 CFR 1502.15 (2022)).

The effects analysis 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). 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 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).

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

actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM are land use planning level decisions and would not authorize any on-the-ground implementation actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis including the gathering of baseline data was conducted at a regional level. As such, the exact locations or numbers of all rangewide resources is not presented as a part of the analysis as that degree of localized information does not help differentiate between the impacts of the planning alternatives. In the GRSG PRMPA/FEIS, the BLM did consider relevant, available, published scientific information up to the date of publication, and considered all information provided to the BLM during the comment period on the GRSG Draft RMPA/EIS, including comments submitted by the protestor. A summary of substantive comments made on the GRSG Draft RMPA/EIS can be found in Appendix 22 of the GRSG PRMPA/FEIS, including how the BLM responded to comments about the use of best available information and baseline data, and how the BLM made changes to the GRSG PRMPA/FEIS as a result of public comments on the GRSG Draft RMPA/EIS (GRSG PRMPA/FEIS, pp. 22-15 – 22-18). The affected environment and potential effects related to GRSG habitat and populations are described in Section 3.2 and 4.2 of the GRSG PRMPA/FEIS. The GRSG PRMPA/FEIS includes a list of literature, studies, and other resources used in the analysis and cited throughout the document (GRSG PRMPA/FEIS, pp. Lit-1 – Lit-46).

The GRSG PRMPA/FEIS provides sufficiently detailed analysis to inform decision-makers and the public about the potential environmental consequences associated with the alternatives, in compliance with NEPA. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Disturbance Caps

Montana Mining Association

Matt Vincent

Issue Excerpt Text: While we appreciate BLM’s additional explanation, the Final RMPA/EIS does not adequately analyze the negative consequences caused by this significant shift. BLM’s only response to the concern that caps being reached more quickly might encourage development elsewhere was that “[t]here is no evidence that project approval rates are influenced by the scale at which disturbance is measured, and exact project location is an implementation level decision.” This response seems to suggest that project approvals would not be affected by any change in the scale at which disturbance is measured, a hypothetical that is illogical and contrary to the Final RMPA/EIS acknowledgement that caps may be “reached more quickly” in the “smaller size of most HAF finescale areas,” as compared to BSU-scales. If the cap is reached more quickly in HAF fine-scale areas, how could project approvals also not be affected? This inherently will push development into other less-developed areas. The BLM’s response also defers the responsibility for considering BLM’s cumulative effects caused by a rangewide plan to “implementation level decisions”—a tactic contrary to the requirements of NEPA. The Final RMPA/EIA still does not adequately acknowledge or analyze the disproportionate negative impacts caused by shifting the scale for disturbance caps in these key jurisdictions.

Lithium Nevada Corp

Colby Prout

Issue Excerpt Text: The Proposed Plan does not explicitly state that locatable minerals are exempt from disturbance cap. In language unchanged from the DEIS/RMPA, the FEIS/RMPA’s Proposed Plan provides that “[n]ew infrastructure projects would be deferred to the extent allowable under applicable laws (such as the Mining Law of 1872), or valid existing rights.” FEIS/RMPA at 2-40. By contrast, the 2015 LUPAs included language that made clearer the fact that disturbance caps do

not apply to locatable mineral projects. They stated that “[a]lthough locatable mine sites are included in the degradation calculation, mining activities under the 1872 mining law may not be subject to the 3% disturbance cap.” See Nevada 2015 LUPA at E-2. The language in the FEIS/RMPA, especially as compared to the language in the 2015 LUPAs, could be perceived to weaken BLM’s commitment, mandatory under the General Mining Law, to recognize mining claims as property interests and valid existing rights. We raised this issue at p. *16 of our comments on the DEIS/RMPA, and also suggested in our comments that BLM eliminate the disturbance cap. See *id.* at *12, *16. Additionally, contrary to NEPA’s requirements, the Proposed Plan would include in the disturbance cap calculation disturbance on non-BLM lands. BLM states that such analysis is “consistent with the BLM’s responsibility to consider cumulative impacts when making decisions for activities on public lands.” FEIS/RMPA at 2-41. As we stated on pp. *16–17 of our comments on the DEIS/RMPA, this misstates the cumulative effects analysis that NEPA requires for an RMPA. It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis at the RMPA stage because an RMPA is intended to set the scene for BLM’s more site-specific decisions. Whenever BLM permits a project, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate. 40 C.F.R. § 1508.1(g)(3). We protest BLM’s failure to specify, as it did in the 2015 LUPA, that disturbance caps do not apply to locatable mineral projects. Additionally, we protest BLM’s decision not to eliminate the disturbance cap, including its consideration of disturbance on nonfederal land, from the FEIS/RMPA.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: Protesters consistently raised the issue and presented science supporting the need to lower disturbance caps in our scoping and DEIS comments (Advocates et al. 2024 p.13-19; Defenders of Wildlife DEIS comment letter at 19). We protest the Bureau’s failure to take a hard look at the impacts of disturbance caps on greater sage grouse, not doing so is arbitrary and capricious decision making. The scoping notice stated that disturbance caps were one of the topics to be analyzed in the draft EIS. Federal Register 2021-25393 (86 FR 66331). In response to protesters stressing the importance of evaluating lower disturbance caps, the Bureau’s National Sage-Grouse Conservation Coordinator asked protesters to include any science that supported lowering disturbance caps in our DEIS comments. We summarized the science supporting lowering disturbance caps that we timely submitted in an August 12th letter to the Bureau (see Attachment E). Despite clear scientific evidence that a 3% disturbance cap—as well as a 5% cap— will negatively impact key sage grouse mating, nesting and brood rearing habitat, the Bureau failed to take a hard look at or analyze a scientifically supported lower cap.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: Not only didn’t the BLM evaluate lower disturbance caps, its explanation was inadequate and contrary to the facts about grouse tolerance to disturbance. FEIS at 2-5. “However, after reviewing existing plans, available literature, and habitat and population trends, changes to existing language on RFDs and lek buffers, as well as the other minimization measures, would not be proposed for amendment during this plan amendment because such a change would not be consistent with updated scientific information, nor would it allow the BLM to be responsive to biological information that considers locally relevant habitat variability.” Indeed as presented here and in protester’s comments, lowering disturbance caps is absolutely consistent with updated science and completely locally relevant. The Bureau’s response to comments as to why they didn’t consider lower disturbance caps is inadequate and contradictory. PRMPA/FEIS at 22-26. The Bureau states that disturbance caps are “only one of the tools in the toolbox to help the Bureau analyze project proposals while meeting GRSG habitat objectives. It works in concert with specific

management actions, mitigation, and adaptive management to address overarching GRSG goals.” This statement belies the fact that discrete anthropogenic disturbance is one of the main drivers of sagebrush habitat loss and population decline over which the Bureau has complete control (with some exceptions under the 1872 mining law). Mitigation and adaptive management are tools to attempt to offset damage to grouse and its habitat from authorized habitat loss and degradation. Disturbance caps are a foundational tool to conserve sage grouse habitat and arrest population declines, the science is crystal clear on this.”

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: Protesters urged the Bureau to analyze lower disturbance caps based on best available science. Advocates et al. 2024 at 13-19; Defenders of Wildlife DEIS comment letter at 18-20. Sagebrush habitat fragmentation, loss and disturbance have been identified as the primary influences on GRSG population trends (Knick and Hanser, 2011). DEIS 2-120. The Bureau had identified disturbance caps as one of the areas to be evaluated for change in the Bureau’s scoping notice. FEIS ES-2. However, the BLM failed to analyze an alternative with lower disturbance caps. The DEIS states: “Regarding the decision to consider whether to retain a resource topic for more detailed consideration or analysis in this RMPA/EIS, the interdisciplinary team considered several questions, including:

- Is analysis of the issue necessary to make a reasoned choice between alternatives? That is, does it relate to how the proposed action or alternatives respond to the purpose and need?
- Is the resource issue/topic associated with a significant direct, indirect, or cumulative impact, or where analysis is necessary to determine the significance of impacts? DEIS 1-7.

As a resource topic, disturbance caps should have received an affirmative yes to the interdisciplinary team’s questions. Analyzing lower disturbance caps unquestionably would help make a reasoned choice between alternatives as well as respond to the purpose and need. Disturbance caps are also a resource topic associated with a significant direct and cumulative impact and an analysis is necessary to determine the significance of impacts.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: A reasonable range should have included disturbance caps at levels far below 3% where science has demonstrated birds preferentially select habitat and avoid/abandon habitat at higher levels of disturbance. Disturbance caps at this level will have negative population level impacts. Best science (Kirol et al 2020), raised by protesters in our DEIS comments (Advocates et al. 2024 at 14), has shown that “nest survival suggested that the likelihood of a successful nest was negatively associated with the amount of press disturbance within an 8 - km² area. Broods exposed to any press disturbance within a 1 - km² area were less likely to survive compared to broods not exposed to press disturbance.” BLM cited Kirol et al 2020 to support a 3% disturbance cap but was arbitrary and capricious in not utilizing the findings of this study to analyze and select lower disturbance caps. The Bureau should have analyzed disturbance in the 0-0.5 % range (78% of leks were in the 0 to 0.5% developed category, while less than 10% of leks were in areas with greater than 1% development Knick et al. 2013), and 0-1% disturbance (70% of nests were in habitats with 0-1% press disturbance for energy development.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau further states that “Disturbance caps identify an upper limit (maximum disturbance permitted) above which no new development is generally permitted (subject to applicable laws and regulations and valid existing rights). A disturbance cap acts as a “backstop” to ensure that total disturbance does not exceed the level of GRSG tolerance for anthropogenic activities.” (PRMPA/FEIS 22-25). In direct contradiction to that statement, the Bureau then acknowledges that disturbance caps in the PRMPA exceed the level of grouse tolerance for anthropogenic activities. Response to comments states (PRMPA 22-26), “GRSG are sensitive to increasing levels of anthropogenic disturbance with recent science indicating that levels of about 3% of disturbance result in GRSG moving out of an area and that about 70% of nests were located in habitats with 0-1% disturbance (Kirol et al., 2020), emphasis added. Additionally, Knick et al. 2013 specifically identified a relationship between disturbance and leks being abandoned, demonstrated by the finding that less than 10% of leks occur in areas with greater than 1% development.” The Bureau then attempts to dismiss this hard evidence by saying that “the NTT contained similar results yet, the Bureau did not rely on NTT in developing this RMPA but rather on published data that post-dates the 13-year-old NTT which supports limiting disturbance to the levels presented.” (PRMPA 22-26) This statement does not make sense. First, the Bureau attempts to dismiss Knick et al. by saying it is similar to NTT and that the Bureau didn’t rely on NTT because it is 13 years old. Knick data stands on its own regardless of similar results in NTT. Second, GRSG sensitivity to specific levels of anthropogenic disturbance has been confirmed—not disputed— over time. That makes NTT and Knick even more valid. Even if the Bureau were to only rely on post 13-year data, then Kirol et al 2020, which the Bureau cited in the Draft EIS and PRMPA, presents a clear case that disturbance caps must be analyzed and lowered. Yet the Bureau ignored the detailed findings of this study, which found “The exposure of our sample of sage grouse to several types of development and infrastructure allowed us to identify population - level effects of the disturbance footprint associated with development. Our findings suggest that as press disturbance increased in sage - grouse nesting habitat, nests exposed to increasing disturbance experienced a gradually increasing risk of failure. Therefore, a surface disturbance cap of 3% or 5% would not eliminate negative effects of press disturbance on nest survival, but lower disturbance intensities would be expected to reduce effects on nest survival when compared to higher disturbance intensities. Our brood survival results suggest that any press disturbance in brood - rearing habitat increased risk for broods and the relationship we detected was irrelevant to the intensity of disturbance.” Emphasis added. Ironically, in response to comments, not in the DEIS or PRMPA/FEIS, the Bureau appropriately cite Kirol’s findings that 3% disturbance will cause grouse to abandon habitat, with most grouse selecting habitat in the 0-1% range. Neither did the Bureau present any evidence in the DEIS, PRMPA or in its response to comments to support a 5% disturbance cap even if it includes wildfire and agricultural conversion, at the project level for Wyoming. In fact the Bureau acknowledges that allowing Wyoming and Montana a 5% disturbance cap at the project scale “ would increase potential for habitat loss and alterations as well as direct disturbance to GRSG above those of 3%.” DEIS 4-232. The science is clear: grouse do not tolerate disturbance above 3%. Protesters had also requested that wildfire and agricultural conversion be evaluated and included in the 3% cap. (Advocates et al. 2024 at 15). BLM failed to take a hard look at the impacts of a 5% cap, or include fire and agriculture conversion in the 3% cap.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: Protestors also requested that disturbance limits be calculated on a per-square-mile basis (Advocates for the West et al. 2022 at 34), such that disturbance percentages could not be watered down by extending the calculation over large areas, and thereby allowing heavily industrialized sacrifice zones to be permitted that far exceed the disturbance limits within their

perimeters. Instead, the Bureau extends the use of much larger areas (PRMPA/FEIS at 2-41), defaulting to the DDCT methodology, or using a HAF Fine Scale area (or neighborhood cluster in Wyoming), all of which lack any scientific support at all. No studies calculating the effect of disturbance percentage on sage grouse populations have ever been undertaken at acreages corresponding to the DDCT, BSU, or HAF Fine Scale; the most expansive study (Knick et al. 2013) used a 3-mile radius, while NTT (2011) was explicit in its recommendation that the calculation be made at a 640-acre level. BLM failed to take a hard look at using smaller scales (3-mile radius or 640-acres). Calculation of disturbance across large areas, in the absence of scientific studies determining critical thresholds for sage grouse persistence when disturbance is calculated in this way, is arbitrary and capricious (particularly when available scientific studies identifying disturbance percentage thresholds calculated them across much smaller areas).

Summary:

Protesting parties raised concerns that the analysis of disturbance caps in the GRSG PRMPA/FEIS was inadequate, that the BLM should have included lower disturbance caps in at least one alternative. Protesters argued that shifting to HAF fine-scale areas will limit project approvals and push development into less-developed areas. Other protests expressed that the GRSG PRMPA/FEIS does not provide adequate clarity on exemptions for locatable minerals and the inclusion of non-BLM-administered land in disturbance calculations, asserting these actions undermine valid existing rights. Additional protests alleged that BLM ignored scientific evidence supporting lower disturbance caps critical for sage grouse conservation, instead relying on unsupported methodologies and larger-scale calculations that dilute local habitat impacts. Some protesting parties criticized BLM's failure to thoroughly analyze impacts, incorporate updated science, and address site-specific considerations related to disturbance caps.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and that NEPA documents must concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMP/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

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 analysis provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM plan-level decisions and would not authorize any on-the-ground implementation actions, the scope of the analysis was conducted at a regional level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Scientific literature supports the use of disturbance limits to prevent or minimize impacts of development on GRSG. The GRSG PRMPA/FEIS utilizes the HAF to assess whether an area provides GRSG habitat along with other assessment tools. The HAF is not used to measure disturbance levels. By contrast, the Disturbance Density Calculation Tool (DDCT) is a measure of disturbance used by the states of Wyoming and Montana and is not a habitat assessment tool. As described in GRSG PRMPA/FEIS Chapter 4, under the PRMPA the application of a disturbance cap

would occur at both a HAF fine-scale as well as a project scale (GRSG PRMPA/FEIS p. 4-41). When determining whether a proposed action would be in conformance with the disturbance cap, the BLM will use the best available disturbance information as described in GRSG PRMPA/FEIS Appendix 7 under Measure 2: Habitat Degradation and Development Intensity in GRSG Habitat (GRSG PRMPA/FEIS pp. 7-9 – 7-15).

The BLM analyzed the potential direct, indirect, and cumulative effects of the PRMPA, including the proposed disturbance caps, on a range of resources and resources uses throughout Chapter 4 of the GRSG PRMPA/FEIS. Potential effects on the development of locatable minerals are outlined in Section 4.10.4, *Locatable Minerals* (pp. 4-82 – 4-84). The BLM clarifies in Section 4.10.4 of the GRSG PRMPA/FEIS that where disturbance caps are applied, surface disturbance from locatable operations would be counted towards the disturbance cap, but the BLM may not prevent or unduly restrict operations or uses under the Mining Law in areas where the disturbance cap was exceeded through land use planning (p. 4-83). In other words, disturbance associated with exploration and mining operations would be incorporated into the numerator of the disturbance cap calculation (GRSG PRMPA/FEIS p. 2-40), even though the PRMPA would not affect the applicability of the U.S. mining laws on BLM-managed public lands. Although the decisions resulting from the GRSG PRMPA/FEIS, including the disturbance cap, will apply only to proposed projects on BLM-administered lands, the calculation of the disturbance cap (the denominator) includes all lands regardless of land ownership (GRSG PRMPA/FEIS p. 2-42). This will help the BLM consider the cumulative impacts of disturbance on GRSG when considering proposed projects. Further, the BLM's analysis considers potential effects across all land statuses to ensure a comprehensive evaluation of direct, indirect, and cumulative impacts on GRSG and other resources addressed in the EIS. Section 4.10 of the GRSG PRMPA/FEIS includes an updated and expanded discussion of cumulative impacts highlighting the integration of indirect impacts for checkerboard land patterns. Additionally, cumulative impacts are analyzed to account for potential effects on adjacent lands and how they intersect with broader resource management objectives.

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). The BLM developed the disturbance cap using the best available science to ensure effective GRSG habitat conservation. The cap targets discrete anthropogenic disturbances, reflecting studies that show GRSG are highly sensitive to disturbance. As discussed in the BLM's response to comments, research indicates that disturbance levels above 3 percent can cause GRSG to leave an area, with 70 percent of nests found in habitats with 0-1 percent disturbance. Similarly, a link had been found between disturbance and lek abandonment, with less than 10 percent of leks occurring in areas exceeding 1 percent development (GRSG PRMPA/FEIS Appendix 22 p. 22-26).

The disturbance cap is designed to address direct habitat loss while providing the BLM with a framework for evaluating new developments. This approach balances the need to manage changing land uses with the broader goal of consistent, rangewide GRSG conservation. By analyzing the total disturbance within HMAs, including valid existing rights, the BLM ensures that development proposals align with GRSG conservation objectives while remaining informed by localized and cumulative impacts.

The BLM analyzed the environmental consequences related to disturbance caps in the GRSG PRMPA/FEIS in accordance with NEPA. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - GRSG

The Wilderness Society

Ben Tettlebaum

Issue Excerpt Text: If BLM does not retain these oil and gas and locatable minerals protections from the 2015 plan, it must take a hard look at the impacts to sage-grouse from leapfrogging past the avoid step in the mitigation hierarchy. The FEIS fails to do so, which makes it impossible for the public and BLM to compare how different alternatives will impact the sage-grouse. For example, with prioritization eliminated, BLM's proposed plan has no requirements limiting new leasing in sage-grouse habitat. See Response to comments at 82 ("Under the Proposed RMP Amendment, no specific objective or management action would specify a fluid mineral leasing strategy"); see also FEIS at 2-110 (chart summarizing fluid mineral objective under different alternatives). This step will inevitably increase new leasing and drilling in sage-grouse habitat. The FEIS, however, ignores the impact of that important change. Nothing in the FEIS considers the extent to which removing the directive to prioritize new leasing outside GHMA and PHMA will increase future oil and gas development in that habitat, and how that drilling will impact sage-grouse populations. This omission is illustrated by BLM's reasonably foreseeable development scenario (FEIS Appendix 12) (the RFD), which makes no mention of the leasing prioritization requirement in the 2015 plans. In Utah, for example, the RFD states: "Alternative 2 [the 2019 plans] would apply essentially the same management for fluid minerals as Alternative 1 [the 2015 plans]," RFD at 12–30, even though the 2019 amendments eliminated the prioritization objective from the Utah plan. See FEIS at 2-110. The RFD then predicts that the same number of wells will be drilled, with identical levels of surface disturbance, under every Utah alternative other than Alternative 3. RFD at 12–33. The RFD for Montana suffers from the same flaw. See RFD at 12-11 (stating that "Alternatives 1, 2, 4, 5, 6, and the Proposed RMP Amendment are substantially similar to each other"), 12–13 (forecasting identical levels of drilling and surface disturbance for every alternative other than Alternative 3).

Sierra Club

Robert Joyce

Issue Excerpt Text: As Sierra Club argued in its comments submitted June 13, 2024, BLM failed to take a hard look at lek buffers and as a result failed to rationally support the inadequate buffers provided in the plan amendments for oil and gas activities, mining, and livestock grazing. Allowing oil and gas drilling activity within a 0.6-mile radius of a Greater Sage-Grouse lek poses a significant threat to the species' survival. It should be a much greater distance, because leks are so sensitive to noise and disturbance. This proposed plan disregards the importance of industrial buffers. Buffers help preserve the quality and quantity of sagebrush habitat, which is essential for sage-grouse survival. By limiting development and other human activities within buffer zones, we can protect the vegetation, water sources, and other resources that sage-grouse rely on. Buffers can also help maintain connectivity between different habitat patches, allowing sage-grouse to move freely between breeding, nesting, and foraging areas. This is particularly important for maintaining genetic diversity and population health.

Wildlands Defense

Katie Fite

Issue Excerpt Text: We Object to the failure to conduct a hard look science-based NEPA analysis of the current Sage-grouse population status and trends; of habitat fragmentation and growing loss of connectivity between populations; and failure to provide an adequate current baseline of threats, ecological degradation and habitat loss since the 2015 plans. BLM's 2024 FEIS forsakes a current hard look at the 2015 plan's ineffectiveness in protecting and preserving identified Sage-grouse

populations. It also forsakes a hard look at its refusal to abandon its own blindered and out-dated management policies that are helping cause expanded habitat loss and population declines. BLM ignores the relative ineffectiveness of “vegetation treatments” and other elements of the 2015 plans used to distract the public into thinking that BLM is actually doing something to protect the bird. BLM ignores a hard look at the failure of the minimization and mitigation measures BLM already relies upon, and the tweaks in the 2024 plan, to adequately protect Sage-grouse, migratory birds, Pinyon Jay and a host of other declining sensitive species.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: BLM has not justified its determination that tripping a threshold always indicates there is a discernible population or habitat issue, which will be identified during the CF A. In fact we know that more likely than not there is not a discernable problem. Triggers should be an indication a closer look is needed, not an immediate restriction on activities that may not have anything to do with the anomaly. The seemingly unbounded range of actions a BLM AO could enact based on an inconclusive CF A has not been explained and is not reasonable. Furthermore, BLM has not analyzed the effects of the proposed management actions in accordance with 43 CFR 46.145.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: Our comments on the DEIS explained that the Bureau’s analysis of impacts to sage-grouse failed to meet its “hard look duty.” Advocates et al. 2024 at 5 and Defenders of Wildlife DEIS comment letter at 14, 24, 27, 36, and 39-42. The Bureau did not directly respond to this comment, but did claim as a general matter that the “Draft RMPA/EIS provides sufficiently detailed information to aid in determining whether to proceed with the preferred alternative or to make a reasoned choice among the other alternatives in a manner such that the public could have an understanding of the environmental consequences associated with the alternatives, in accordance with 40 CFR 1502.” FEIS at 22-24. We respectfully disagree. The essential purpose of this planning process is to set management direction for greater sage-grouse “to facilitate [sage-grouse] conservation efforts.” Yet in an EIS spanning over 2,800 pages, the Bureau devotes just 23 pages (FEIS at 4-25 to 4-47) to analyzing how well its alternatives achieve that goal. Those scant pages also lack any meaningful analysis of the nature or degree of impacts to sage-grouse under each alternative, as EPA also noted. The Chapter 4 discussion of sage-grouse impacts begins with a generic discussion of the types of impacts that could occur from the allocated uses, which tells the reader nothing about how the proposed alternatives differ in their impacts. The subsequent sections purport to describe the impacts of the PRMPA but largely just summarize the management measures for each resource, concluding with a perfunctory statement about impacts, such as that a plan element would “protect GRSG,” would “reduce disturbance,” or would “decrease the potential for impacts” or vague relative statements such as one alternative “could allow more development” than another alternative. The reader is not told what these conclusions are based on; the nature of the impacts; or importantly, the degree of increase or decrease. This is not the hard look NEPA demands. NEPA’s hard look standard requires agencies to provide “quantified or detailed information” and “[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” See *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993–97 (9th Cir. 2004); *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2004). The Bureau has not provided any justification here as to why the DEIS must be so vague. The Bureau had sufficient information to include far more detailed projections of the relative scale or acres of foreseeable habitat loss, degradation, and fragmentation; the ability of the species to tolerate this degree of

habitat disturbance; the degree of sage grouse behavioral disturbance that may result; the impacts on bird survival or reproduction, nest success and chick survival; the impacts on lek and population persistence/viability and abandonment; and the impacts on genetic connectivity."

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: Most concerningly, the Bureau failed to actually include any discussion of the likelihood that each alternative would stem habitat and population declines for the species—across biologically significant units (measured at the Haf fine scale) and rangewide. Importantly, the Bureau also failed to provide any geographic context or specificity to its discussions, describing the area or location in which the impacts will occur (e.g., areas of high oil and gas or mining development), linking those discussions to baseline conditions in that area, and describing the ultimate effect on sage grouse habitat or populations in that area. Without that type of hard look, it is unclear how the Bureau or the public can meaningfully assess the alternatives under consideration or options to avoid them. Remarkably, the FEIS also fails to even disclose that the PRMPA will increase harm to sage-grouse as compared to the status quo management (Alternative 1). That is a shocking omission given that the Bureau’s overarching goal is to conserve and restore the species. The PRMPA is less protective than current management in nearly every respect, yet with few exceptions, the Bureau fails to acknowledge that fact—or disclose that the net effect of the PRMPA is to decrease protections for sage-grouse. NEPA analysis must include a “discussion of adverse impacts that does not improperly minimize negative side effects.” See *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491 (9th Cir. 2011 (citing *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000); *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1159 (9th Cir. 2006)). This FEIS lacks such candor.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau fails to take the required hard look at how leks and lek buffer zones (the four mile zone around leks) will be treated under each of the alternatives and the efficacy of these buffers and management direction. The PRMPA also fails to disclose the current condition (e.g., amount of disturbance) of leks and lek buffer zones and how the health of lek buffer zones has changed over time (for example, through granting of exceptions, modifications, and waivers), in violation of NEPA. This is a significant deficiency given how crucial protection of the lek buffer zone is for the persistence of greater sage-grouse and achievement of the Bureau’s greater sage-grouse management goals. Defenders of Wildlife raised this issue in its DEIS comment letter at 13-14. See also *Advocates et al.* 2024 at 10. The Bureau states multiple times in the PRMPA/FEIS that it is not modifying rangewide lek buffers. See, e.g., PRMPA/FEIS 2-5 to 2-6, 22-16 and 22-82. While the Bureau may not be applying a universally consistent buffer requirement across the range, it is certainly modifying lek buffer management (both size of lek buffers and management requirements) through a series of state-level modifications. In fact, in the section on Purpose and Need, the Bureau explicitly states that it is proposing to modify lek buffers (“Management actions targeted for amendment in some states include saleable minerals, fire and fuels, vegetation and invasives, lands and realty actions, project screening, lek buffers, and interagency coordination.”). PRMPA/FEIS 1-4, emphasis added. These changes individually and cumulatively must be evaluated in the PRMPA/FEIS so that decision makers and the public can understand the consequences to this crucial seasonal habitat under each of the alternatives. Yet, the Bureau provides no information on the number, location, and condition of leks and lek buffer zones; changes to lek and lek buffer zone conditions over time; and anticipated changes to lek and lek buffer zone conditions under the alternatives. In fact, it is very difficult to glean how lek buffer zones will be managed across the range as the PRMPA/FEIS fails to provide a clear summary of the

management direction despite our explicitly asking for this (see Defenders of Wildlife 2024 DEIS comments at 14).

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The Bureau failed to adequately consider the impacts on the FEIS’s alternatives on greater sage-grouse habitat connectivity (i.e., fragmentation) and genetic connectivity, as we previously raised in comments. See Advocates et al. 2024 at 4, 5, 38. Science shows that sage grouse require large expanses of contiguous habitat and that habitat fragmentation is a primary cause of the species’ decline. Likewise, genetic connectivity is vitally important to the species. Genetic variation and the dispersal of individuals are necessary to maintain GRSG resilience to current and future environmental and demographic stochasticity and anthropogenic effects.” There are certain “hubs” and subpopulations across the range that are believed to be more important for maintaining overall species connectivity by allowing different genetic groups to converge. FEIS at 3-9. Harm to such populations, and overall fragmentation of sage-grouse habitat, restricts connectivity between populations, limiting genetic flow and placing isolated populations at greater risk of extirpation. Although the Bureau acknowledges these facts, it did not study or evaluate the possible extent of habitat fragmentation under each alternative. Likewise, the Bureau did not study the foreseeable effects to genetic connectivity from further habitat loss and fragmentation, as well as continued losses of sage-grouse subpopulations across the range. This analysis was possible by looking at the existing habitat conditions, lek trends, and research on genetic connectivity; assessing the areas in which future development is highly foreseeable (e.g., areas with proposed projects); and considering the degree to which each plan alternative would result in habitat fragmentation and isolation of particular populations, with attendant losses to genetic connectivity.] In short, the Bureau must take a hard look at connectivity between key sage-grouse populations and habitats, including how local and regional populations are inter-connected and threatened, and how the proposed conservation measures will or will not prevent habitat and population fragmentation at the regional and range-wide levels.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: PRMPA/FEIS at 22-10: “The updated regulations define “irreparable damage” to mean: “harm to a value, resource, system, or process that substantially diminishes the relevance or importance of that value, resource, system, or process in such a way that recovery of the value, resource, system, or process to the extent necessary to restore its prior relevance or importance is impossible.” The PRMPA/FEIS claims that the Bureau provided an adequate discussion of the irretrievable and irreversible impacts. PRMPA/FEIS at 22-23. We protest this assertion, as none of the alternatives discussed the local extirpations of sage grouse that may result from the authorized land uses, the further fragmentation and disconnection of sage grouse populations that will limit genetic exchanges and species health, and ultimately, the extinction of the species that will occur as a result of these inadequate plans. This should have been included in a truly “hard look” at the impacts of the proposed action. Advocates et al. 2024 comments discussed the need to select Alternative 3 as a means of slowing extinction (see, e.g. at 3), but the Bureau didn’t respond as to why any of the other alternatives were justified in making these irretrievable commitments of resources.

***Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson***

Issue Excerpt Text: The Proposed RMPA/FEIS will arbitrarily adopt the lek status definitions used by the Western Association of Fish and Wildlife Agencies (“WAFWA”). This decision removes

additional discretion from the state agencies that implement state plans and ignores variations in GRSG subpopulations that warrant discrete definitions. The Proposed RMPA/FEIS fails to analyze how adopting these new definitions will impact public lands users, even though the changes have potential (and, sometimes, obvious) consequences on HMA boundaries, adaptive management thresholds, and the application of management decisions. For example, the definition would quadruple the time during which an unused lek in certain states is considered “pending active,” which will cause long-obsolete leks to show as PHMA on HMA maps, depending on the inputs of state-specific models (e.g., Nevada’s model is calibrated to show the area around active leks as PHMA). The WAFWA definitions also do not define key lek status definitions that were used in prior state- and region-specific planning efforts and therefore should not be adopted by this range wide planning process.

Summary:

Protestors claimed that the BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA because the BLM failed to take a “hard look” at:

- the impacts to GRSG populations and habitat from allowing oil and gas leasing and locatable mineral development in GRSG habitat.
- the differences in management of leks and lek buffer zones across the alternatives and the impacts of the buffers and management direction on GRSG. One protestor claimed that the BLM failed to analyze how adopting WAFWA lek definitions would impact public land users.
- the current GRSG population status and trends and the potential effects of the PRMPA on GRSG including habitat fragmentation, loss of interconnectivity, baseline threats, ecological degradation, and habitat loss.
- geographic context and/or specificity about where impacts will occur.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS be commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and that NEPA documents concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMPA/FEIS.

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

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 and analysis provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground implementation actions (e.g., the BLM is not approving any Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional level. 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 PRMPA would not specify a fluid mineral leasing strategy (GRSG PRMPA/FEIS pp. 2-24 - 2-25). However, the BLM would consider the desired condition to manage public lands to provide

suitable GRSG habitat at the HAF mid-, fine- and site-scales when making leasing decisions. As described in GRSG PRMPA/FEIS Section 2.4, “Fluid mineral leasing would be considered in GRSG habitat management areas consistent with the Secretary’s discretion under the Mineral Leasing Act (as amended), as well as applicable BLM regulations and policies, and in conformance with RMP goals, objectives, stipulations, and required design features to avoid, minimize, and compensate impacts to GRSG” (GRSG PRMPA/FEIS pp. 2-24 - 2-25).

Impacts to GRSG from minerals management under each alternative are detailed in GRSG PRMPA/FEIS Section 4.2.2 (p. 4-36 to 4-37) and Appendix 10 Section 10.2 (pp. 10-3 – 10-28). At the rangewide level, the PRMPA would limit development in the PHMA to further protections for GRSG and reduce habitat loss and fragmentation compared to current levels and additional protections and management actions at the state-wide level would occur (GRSG PRMPA/FEIS p. 4-36). This analysis is consistent with guidance in the BLM Handbook H-1790-1, Section 6.8.1.2. GRSG PRMPA/FEIS Section 4.3.2 provides detailed analysis of the cumulative impacts on GRSG and their habitat (GRSG PRMPA/FEIS, p. 4-42 to 4-47). Additionally, Appendix 12 of the GRSG PRMPA/FEIS provides discussion of the data sources and information used in the development of the GRSG PRMPA/FEIS RFD Scenario for each state (p. 12-1).

The BLM is not proposing rangewide changes to lek buffers in the GRSG PRMPA/FEIS. The analysis in the GRSG PRMPA/FEIS Section 4.2 identifies impacts to lekking. Additional analysis of the impacts on lekking would occur during the project-level NEPA analysis. Appendix 4 of the GRSG PRMPA/FEIS discusses the BLM’s decision to adopt lek and lek status definitions developed by the WAFWA to provide consistency across the states (GRSG PRMPA/FEIS Appendix 4, p. 4-1). The differences in lek buffers between states, described in Section 2.4 and Section 2.5 of the GRSG PRMPA/FEIS, are to allow for conformance with state wildlife agency management strategies for GRSG. GRSG PRMPA/FEIS Chapter 2 Tables 2-8, 2-9, 2-10, and 2-12 provide detailed discussion on the application of lek buffer distances (GRSG PRMPA/FEIS p. 2-77, 2-86, 2-91, 2-100).

The BLM considered additional studies and data provided during the public comment process, including data on disturbance, habitat fragmentation, and reclamation of GRSG habitat, resulting in several clarifications to the GRSG PRMPA/FEIS (pp. Lit-1 – Lit-46). The BLM did not make any changes related to provided studies and data pertaining to implementation level activities, as the BLM’s proposed planning decision does not include any implementation-level activities. Additional analysis on the impacts to GRSG in a specific geographic context will be conducted at the project-specific NEPA level.

The BLM analyzed the environmental consequences and impacts to the GRSG in the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Invasive Species

Western Watersheds Project et al. Greta Anderson et al.

Issue Excerpt Text: Protesters identified that the Bureau provided an “abbreviated and woefully incomplete assessment” of the state of invasive annual grasses in sage-grouse habitat, as well as inaccuracies in the Bureau’s assessment of livestock-wildfire-cheatgrass interactions (Advocates et al. 2024, 29-31). The Bureau failed to meaningfully address these comments in the PRMPA/FEIS. We corrected an inaccuracy of the DEIS in our comments, pointing out that fire exacerbates cheatgrass spread where it already has a foothold, and cannot be solely responsible for cheatgrass invasion, as healthy sagebrush-bunchgrass communities that burn return to bunchgrasses, not cheatgrass (Wroblewski and Kauffman 2003, Chambers et al. 2007; photographs in Molvar et al.

2024: 28, 31) (Advocates et al. 2024 at 29). Despite the burden of scientific evidence that indicates otherwise, the Bureau continues to base its wildland fire ecology and management on the premise that wildfire is “a primary factor facilitating annual grass invasion” in the PRMPA/FEIS (at 3-4). We protest the failure to take a hard look at the science and to retain this broad generalization.

Summary:

A protestor claimed the BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA because the BLM failed to provide an adequate assessment of the state of invasive annual grasses in sage-grouse habitat and provided an inaccurate assessment of livestock-wildfire-cheatgrass interactions. The protestor also claimed the BLM failed to meaningfully address comments on this issue from the GRSG Draft RMPA/EIS.

Response:

Under NEPA and its implementing regulations, agencies evaluate data and conduct analyses commensurate with the importance of the impact (40 CFR 1502.15 (2022)). For this reason, NEPA documents concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMPA/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives. NEPA also requires the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document” (42 U.S.C. 4332(2)(D)). The CEQ’s regulations implementing NEPA further require that agencies use information that is reliable and accurate (40 CFR 1502.23 (2022)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground implementation actions, the scope of the analysis was conducted at a regional level. 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 manages the largest single share of GRSG habitat in the United States: nearly 69 million of 145 million acres total. For decades, federal, state and private land managers have worked to conserve and restore the sagebrush ecosystem, with federal agencies managing habitat on the lands whose surface they administer and states managing and monitoring wildlife populations. Despite these best efforts, the GRSG is in sharp decline. Populations once in the millions now number fewer than 800,000, largely due to habitat loss exacerbated by climate change effects such as drought, increasing wildfires, and the spread of invasive species. Vegetation management for the GRSG planning area has been brought forward from the 2015 plans. Cheatgrass and other non-native invasive annual grasses are analyzed in GRSG PRMPA/FEIS Section 3.3.3, *Invasive Annual Grasses* (GRSG PRMPA/FEIS p. 3-17), and Section 4.2, *Greater-Sage Grouse* (GRSG PRMPA/FEIS pp. 4-24 – 4-47), Section 4.3, *Vegetation* (GRSG PRMPA/FEIS pp. 4-48 – 4-54), Section 4.4, *Wildland Fire Ecology and Management* (GRSG PRMPA/FEIS pp. 4-54 - 4-55), Section 4.6, *Special Status Species* (GRSG PRMPA/FEIS, p. 4-62), and Section 4.14, *Soil Resources* (GRSG PRMPA/FEIS pp. 4-117 – 4-120) as well as the corresponding sections in Appendix 10.

Before beginning the GRSG Draft RMPA/EIS and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The BLM has incorporated the latest science into the discussion of impacts from vegetation management in Section 4.3, *Vegetation*, including an analysis of both the potential for beneficial and adverse effects on GRSG habitat and the importance of vegetation management on fuels treatments, wildland fire management and wildlife habitat (GRSG PRMPA/FEIS pp. 4-52 to 4-53). Further discussion of invasive annual grasses and its interaction with wildland fire management are found in Section 4.4 (GRSG PRMPA/FEIS p. 4-55).

The GRSG PRMPA/FEIS explains that GRSG are considered a sagebrush ecosystem-obligate species; they rely on sagebrush on a landscape level and on a micro-habitat scale for their survival. The BLM will continue to work with appropriate partners to evaluate the latest science and consider changes to habitat indicator tables. As stated in GRSG PRMPA/FEIS Appendix 8, Section 8.2, *Habitat Indicators and Benchmarks for Site-Scale HAF*, as research becomes available, new data could refine or clarify GRSG selection for vegetation structure and composition in seasonal habitats for certain populations. Because of this, the habitat indicators will be periodically reviewed to incorporate the best available science in coordination with applicable federal, state, local, and tribal agencies. Edits should only be made if warranted by scientific evidence, in coordination with the applicable state agency (GRSG PRMPA/FEIS Appendix 8 pp. 8-1 – 8-19).

The GRSG PRMPA/FEIS was developed taking into consideration comments that were made on the GRSG Draft RMPA/EIS. Substantive comments made on the GRSG Draft RMPA/EIS can be found in Appendix 22, including how the BLM responded to comments on vegetation management, invasive vegetative species, and wildland fire management (GRSG PRMPA/FEIS, pp. 22-107 – 22-109). Literature used in the analysis and cited throughout the document provides a comprehensive list of studies and resources used in the preparation of the GRSG PRMPA/FEIS (GRSG PRMPA/FEIS, pp. Lit-1 – Lit-46). The BLM did make several revisions to Sections 4.3 (GRSG PRMA/FEIS, pp. 4-48 – 4-54) and 4.4 (GRSG PRMA/FEIS, pp. 4-54 – 4-55) based on suggestions from commenters.

The BLM relied on high quality information in preparation of the GRSG PRMPA/FEIS and appropriately analyzed the environmental consequences and impacts of invasive annual grasses to GRSG habitat. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Livestock Grazing

N-2 State Grazing Board

Hank Dufurrena et al.

Issue Excerpt Text: The Board maintains that the BLM did not complete an appropriate analysis in Section 18.3.5: Livestock Grazing of Appendix 18: Social and Economic Impact Analysis Methodology regarding the economic or social implications of the Proposed RMPA as it pertains to livestock grazing and the impacted communities. The reduction of Animal Unit Months (AUMs) is not the only quantifying impact associated with social and economic analyses, particularly considering the prevailing culture and longstanding history of public land livestock grazing in Nevada. It is undeniable that rural communities will feel the ramifications of this Proposed RMPA. The BLM's incomplete analysis clearly demonstrates the agency's lack of understanding regarding the importance of livestock grazing in Nevada. Any limitation of livestock grazing on public lands in an attempt to "benefit" Sage-grouse would impact rural communities relying on livestock for their most stable economic sector and way of life.

JRB, LLC
Vance Broadbent

Issue Excerpt Text: Range improvements on public lands must be authorized by the BLM through a cooperative range improvement agreement or a range improvement permit. 43 C.F.R. § 4120.3-1(b). Range improvement projects also require the appropriate review under NEPA. 43 C.F.R. § 4120.3-1(f). In JRB’s experience, most of the range improvements currently located on public lands have been in place for decades and have already gone through the NEPA process, which considered potential impacts to and benefits to all wildlife, including Greater Sage Grouse. They were also put in place for a specific purpose – including the purpose of supporting the existing livestock grazing management and grazing use on federal grazing allotments. And if such range improvements have not required modification or removal at this point, then JRB cannot envision a situation that would now require removal to protect Greater Sage Grouse. The regulations require that permittees maintain range improvements and make specific modifications when necessary. See 43 C.F.R. § 4120.3-4. BLM may also require range improvements to be removed when they “are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under § 4120.3-4.” 43 C.F.R. § 4120.3-6(b). While the regulations allow for modifications and removal, this generally occurs when the improvements are no longer meeting the specific standards under the permit or no longer fulfilling the purpose for which they were established. The proposed Management Action RM-3 states: “During the grazing authorization renewal process, evaluate all existing livestock management range improvements with respect to their effect on GRSG and GRSG habitat. Consider removal or modification of projects that negatively affect GRSG or GRSG habitat. Functional projects needed for management of sensitive species habitat or other sensitive resources should be maintained but consider implementing improvements in a manner less impactful to GRSG.” Proposed RMPA and FEIS at 2-34. Proposed Management Action RM-5 states: “Evaluate if the fence is needed and/or up to BLM wildlife friendly fencing standards (BLM H 1741). If the fence is unnecessary, remove it. If the fence is needed to support management, mark fences (install reflective fence markers) in high risk or important areas (Christiansen 2009; Stevens 2011). Where marking fences does not reduce fence-related GRSG mortality, modify fences. Modification could include re-routing, altering construction materials, drop fencing, or limiting perching of predators.” *Id.* at 2-35. The Livestock Grazing Management Action RM-3 and a portion of RM-5 are unnecessary and contradict the original purpose and need of the existing range improvements. It is also unclear as to the analysis to be made to determine whether a range improvement “negatively affects” Greater Sage Grouse. Management Action RM-5 specifically appears to assume that all fencing has a negative impact on Greater Sage Grouse and must be either removed or modified. The BLM’s analysis is backwards. The BLM must first determine whether any particular fence is impacting Greater Sage Grouse before requiring expensive modifications or unnecessary removals. In addition, any modifications or removal decisions must be discussed with permittees because they are the ones using the improvements and know their importance to ranching operations.

JRB, LLC
Vance Broadbent

Issue Excerpt Text: JRB objects to any modifications or removal of range improvements that have little to no impact on Greater Sage Grouse and its habitat, and more specifically to range improvements that are essential to the ranching operations. The proposed management actions also conflict with Wyoming Executive Order 2019-3, which concludes that livestock grazing and the associated range improvements have a de minimus impact on Greater Sage Grouse and its habitat. Wyoming Executive Order 2019-3, Appendix G at 1.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: Wyoming Department of Agriculture (WDA) believes BLM continues to apply unnecessary adaptive management thresholds to livestock grazing management, when WDA has consistently identified BLM regulations (43 CFR part 4100) which authorizes BLM to modify improper livestock grazing management practices and address greater GRSG habitat under a Land Health Standards (LHS) determination for Special Status Species (SSS): ... The use of "contributing cause" or a "causal factor" is inconsistent with BLM regulation 4180(c)(1), which states, BLM must identify livestock grazing management as a "significant factor/s" in failing to achieve LHS. Simply based on the presence of livestock on any given allotment will certainly and incorrectly implicate livestock grazing management as a "contributing cause" or "causal factor." BLM has under-analyzed the direct, indirect, and cumulative impacts of implicating livestock grazing management as a "contributing factor" or "causal factor" under adaptive management, which will negatively affect every livestock grazing permittee, every time a soft or hard threshold is exceeded.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: The BLM fails to accurately analyze the effects or inadequacies of a fully implemented 2015 RMP. Additionally, the 2019 RMP was never implemented and cannot serve as a reference for the analysis of this document. Proper livestock grazing has never been identified as a high level threat to GRSG. The Proposed RMP plan components for livestock grazing go excessively well beyond the 2015 RMP decision. The Proposed RMP fails to adequately incorporate neutral peer reviewed scientific evidence indicating the need for more stringent and restrictive regulatory mechanisms for livestock grazing management, which again are well outside of existing regulations or the 2015 RMP.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: The BLM is incorrectly focused on the inclusion of ""Thresholds and Response"" to the livestock grazing section. BLM's LHS regulations 43 CFR part 4180 already provides the equivalent of a Threshold when the Standard for SSS is not met due to livestock grazing being the significant causal factor (i.e. the Standard IS the Threshold that must be met.) 43 CFR 4180.2(c)(2) states: ""[T]he authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year. "" When the authorized officer follows and implements 43 CFR 4180.2(c)(2) by modifying the existing grazing management, this IS the Response to address improper livestock grazing negatively impacting GRSG habitat. The Response or modification to existing grazing management, such as season of use, timing, intensity, duration, type of livestock, etc .. is developed in an alternative and analyzed under NEPA, before being implemented into the permit or terms and conditions. This is yet another example of BLM arbitrarily adding management actions well beyond their existing regulations without analyzing the effects to grazing permittees or the agency's ability to implement given economic and staff constraints. Furthermore, the Proposed RMP neglects to analyze the economic impacts from the addition of thresholds and response to the livestock grazing permittees. Under existing regulations, BLM has the full authority to modify improper livestock grazing management on any given permit when LHS for SSS are not met.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: We protest the Bureau's response to comments about the combined impacts of drought and livestock grazing (PRMPA/FEIS at 22-21) which claims that the Bureau IM 2024-034

and an Information Bulletin on the National Grazing Drought Response Dashboard address this issue, but they do not, nor does it comport with NEPA's requirements to include that analysis here. In our comments we raised very specific concerns and detailed the impacts that result from the cumulative and compounding effects of livestock grazing during periods of drought. (WWP et al 2023 at p. 55-57). The FEIS fails to address or acknowledge these impacts, instead relying on the Bureau IM 2024-034 and a related Informational Bulletin. In fact, the Bureau IM 2024-034 does not provide any management guidance or prescription regarding livestock grazing in the context of drought. The IM serves only to address when the Bureau managers should conduct a drought assessment. It does not describe any action to be taken, does not establish a timeline for action, does not include any preliminary precautionary measures to be taken, and even the assessment process is only proposed as a suggestion for how to proceed. Further, the IM does not include any reporting requirements and does not address any action to ensure that assessments are being conducted in a timely manner and in accordance with the suggested guidelines. We have repeatedly raised issues regarding the agency's failure to provide meaningful, consistent habitat objectives for sage grouse habitat, and the concurrent failure to take a "hard look" at grazing's impacts. See, for example, Advocates et al. 2024 at 21, 76. WWP et al 2023 at 63, and Defenders 2024 at 27. We asked the Bureau to fully analyze the impacts of livestock grazing – including the effects of range infrastructure – as part of this planning process. Id. We specifically noted that grazing affects sage grouse in consistent, predictable ways through the range. WWP et al. 2023 at 49. We discussed the ways that the 2015 plans were themselves deficient, and that the Bureau needed to do better in the 2024 plans than ever before. We protest that, rather than analyze these grazing impacts and set durable meaningful, consistent conservation measures related to livestock grazing, the Bureau perplexedly and inappropriately in the PRMPA/FEIS analyzed impacts of the plan to livestock operators rather than analyze the impacts of livestock grazing on sage grouse. See PRMPA/FEIS at 4-65. The Bureau relies on the implementation of land health standards and the design features¹⁰ to remedy any problems for sage grouse. PRMPA/FEIS at 2-33, 3-31. (See also page 18, supra, for a discussion of RDFs being routinely ignored.) The Bureau also included (but did not require implementation of) Livestock Best Management Practices (BMPs). PRMPA/FEIS at Appendix 15. This does not address or analyze the impacts of grazing on sage grouse and we protest on this basis. Additionally, we asked for the Bureau to consider allowing for voluntary relinquishment and permit retirement as a key component of the plan. WWP et al. 2023 at 51. Instead the PRMPA/FEIS adopts RM-6 that reiterates the existing grazing regulations and recommends putting relinquished leases in reserve common allotments. PRMPA/FEIS at 2-35. BLM does not take a hard look at the effect of this. We protest that this only provides temporary reprieve for sage grouse and that the Bureau didn't set any limits on the duration or frequency of use of these allotments, therefore undermining any protection from grazing relinquished permits might have provided. For not taking a hard look at all of these specific issues related to livestock grazing, BLM violated NEPA.

The Idaho Cattle Association (ICA)

Cameron Mulrony

Issue Excerpt Text: Thresholds and Responses Chapter 2, Table 2.4, Page 2-34, RM-2 The management of grazing permits is guided by 43 CFR. In these regulations, 4180.2(c)(1) outlines the steps to be taken if rangeland is failing to achieve standards. Under the existing regulatory framework, if an area is found to not be meeting standards and grazing is determined to be the causal factor, then additional terms and conditions are developed during the permit renewal process. This process gives BLM full ability to respond to and address management concerns and make management changes if a standard is not being met. Threshold and responses allow the BLM to add additional requirements and repercussions outside of the permit process. Grazing permit requirements are established to manage the landscape as a whole over time where thresholds and

responses inappropriately bring focus on small areas that are likely not representative of the health of the landscape.

The Idaho Cattle Association (ICA)
Cameron Mulrony

Issue Excerpt Text: Range Improvements Chapter 2, Table 2.4, Page 2-34 and 2-35, RM-3, RM-4, and RM-5 The Proposed Plan establishes a position that range improvements, generally, pose an outsized risk to GSRG persistence. Productive grazing management depends on BLM compliance with the grazing regulations and the ability to develop range improvements that support reasonable and responsible land use management. Prohibition of new range improvements, recommendations to remove range improvements, or consideration of range improvements as primary threats are not supported by science. Further, assessment of range improvements and their distance requirements from leks should not be prescribed at this programmatic level but rather conducted through a site specific NEPA process. Rangeland improvement projects are important tools for grazing permittees and the BLM to manage grazing at optimal levels. Implementation of the Proposed Plan should not result in the reduction or elimination of range improvements, nor should the plan discourage their development. The Plan should be modified to state that that range improvements are within the suite of actions to be considered to achieve applicable Standards and Objective, as is already prescribed in 43 C.F.R. 4180.2(c).

Summary:

Protestors stated the BLM’s approval of the GRSR PRMPA/FEIS would violate NEPA by:

- Failing to take a hard look at and analyze the direct, indirect, and cumulative impacts of livestock grazing on GRSR, stating the Livestock best management practices (BMPs) outlined in Appendix 15 do not address the impacts of livestock grazing on GRSR.
- Failing to incorporate neutral, peer-reviewed literature for livestock grazing management and by failing to respond to comments on the GRSR Draft RMPA/EIS about the impacts of livestock grazing.
- Failing to perform an adequate analysis of the social and economic impacts of livestock grazing management actions on the impacted communities.
- Using the 2019 RMP as a reference for this analysis when it was never implemented.
- Protestors also claim the BLM’s approval would fail to comply with BLM grazing regulations (43 CFR 4180.2(c)) by suggesting management actions that are not supported by science and are outside the existing regulatory framework and by failing to prove livestock grazing management is a contributing or causal factor to GRSR under adaptive management.

Response:

Under NEPA and its implementing regulations, agencies evaluate data and conduct analyses commensurate with the importance of the impact (40 CFR 1502.15 (2022)). For this reason, NEPA documents concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSR PRMPA/FEIS.

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

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground planning implementation actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional level. 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 GRSG PRMPA/FEIS does not propose closing any lands to livestock grazing. As noted in Section 2.2 (GRSG PRMPA/FEIS, pp. 2-1 – 2-2) and described further in Appendix 15 (GRSG PRMPA/FEIS, pp. 15-1 – 15-40), Alternatives 1 and 2 include livestock grazing actions addressed by regulation, policy, or that contain duplicate management in the existing RMPs. The action alternatives focus on the threat to GRSG from improper livestock grazing. The BLM will continue to comply with all existing laws and regulations related to livestock grazing.

Previous adaptive management strategies were inconsistent across the range of GRSG, were often based on political and not biological boundaries, and frequently resulted in conflicting data because of these inconsistencies, compromising any meaningful response. After extensive discussions with state wildlife agency biologists regarding these inconsistencies, the BLM elected to include a hierarchical population monitoring tool in the PRMPA to remove these inconsistencies, and the BLM would use the results as an agreed-upon starting point for future discussions with state wildlife agencies when a population anomaly is detected, and the use of these tools does not directly result in a management action. Monitoring GRSG populations provides a useful tool for identifying habitat conditions. Should livestock grazing and GRSG habitat prove to be in conflict, adaptive management will provide detail on how to address low population numbers, reversal or retention of thresholds, differential scales, and coordination between agencies on assessing population trends. See Table 2-4 for details on how adaptive management strategies would be used in future management actions (GRSG PRMPA/FEIS, pp. 2-44 – 2-50).

The BLM is required to analyze the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). Cumulative effects are “effects on the environment that result from the incremental effects of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time” (40 CFR 1508.1(g)(3) (2022)). The BLM has prepared a cumulative impact analysis consistent with the broad nature and scope of the proposed alternatives 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 of livestock grazing on GRSG are discussed in Section 4.2.3 (GRSG PRMPA/FEIS, p. 4-44), and the cumulative impacts to livestock grazing are discussed in Section 4.8.3 (GRSG PRMPA/FEIS, pp. 4-69 – 4-70).

Appendix 15 of the GRSG PRMPA/FEIS outlines the BMPs that the BLM would consider during implementation of the PRMPA. As stated in Appendix 15, the BMPs or design features, which would apply only to livestock grazing activities, are not required for every proposed project or activity but are useful to aid in proper livestock grazing management in GRSG habitats (GRSG PRMPA/FEIS, p. 15-1). The applicability and overall effectiveness of each BMP cannot be fully assessed until the project level when the project location and design are known. Because of site-specific circumstances, some BMPs may not apply to some projects (e.g., a resource is not present on a given site) and/or may require slight variations. Discretion would be allowed by the authorized officer in how and when the BMPs and design features would be applied.

The BLM considered relevant, available, published scientific information up to the date of publication of the GRSG PRMPA/FEIS and considered all information provided during the comment period on the GRSG Draft RMPA/EIS. See Appendix 10, Section 10.1.1 for a discussion on the methodology the BLM used in analyzing impacts (GRSG PRMPA/FEIS, p. 10-1), Section 10.2.1 for assumptions and methods associated with GRSG (GRSG PRMPA/FEIS pp. 10-3 – 10-4), and Section 10.8.1 for assumptions and methods associated with livestock grazing (GRSG PRMPA/FEIS, pp. 10-56 – 10-57).

In compliance with NEPA, the BLM considered all public comments submitted on the GRSG Draft RMPA/EIS. The BLM complied with CEQ's NEPA implementing regulations (40 CFR 1503.4 (2022)) by performing a detailed comment analysis that assessed and considered all substantive comments. GRSG PRMPA/FEIS Appendix 22 presents the BLM's responses to all substantive comments. Summaries of each issue raised by each comment letter with the BLM's response can be found in Section 22.2 for rangewide comments (GRSG PRMPA/FEIS, pp. 22-4 – 22-113) and Section 22.3 for state-specific comments (GRSG PRMPA/FEIS, pp. 22-113 – 22-119). The BLM's responses identify modifications to the alternatives, improvements to the impact analysis, or factual corrections made in the GRSG PRMPA/FEIS as a result of public comments. The BLM's responses also explain why certain public comments did not warrant further agency response. BLM's response to comments on livestock grazing impacts can be found in Section 22.2.23 (GRSG PRMPA/FEIS, pp. 22-53 – 22-59).

GRSG PRMPA/FEIS Appendix 13 serves as an update to the social and economic baseline conditions discussed in the 2015 Sage-Grouse Plan Amendment EISs (GRSG PRMPA/FEIS, pp. 13-1-1 – 13-6-8). Impacts to social and economic conditions, including as they relate to grazing, are described in Section 4.12 (GRSG PRMPA/FEIS, pp. 4-90 – 4-109). Additionally, Section 4.12.3, discusses how impacts on social and economic conditions could have cumulative impacts on the surrounding communities (GRSG PRMPA/FEIS, pp. 4-104 – 4-109).

The BLM is not withdrawing either the 2015 or 2019 RMP but is instead following its land use planning process under FLPMA and BLM's land use planning regulations to amend existing land use planning decisions for GRSG. Section 1.2 describes the timeline for planning and changes since 2015 and 2019 that precipitated this current effort (GRSG PRMPA/FEIS, pp. 1-1 – 1-2). Alternative 1 represents the 2015 plan (GRSG PRMPA/FEIS, pp. 2-1 – 2-2) and Alternative 2 represents the 2019 plan (GRSG PRMPA/FEIS, p. 2-2), and Chapter 2 of the GRSG PRMPA/FEIS explains how the PRMPA compares to those alternatives. The manner in which the GRSG PRMPA/FEIS would amend the 2015 and 2019 RMPs and the degree to which management direction from those plans would remain in place, would be fully replaced by, or would be partially replaced by management direction and allocations in this PRMPA has been clarified, by State, in Appendix 2 (GRSG PRMPA/FEIS, pp. 2-IN-1 – 2-WORLAND-36).

The BLM adequately analyzed environmental and socioeconomic impacts related to livestock grazing in the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Locatable Minerals

Lithium Nevada Corp Colby Prout

Issue Excerpt Text: BLM must better analyze impacts to valid existing rights and impacts of reduced mineral exploration. As we have previously commented, see Lithium Nevada DEIS/RMPA Comments at *15, the Proposed Plan fails to assess impacts of reduced mineral exploration as a result of more onerous restrictions on surface disturbance in PHMA and restrictions on rights of

way. Such restrictions appear to be contrary to statute, which provides for pre-discovery access to, use of, and occupancy rights on lands open to location for mineral exploration and development. See 30 U.S.C. § 22. Restrictions on mineral exploration also will create socioeconomic impacts and exacerbate our country's dangerous reliance on unfriendly foreign sources of critical minerals. We protest BLM's failure to describe an efficient method by which BLM will address valid existing rights that have not yet been adjudicated in federal court. This is particularly important because, as we have repeatedly stated in these comments, BLM's habitat designations are inaccurate.

***Montana Mining Association
Matt Vincent***

Issue Excerpt Text: Without providing more specifics on the current conditions of the cap percentage potential exceedance, the Final RMPA/EIS does not comport with NEPA's "hard look" requirements or the APA's notice and comment requirements, because it is impossible for stakeholders to fully understand and provide meaningful comments on the impacts of the cap changes being proposed.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: We protest the Bureau's failure to include locatable minerals in the Reasonably Foreseeable Development (RFD) analysis. Protesters (Advocates et al. 2024, p. 35-36, Defenders of Wildlife DEIS Comment letter at 37-38) identified the necessity of including locatable minerals in the RFD to: 1) inform the potential range of direct, indirect, and cumulative effects of mineral development to PHMAs in the next 20 years, 2) determine whether there are regions/populations/leaks that are particularly at risk from locatable mineral development, and 3) analyze the potential cumulative effects of locatable mineral development in combination with other mineral development (fluid, solid, etc.), and their location with respect to proposed ACECs, and other considerations. In response, the Bureau (PRMPA/FEIS p. 22-84) states that, "The GRSG RMPA/EIS includes information about mineral potential for oil and gas and certain leasable minerals, potential for locatable minerals is very difficult to accurately determine due to the wide range of what falls into the locatable mineral category and the constant variability of values of various metals and gems. Information available about locatable mineral development is limited and it is not feasible to use to develop trends needed to project future locatable mineral development. As such, information on the number, location and size of existing locatable mining claims, notices and plans of operations are not included in the EIS." This response is inadequate. As stated in our comments (Advocates et al. 2024 at 36), the Department of Interior has completed mineral potential analyses for locatable minerals in RFDs for other major planning processes, including the recent Central Yukon RMP, which analyzed potential impacts to 13 million acres of the Bureau lands in Alaska. The Bureau provides no rationale for why it is feasible to include locatable minerals in the RFD for the Central Yukon RMP and yet infeasible for the Sage Group RMP process. Its decision to forgo this important information and analysis is arbitrary and capricious and fails to meet the hard look requirements of NEPA.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: In our comments (Advocates et al. 2024 at 42), we noted that Section 4 (DEIS, p. 4-108) provides incomplete information on the plans of operations, exploration projects and notices in the planning area and within SFAs. The DEIS provided information on Idaho, (56 plans of operations and notices currently authorized within the decision area - 7 of those are within the SFA that were previously recommended for withdrawal) and Oregon (117 mining claims, 1 plan of operation and 9 exploration notices in SFA), but it failed to provide the same information for

California and Nevada. The Bureau’s response to comments does not specifically address this issue, but the FEIS fails to provide the missing information, which is necessary under NEPA to characterize existing conditions and to understand the potential impacts of locatable mineral development within SFAs.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: We also protest the Bureau’s failure to take a hard look at the potential direct, indirect and cumulative effects of locatable mineral development, which is necessary to compare the alternatives (with and without recommended mineral withdrawals) and understand the viability of the various alternatives to achieve the stated sage grouse conservation goals and objectives, as stated in Protester’s comments (Advocates et al. 2024 , p. 39-44). In response, the Bureau (p. 22-610) states that, “NEPA directs the Bureau to analyze a range of reasonable alternatives for management, based on the Purpose and Need, as outlined in Chapter 2, sections 2.1- 2.5. As noted, the preferred alternative in the Draft EIS was Alternative 5, but that is not the Bureau’s final decision about management of the Bureau lands. The Bureau retains the discretion to make a reasoned choice among the alternatives in a final decision for management based on public comments and the analysis. Alternatives 1 and 3 would recommend that certain areas are withdrawn from location and entry under the Mining Law of 1872. As noted in Section 3.2.1 of the Draft RMPA/EIS, there are numerous reasons for the decline of GRSB populations, locatable mineral development is one source of loss, fragmentation, and/or degradation of suitable sagebrush habitat. A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive presentation of baseline data or impacts analysis. The baseline data and impacts analysis provides the necessary basis to make informed land use plan-level decisions. “Impacts on GRSB from locatable minerals management under each alternative are described in Section 4.2 of the Draft RMPA/EIS to a level that would allow for an informed decision among alternatives. The Bureau also recognizes that it has limited authority to impose conditions on certain uses related to the Mining Law of 1872 through land use planning decisions. Accordingly, the Bureau will apply management actions in the RMPA only to the extent that they are consistent with the Mining Law of 1872 and the Bureau’s regulations.” This response is inadequate. While a land use planning level decision may not require an exhaustive presentation of baseline data or impacts analysis, it must provide sufficient data and analysis for the public and decision-makers to understand the potential impacts of locatable mineral development and to compare alternatives. In this case, the Bureau has failed to provide even the most basic information and analysis on locatable minerals, which it has done in other NEPA documents and planning projects. As noted above (and in Advocates et al. 2024 at 36), the Bureau has completed mineral potential reports in the Central Yukon RMP process to analyze potential management direction for 13.1 million acres of the Bureau lands, and as noted in Protestor’s comments (Advocates et al. 2024, p. 39-44), the “No Action” alternative for the 2016 Sage Grouse Focal Area Mineral Withdrawal DEIS analyzed the potential effects of locatable mineral development over a 20-year period on roughly 10 million acres of federal lands (Sagebrush Focal Areas), subject to compliance with all applicable laws. It estimated direct impacts to 108 leks and 961 males and indirect impacts to 386 leks and 8,331 males. Although that analysis likely underestimated the impacts of locatable mineral development within that area, given the sharp increase in claim-staking since 2016, this is the type of quantitative analysis that is necessary to analyze impacts and compare alternatives (with and without recommended withdrawals) in this DEIS. The Bureau fails to provide any rationale for why this type of information and analysis is feasible for other planning processes and NEPA analysis, but infeasible for this one.

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Greta Anderson et al.

Issue Excerpt Text: We also object to the Bureau’s failure to demonstrate that absent proposed mineral withdrawals the RMPs will meet the stated goals and objectives, including those to a) uphold disturbance caps, b) maintain and enhance habitat conditions in PHMAs, and maintain existing connectivity between sage grouse populations, and c) achieve no net habitat loss. The Bureau’s generic response (P. 22-610) fails to address these issues as raised in Protestors comments (Advocates et al. 2024, p. 36—38). Absent an RFD for locatable minerals development, the Bureau fails to take the necessary hard look required under NEPA to determine the potential impacts of locatable mineral development to disturbance caps, connectivity, and net habitat loss. Protesters used readily available claims data from the Bureau database to create maps of locatable mineral claims in conjunction with predicted sage grouse population extirpation trends by Coates et al. These maps illustrate the tremendous risk to Greater Sage Grouse populations from locatable mineral development, absent proposed mineral withdrawals. The Bureau failed to respond to this data and analysis, nor provide any of its own data and analysis to demonstrate that the goals and objectives could be achieved.

Summary:

Protesters stated that the BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA by:

- Failing to analyze the effects to valid existing rights and mineral exploration.
- Including insufficient and inconsistent baseline information on locatable minerals, not including locatable minerals in the RFD, and failing to adequately analyze potential effects of mineral development on GRSG.

Response:

The effects analysis in an EIS must demonstrate that the BLM took a “hard look” at the environmental 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 reliable and accurate (40 CFR 1502.23 (2022)). 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 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 environmental 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 analysis in the GRSG PRMPA/FEIS land use planning effort provides the basis to make informed decisions regarding individual project applications. However, the BLM’s proposed planning decisions described in the GRSG PRMPA/FEIS would not authorize any mining projects, and all project approvals are subject to further review.

As the land use planning decisions under consideration by the BLM are broad in nature, the scope of the analysis was conducted at a regional 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 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).

Before beginning preparation of the GRSG Draft RMPA/EIS, and throughout the planning effort, the BLM considered the availability of data from all sources, the adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The BLM has incorporated the latest science into the discussion of impacts in Chapter 4 (GRSG PRMPA/FEIS, pp. 4-1 – 4-144) and Appendix 10 (pp. 10-1 – 10-196).

The BLM describes potential effects of the PRMPA and alternatives on locatable mineral development in GRSG PRMPA/FEIS Section 4.10.4, and the potential effects of mineral development on GRSG are described in GRSG PRMPA/FEIS Section 4.2. Based on BLM guidance, the socioeconomic analysis for locatable minerals was conducted commensurate with the level of decision making. The BLM used the best available data at the time of preparing the GRSG PRMPA/FEIS for the baseline socioeconomic discussion and the impacts on social and economic conditions. In GRSG PRMPA/FEIS Section 4.12, *Social and Economic Conditions (Including Environmental Justice)* (GRSG PRMPA/FEIS pp. 4-93 – 4-94; 3-46 – 3-54), Appendix 10 (Section 10.12, pp. 10-108 - 10-144) and Appendix 13 the BLM discusses the baseline economic conditions and impacts on economic conditions under each alternative throughout the analysis area, including for locatable minerals. As discussed in these sections, impacts on economic conditions affect many individuals in the surrounding communities, including in communities that rely on mining.

As noted in GRSG PRMPA/FEIS Appendix 22 (pp. 22-84), the “potential for locatable minerals is very difficult to accurately determine due to the wide range of what falls into the locatable mineral category and the constant variability of values of various metals and gems. Information available about locatable mineral development is limited and it is not feasible to use to develop trends needed to project future locatable mineral development.” For these reasons, the BLM did not include locatable minerals in its RFD scenarios describing potential quantitative effects under the alternatives in the GRSG PRMPA/FEIS. A qualitative approach to assessing impacts on mineral development applied in the GRSG PRMPA/FEIS is also appropriate because, as stated in Section 4.10.4 of the GRSG PRMPA/FEIS, “Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts. However, the BLM could ask the Secretary of the Interior to propose and make a withdrawal of the land from location and entry under the Mining Law of 1872 pursuant to Section 204(a) of FLPMA ” (GRSG PRMPA/FEIS p. 4-82). Withdrawals are considered under a separate process by the Secretary consistent with FLPMA and applicable regulations. Should the Secretary propose a withdrawal, the proposal would require environmental and other analysis under NEPA and other applicable authorities before the land could be withdrawn. Additionally, valid existing rights would be respected and would be subject to the new restrictions or exclusions only to the extent consistent with applicable law (GRSG PRMPA/FEIS p. 4-71).

The BLM adequately analyzed the environmental and socioeconomic consequences to and from locatable mineral development under the alternatives considered in the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis – Oil and Gas

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The discussion of oil and gas impacts under different alternatives is arbitrary and capricious and violates NEPA. Like the DEIS, the FEIS fails to provide the information and

analysis required for a hard look at the impacts of the different alternatives. The FEIS makes it impossible for the public and the Bureau to compare how different alternatives will impact the sage-grouse. This is particularly true for oil and gas impacts: while the Bureau claims that its proposed plan will better protect the sage-grouse than current management, the FEIS and supporting documents do not support that claim. The fact that most oil and gas provisions are being weakened as compared to current management (Alternative 1) directly contradicts the claim. Further, the proposed plan largely abandons the first step in the mitigation hierarchy: it would not require the Bureau to avoid new leasing in sage-grouse habitat. But nowhere does the FEIS evaluate the impact of that fundamental change in management direction. For example, the proposed plan weakens the 2015 plans currently in effect by eliminating the requirement to prioritize new leasing outside of PHMA and GHMA. Unlike the 2015 plans, the Bureau's proposed plan has no requirements limiting new leasing in sage-grouse habitat. See Response to comments at 82 ("Under the Proposed RMP Amendment, no specific objective or management action would specify a fluid mineral leasing strategy"); see also FEIS at 2-110 (chart summarizing fluid mineral objective under different alternatives). This step will inevitably increase new leasing and drilling in sage-grouse habitat. The FEIS, however, ignores the impact of that important change. Nothing in the FEIS considers the extent to which removing the directive to prioritize new leasing outside GHMA and PHMA will increase future oil and gas development in that habitat, and how that drilling will impact sage-grouse populations. This omission is illustrated by the Bureau's reasonably foreseeable development scenario (FEIS Appendix 12) (the RFD), which makes no mention of the leasing prioritization requirement in the 2015 plans. In Wyoming, for example, the RFD assumes that under both Alternatives 1 and 2 (the 2015 and 2019 plans), future drilling rates over the 20 year life of the plan would remain comparable to what occurred from 2015-2023. RFD at 12-37 to 12-38.7 This assumption substantially overstates the level of drilling likely to occur under Alternative 1, however, because application of the leasing prioritization requirement will reduce future drilling rates over the life of the 2015 plan."

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: Steering new leasing away from sage-grouse habitat does not immediately reduce new well spuds. Instead, the impact of reduced leasing is felt over several years. See Decl. of Laura Zachary at 20, Attachment C (describing Congressional Budget Office finding that most production on newly issued onshore leases does not occur until ten years after lease issuance); Amy Joi O'Donoghue, New leases for oil, gas plummet under Biden-Harris. Will the future hold more of the same?, *Deseret News* (Sept. 12, 2024), <https://www.deseret.com/utah/2024/09/12/new-leases-for-oil-gas-plummet-under-biden-harris/> (Western Energy Alliance President Kathleen Sgamma noting that "We will not see the full impacts of [reduced federal oil and gas leasing] for at least a few years"). As a result, leasing prioritization under the 2015 plans is not reflected in 2015-2023 drilling rates, and assuming those rates will continue for the next two decades ignores the impact of prioritization. This omission is illustrated by comparing the RFD's projections for Alternative 3 and Alternative 1. Alternative 3 would close sage-grouse habitat to new leasing, and thus dramatically reduce future development: the RFD predicts that future drilling under Alternative 3 will drop by more than 70% compared to Alternative 1. See RFD at 12-41 (forecasting 4,900 wells drilled in Wyoming sage-grouse habitat under Alternative 1, and only 1,453 wells under Alternative 3). The RFD's disregard of leasing prioritization distorts the entire analysis of oil and gas impacts, and inaccurately portrays Alternative 1 as worse for the sage-grouse than other alternatives under consideration. In fact, the RFD asserts that every FEIS alternative (other than the 2019 plan) would result in less drilling and surface disturbance in Wyoming sage-grouse habitat than Alternative 1. RFD at 12-41. The RFD's analysis in other states is similar: there is no mention of prioritization anywhere in the RFD. See PRMPA/FEIS Appx 12. In Utah, for example, the RFD states

“Alternative 2 [the 2019 plans] would apply essentially the same management for fluid minerals as Alternative 1 [the 2015 plans],” RFD at 12-30, even though the 2019 amendments eliminated the prioritization objective from the Utah plan. See PRMPA/FEIS at 2-110. The RFD then predicts that the same number of wells will be drilled, with identical levels of surface disturbance, under every alternative other than Alternative 3. RFD at 12-33. The RFD for Montana suffers from the same flaw. See RFD at 12-11 (stating that “Alternatives 1, 2, 4, 5, 6, and the Proposed RMP Amendment are substantially similar to each other”), 12-13 (forecasting identical levels of drilling and surface disturbance for every alternative other than Alternative 3). Disregarding prioritization, and assuming that removing limits on new leasing will have no impact on future levels of oil and gas development, violates NEPA and represents classic arbitrary and capricious decision making.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: Our DEIS comments explained that the Bureau failed to meaningfully consider or disclose the prevalence of Fee/Fee/Fed oil and gas wells and how they undermine the presumed effectiveness of plan requirements, which the Bureau will not apply when approving such wells. See Advocates et al. 2024 at 55. Our calculations suggest that Fee/Fee/Fed wells now account for at least 25% of all oil and gas wells the Bureau approves nationwide, and well over 50% of wells approved in states like Wyoming and Colorado. Nonetheless, the DEIS and FEIS both incorrectly assume that all development of federal oil and gas leases in sage-grouse habitat will be subject to the lek buffers, timing limits, disturbance caps, compensatory mitigation, and other requirements of the PRMPA. That is demonstrably false. In response to comments, the Bureau claimed that “it is not appropriate to analyze these [impacts] in the plan and is outside the scope and management area.” The Bureau further claims that such wells are “drilled without the Bureau knowledge or input” and that the impacts would already have occurred once the Bureau approved such wells. This is wrong for countless reasons. First, the impacts to sage-grouse from Fee/Fee/Fed oil and gas wells are not outside the scope of this NEPA document as they are a foreseeable result of oil and gas leasing in sage-grouse habitat (an allocation decision made in this plan) and will impact sage-grouse on HMAs and nearby lands (putting them within the scope of the effects analysis). Second, it is false that such wells are always—or even ordinarily—drilled without the Bureau knowledge. The Bureau must approve an APD before a Fee/Fee/Fed well can be drilled, and even if some surface development has already occurred (which is not always true), the impacts of the federal wellbore (dust, noise, traffic, etc) cannot occur until the Bureau approves the APD. See PIM 2018-014, Attachment D. More to the point, even if the impacts of such wells occur before the Bureau can permit them, that is not an excuse for failing to analyze such impacts now, as a foreseeable consequence of allowing oil and gas leasing in sage-grouse habitat. The Bureau can use its RFD projections of new oil and gas drilling rates, along with historic rates of Fee/Fee/Fed wells (readily calculable using publicly-available AFMSS and National NEPA Register data), to estimate what portion of new oil and gas development in sage-grouse habitat will occur from such wells and therefore without the presumed protections of the PRMPA. “Reasonable forecasting and speculation” is required under NEPA, so the Bureau cannot shirk its duty to analyze the direct, indirect, and cumulative impacts of oil and gas development pursuant to Fee/Fee/Fed wells “by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’” *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir 1973). In short, it is unreasonable for the Bureau to assume that federal oil and gas leases in sage-grouse habitat will all be developed subject to its plan protections. The Bureau must take a hard look at the prevalence of Fee/Fee/Fed wells which undermine this assumption.

Summary:

A protestor claimed that the RFD scenario for oil and gas leasing in the GRSG PRMPA/FEIS is inaccurate and therefore the GRSG FEIS/PRMPA failed to adequately assess impacts to GRSG from future oil and gas leasing under each alternative. Protestors claimed that the BLM also failed to adequately describe and analyze effects from Fee/Fee/Fed wells on GRSG.

Response:

An EIS must succinctly describe the environment of the areas to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the areas (40 CFR 1502.15 (2022)). The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the alternatives.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize on-the-ground implementation actions, the scope of the analysis was conducted at a regional level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

BLM Washington Office IM 2004-089 provides direction regarding the level of detail and type of information included in an RFD:

The RFD is based on a review of geological factors that control the potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity. The RFD also considers petroleum engineering principles and practices and economics associated with discovering and producing oil and gas. The RFD projection can range from speculative estimates in unexplored frontier areas to estimates with higher levels of confidence in maturely developed producing areas.

Because the potential for oil and gas occurrence and development is rarely the same from one planning area to the next, the level of detail and the type of information included in an RFD is determined on a case-by-case basis. This is usually based on the location and size of the study area and whether or not the RFD is addressing a known development proposal or specific management request (Washington Office IM 2004-089, Attachment 1, p. 1-3).

In the RFD provided in GRSG PRMPA/FEIS Appendix 12, the BLM made assumptions about the overall magnitude of development that could occur under each alternative based on known oil and gas resources and current technologies and economic trends using the best available information. As noted in GRSG PRMPA/FEIS Appendix 22 (pp. 22-34 - 22-35), the BLM received information related to the RFD during public comment on the GRSG Draft RMPA/EIS which was reviewed by BLM staff, including scientists and NEPA specialists. While the BLM considered studies submitted during the comment period, overall, they did not offer information that changed the analysis of the GRSG Draft RMPA/EIS and did not offer any new conditions or other information the BLM had not considered already in the RFD or elsewhere in its land use planning process.

The GRSG PRMPA/FEIS includes allocations, management direction, and stipulations related to oil and gas development (GRSG PRMPA/FEIS Sections 2.4 and 2.5, Appendix 2, Appendix 16). Effects from fluid mineral resource management to GRSG under the GRSG PRMPA/FEIS are discussed in

Section 4.2.1. The PRMPA would not specify a fluid mineral leasing strategy (GRSG PRMPA/FEIS pp. 2-24 - 2-25). However, the BLM would consider the desired condition to manage public lands to provide suitable GRSG habitat at the HAF mid -, fine- and site-scales when making leasing decisions. As described in GRSG PRMPA/FEIS Section 2.4, “Fluid mineral leasing would be considered in GRSG habitat management areas consistent with the Secretary’s discretion under the Mineral Leasing Act (as amended), as well as applicable BLM regulations and policies, and in conformance with RMP goals, objectives, stipulations, and required design features to avoid, minimize, and compensate impacts to GRSG” (GRSG PRMPA/FEIS pp. 2-24 - 2-25).

As part of the process to receive a permit to drill, oil and gas project proponents must submit detailed plans of development that include specific information, such as the location of roads, traffic, and pipelines. The BLM will conduct additional site-specific analysis of project proposals—including applications for permits to drill—under NEPA.

The Mineral Leasing Act requires that the “the Secretary of the Interior...shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of the surface resources.” 30 USC 226(g). This requirement under the MLA applies to all federal oil and gas leases, regardless of surface ownership. Thus, while the BLM does not have the legal authority in split-estate situations to regulate how a surface owner manages his or her property, the agency does have the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts (e.g. applying a lease stipulation) that may result from federally authorized mineral lease activity, and will consider measures to reduce impacts to GRSG from oil and gas development consistent with this authority.

The BLM notes in GRSG PRMPA/FEIS Section 1.3, *Planning Area and Decision Area* (pp. 1-3), the “the decision area applies to areas within GRSG habitat management areas where BLM administers the lands, including areas where BLM administers subsurface minerals”, adding that for “non-federal surface lands with underlying split federal mineral estate, only decisions associated with management/development of the underlying federal minerals are applicable.”

For fluid leasable minerals, the term “fee/fee/fed” refers to situations where a well is located on non-Federal land overlying non-Federal minerals, but some portion of the wellbore enters and produces from the Federal mineral estate. As noted in GRSG PRMPA/FEIS Appendix 22 (p. 22-36), because fee/fee/fed wells are initially drilled on private surface and private minerals, they can be drilled without BLM knowledge or input, before being later extended into federal mineral estate. Because of the unique issues associated with these oil and gas well types, it is not possible to accurately determine what impacts might result from fee/fee/fed wells or how those impacts would change under each alternative considered in the GRSG PRMPA/FEIS.

The BLM relied on the best available information at the time the RFD for the GRSG PRMPA/FEIS was prepared. The BLM appropriately analyzed effects from reasonably foreseeable oil and gas development. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis - Socioeconomics

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: BLM Failed to Adequately Consider the Socioeconomic Impacts that the GrSG Management Decisions Will Have on Other Multiple Uses The BLM’s response to socioeconomic concerns raised during the GrSG Plan Amendment process is inadequate and fails to meet the requirements of a robust NEPA analysis. Despite repeated requests from Sublette County, the

WCCA, and other stakeholders, the BLM has not sufficiently addressed how the proposed Plan Amendment will affect the economic well-being, custom, culture, and stability of Wyoming's communities. Access to federally administered lands is critical to the livelihoods of Wyoming county residents. Decisions regarding public land management directly impact mineral development, agriculture, recreation, travel, tourism, and the many industries and public services that rely on these activities. However, the BLM's analysis downplays these impacts and lacks the depth needed to fully assess the consequences of curtailing access to public lands.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: In direct contrast to these principles, the BLM has failed to adequately analyze or mitigate the socioeconomic impacts of the PRMPA. Specific shortcomings include: 1. Insufficient Differentiation Between Alternatives: The socioeconomic section does not provide a clear, quantitative comparison of the impacts of each alternative, leaving counties unable to assess the real-world consequences of the Preferred Alternative. The WCCA included this information succinctly within their comments, though the BLM did not incorporate this information within the PRMPA. It did, however, continue to make comments such as "More than half of the federal natural gas production in Wyoming occurs in Sublette, Sweetwater, and Fremont Counties, [...]. These three counties in Wyoming have a large percentage of the BLM-administered BLM Land and Resource Use and surface acres in GRSG HMAs, which suggests that these counties MIGHT be impacted by changes in BLM management decisions on GRSG." 2. Undervalued Mineral Contributions: The BLM significantly undervalues the contributions of mineral development to county and state economies. For example, the analysis does not accurately quantify the impacts to severance taxes, ad valorem taxes, sales and use taxes, and royalties, nor does it account for how these losses would ripple through local economies. 3. Failure to Address Public Services: The proposed restrictions on mineral development, grazing, and ROW access threaten critical revenue streams that fund public services, including education, emergency services, and infrastructure. The BLM offers vague statements about potential negative effects but does not provide a detailed or actionable analysis. 4. Inadequate Consultation and Collaboration: The BLM has not meaningfully consulted with the County, despite the interconnected nature of public, state, and private lands in Wyoming. The County provided the SCFSLUP, which outlines specific requirements for socioeconomic analyses, yet the BLM largely ignored these directives. 5. Overlapping Restrictions Without Proper Analysis: The Plan Amendment imposes overlapping restrictions that exacerbate socioeconomic impacts, such as increases in acres excluded from ROW access. These restrictions will hinder mineral development and other economic activities without a comprehensive evaluation of the long-term effects on local economies.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: As we noted in our comments on the Draft RMPA/EIS, development of minerals in this area of Montana is important for the economy of the State and local communities, as well as for the Biden Administration's goals for building more modern and sustainable infrastructure with domestic resources. Accordingly, retention of significant PHMA in southwest Montana—along with accompanying restrictive management requirements that stifle development of minerals and associated infrastructure—may hurt the state's economy, local jobs and local economies, as well as hinder the Biden Administration's goals for development of our nation's infrastructure. It could also end up shifting that development to areas and countries with less stringent environmental standards and make the United States even more reliant than it already is on foreign resources, leading to worse overall outcomes. Further, MMA remains concerned that the local and national economic impacts of reduced mineral development have not been adequately analyzed in the Final RMPA/EIS and therefore do not meet the requirements of NEPA.

***Lithium Nevada Corp
Colby Prout***

Issue Excerpt Text: BLM must develop an effects analysis that more fully addresses socioeconomic impacts of the various alternatives and that develops a climate analysis for any restrictions on mineral exploration and development. Contrary to our suggestion in comments on the DEIS/RMPA, the FEIS supporting the Proposed Plan does not develop accurate, detailed analysis of the climate and socioeconomic impacts should exploration and further mineral development in the Thacker Pass area be curtailed by any alternative, including the Proposed Plan. See Lithium Nevada DEIS/RMPA Comments at *8–9. As we explain further in our DEIS/RMPA comments, BLM does not address the potential risk from the Proposed Plan or the alternatives it considers in the DEIS/RMPA to local economies reliant on mining. Further, it does not analyze effects stemming from the fact that mines like the Thacker Pass Project provide important sources of employment and economic development for Native American tribes and communities with environmental justice concerns that live proximate to those projects. Finally, BLM does not state how the restrictions it places on PHMA will affect critical mineral production. We protest BLM’s failure to address—more fully than it does in the FEIS/RMPA—effects of its proposed alternatives on climate change and local economies as well as the national economy, national security, and supply chain.

***Cassia County, Idaho
Kerry McMurray et al.***

Issue Excerpt Text: Although raised throughout Cassia County's comments on the draft RMPA/DEIS, the final RMPA/EIS utterly fails to analyze the impact of effectively prohibiting through ROW exclusions, disturbance caps, and other restrictive measures on utility siting in the County. If BLM lands are effectively off-limits for large-scale utility siting, then transmission lines such as the proposed Gateway West project will have no place to go other than prime irrigated agricultural lands in the county. Indeed, this has already happened, as pointed out at page 13 of the County's comments, where it is noted that large infrastructure projects will be displaced from public lands based on current or future GRSG policies adopted in BLM planning. The Cassia County comments contain significant information about how critical irrigated agriculture is to Idaho's economy - supporting 1 in 8 jobs in the state and over \$11.2 billion of economic activity in 2023, and being critical to our nation's food security.⁹ It is a direct and foreseeable result of the BLM's decision to create ROW exclusion areas for GRSG that effectively eliminate access for large scale utility corridors that private agricultural lands will be taken out of production for all future transmission projects. Similarly, Cassia County provided substantial evidence that a large percentage of the largely- Hispanic agricultural workforce in the County constitutes an environmental justice population, who will be directly adversely affected by future impacts to prime agricultural lands. Section 4.12 of the FEIS, entitled Social and Economic Conditions {Including Environmental Justice} completely fails to analyze Cassia County's provided information on the impact of diverting infrastructure and renewable energy off public lands due to GRSG limitations. Because the impacts of doing so are substantial and reasonably foreseeable (indeed, they have been formally noted by BLM in prior environmental documents),¹⁰ BLM's failure to analyze them in the FEIS violates NEPA and the APA.

***Western Exploration
Darcy Murad***

Issue Excerpt Text: BLM must develop an effects analysis that, in particular, more fully addresses socioeconomic impacts of the various alternatives. An agency must ""take[] a 'hard look' at the environmental consequences of its proposed action."" Such discussion must be ""fully informed"" and ""well considered."" As part of this discussion, NEPA requires that an EIS' s environmental consequences analysis address, "" [w]here applicable, economic and technical considerations.""

""[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."" For at least the reasons listed below, the DEIS/RMPA does not take the requisite hard look.

- Despite our comment on the DEIS/RMP A seeking this analysis, the FEIS/RMP A makes no statement about the price of gold, silver, and copper in Nevada.
- The Affected Environment chapter does not include a section on geology; rather, the chapter contains a brief discussion of staking claims and states that ""[b]ecause locatable minerals are governed under the requirements of the Mining Law of 1872, as amended, the BLM has limited baseline data on the production and revenue associated with locatable minerals."" BLM revised this statement in the FEIS/RMPA in response to our comments: in the DEIS/RMP A, BLM stated that ""[b]ecause locatable minerals are governed under the requirements of the Mining Law of 1872 ... the BLM has limited information regarding the existing conditions of locatable mineral development. "" The revision does not address WEX' s concern, which is that BLM does not marshal the abundant data available to it as a key mining regulatory agency to establish a baseline by which to compare effects of the Proposed Plan (and alternatives considered in the FEIS) with existing conditions. BLM's rationale for this omission appears to be that BLM does not have much information on mining: ""[m]any locatable mineral prospecting and exploration activities fall under the definition of casual use and thus can occur without notifying the BLM""; ""[r]equired filings of claims, notices of intent or plans of operations do not require the identification of the particular locatable minerals being sought or developed""; and there is ""no requirement to report the locatable mineral commodities produced or amounts produced each year."" BLM concludes: ""As a result, information regarding the existing conditions of locatable mineral development in the planning area is not available. "" But BLM's own Mineral and Lands Record System (""MLRS"") provides information regarding numbers of claims that overlap with HMA designations. And we are not familiar with operators filing a notice of intent or plan of operations that do not identify the mineral being sought or developed. For example, it would be difficult to satisfy BLM' s regulatory requirement to file with a plan of operations ""[a] description of the equipment, devices, or practices you propose to use during operations"" without providing some information about the mineral at issue. Further, the Nevada Division of Minerals publishes detailed fact sheets each year quantifying the amount and value of minerals explored for and produced in the state.

Western Exploration

Darcy Murad

Issue Excerpt Text: BLM does not provide a section on locatable minerals in Nevada in its Reasonably Foreseeable Development Scenario section, though it does discuss reasonably foreseeable development of fluid minerals and renewable energy in this section. BLM is required to consider publicly available information to provide for a fully informed decision and reasonable opportunity for public comment. A wealth of data on reasonably foreseeable development of locatable minerals is available from the Nevada Bureau of Mines and Geology, USGS, and other published sources. BLM does not acknowledge that, without access roads to areas with mineral exploration and development potential, locatable mineral rights cannot be explored and developed. Thus, it does not adequately analyze the effects of the ROW restrictions it proposes.

Western Exploration

Darcy Murad

Issue Excerpt Text: BLM should discuss the FEIS/RMPA's impacts on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; economic impacts to industry and communities who rely on locatable mineral development for

personal income and tax revenue. Like the DEIS/RMP A, the FEIS/RMP A includes scant discussion of adverse impacts to mining exploration and development; thus, it minimizes and insufficiently discusses impacts to exploration and development potential as well as economic losses to the state and local community from withdrawals or blanket conservation measures. The FEIS/RMP A does not take the required "hard look."

N-4 State Grazing Board
Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: It remains extremely concerning to the Board that the BLM has decided to stay with a rangewide approach as the method of analysis for all 11 states in the West with Sage-grouse habitat and populations. Each of these states included in the BLM's analysis has its own unique, complex management needs in addition to social and economic factors that cannot be fully detailed in one "consistent" approach. It is impossible to social and economic factors that cannot be fully detailed in one "consistent" approach. It is impossible to provide an adequate amount of detail when each state vastly differs from one another. It is apparent that the BLM did not seriously consider any input from the State of Nevada, the Board, or others which is in direct conflict with FLPMA (43 U.S.C. § 1712(c)(9)).

Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden

Issue Excerpt Text: In our DEIS/RMPA comments, we also asked BLM to omit its statement, now also on p. 4-82 of the FEIS/RMPA, that "if minerals of interest are not known to occur on the lands within the withdrawal, then the withdrawal would not have an effect." BLM did not omit the statement. As we explained, this faulty logic completely dismisses the point that minerals cannot be discovered on lands that are withdrawn from mineral entry during the period of the withdrawal. BLM shortsightedly fails to acknowledge that withdrawn lands may contain important minerals that are currently unknown but that could be discovered in the future if these lands were not off-limits to mineral exploration and development. Because the country and the world will need many minerals in the future, and may need different minerals than are currently identified, withdrawing lands is likely to jeopardize the country's future ability to satisfy its long-term mineral requirements. For example, the soaring demand for lithium for the lithium-ion batteries used to power electric vehicles and store electricity is a recent phenomenon. Twenty years ago (the initial term for most withdrawals), this demand did not exist. BLM's conclusion violates the requirement of the Council on Environmental Quality's NEPA implementing regulations that an agency consider effects of its proposed action, that is, "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable." 40 CFR § 1508.1(g)

Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden

Issue Excerpt Text: BLM has NEPA obligations to thoroughly evaluate the impacts associated with each alternative considered in detail in the FEIS/RMPA, including the recommended mineral withdrawals associated with Alternatives 1 and 3. BLM's analysis must include a thorough disclosure of the jobs and local and state tax revenues that will be lost if lands are withdrawn from mining. It must also discuss how these withdrawals would make it harder to find domestic sources of the minerals we need and lead to an increase in the country's reliance on foreign minerals.

Summary:

Protestors stated that the BLM's approval of the GRSG PRMPA/FEIS would violate NEPA and the APA by:

- Failing to thoroughly evaluate or mitigate the socioeconomic impacts associated with each alternative considered under the rangewide approach, including from proposed mineral stipulations, ROW exclusions, and withdrawals.
- Failing to acknowledge the effects of reduced mineral development on climate change and local economies.
- Failing to take the required "hard look" at the current conditions of and impacts to mining exploration and development including minerals subject to disposal under the Mining Law.
- Failing to provide a section on locatable minerals in Nevada in its RFD Scenario section and failing to analyze the effects of the proposed mineral leasing restrictions.

Response:

The closure or restriction of public lands to minerals leasing does not constitute a withdrawal under FLPMA. Withdrawals are 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)). The terms "settlement," "sale," and "entry" are all terms contemplating "patent" or transfer of title to federal lands into private ownership under the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land laws. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a "sale" of public land under Section 203 of FLPMA, and a closure to leasing is not a "withdrawal" as described in Section 204 of FLPMA.

The PRMPA does not include any recommendations for withdrawals. The implications of potential withdrawals of public lands from location and entry under the U.S. mining laws for the protection of GRSG are explained in detail in Section 4.10.4, *Locatable Minerals* (GRSG PRMPA/FEIS p. 4-82 – 4-84) and Appendix 10 Section 10.10.4 (pp. 10-96 – 10-99). The BLM applied management actions in the GRSG PRMPA/FEIS only to the extent that they are consistent with the Mining Law of 1872, as amended by FLPMA, and the BLM's regulations. As explained above, withdrawals are considered under a separate process by the Secretary consistent with FLPMA and applicable regulations. As stated in Section 4.10.4 of the GRSG PRMPA/FEIS, "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts. However, the BLM could ask the Secretary of the Interior to propose and make a withdrawal of the land from location and entry under the Mining Law of 1872 pursuant to Section 204(a) of FLPMA. Proposing and making a withdrawal is not a land use planning decision. Should the Secretary propose a withdrawal, the proposal would require environmental and other analysis under NEPA and other applicable authorities before the land could be withdrawn. For purposes of this planning initiative, the alternatives analysis includes a description of the likely environmental effects should the Secretary propose and make a withdrawal in the future (e.g., reduced potential for behavioral disturbance and habitat loss/alterations)" (GRSG PRMPA/FEIS, p. 4-82). The PRMPA does not recommend any areas for withdrawal from operation of the U.S. mining laws (GRSG PRMPA/FEIS p. 4-83).

Under NEPA and its implementing regulations, agencies evaluate data and conduct analyses commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and NEPA documents concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the GRSG PRMPA/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the

degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives. The BLM is required to consider the environmental impacts of a proposed action and any reasonable alternative when preparing an EIS, which includes the cumulative effects (40 CFR 1502.16(a)(1) (2022) and 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 1508.1(g)(3) (2022)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground implementing actions, the scope of the analysis was conducted at a regional level. 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 proposed planning decisions described in the GRSG PRMPA/FEIS would not authorize any projects, and all projects are subject to further review. The analysis in this land use planning effort provides the basis to make informed decisions regarding individual project applications.

The BLM discusses the existing socioeconomic conditions and trends including those related to mineral development in Chapter 3, *Affected Environment*, Section 3.12, *Social and Economic Conditions (Including Environmental Justice)* (GRSG PRMPA/FEIS pp. 3-46 – 3-54). This section describes social and economic conditions, including identified environmental justice communities, population, employment, and income data and trends. Additionally, GRSG PRMPA/FEIS Appendix 13, *Socioeconomic Baseline Report*, provides an overview of population changes since 2010 and provides a summary of economic data, including trends and current conditions for per capita income and unemployment. Appendix 13 also identifies and describes major economic sectors in the socioeconomic study area, including leasable minerals, that can be affected by public land management actions (Appendix 13 pp. 13-3-1 – 13-3-36). Appendix 13 Chapter 2, *Demographic and Economic Baseline Conditions*, discusses the jobs in key sectors for each state in the analysis area, and Table A-2 through Table A-21 (Part 3) in Appendix 13 show the number of jobs and labor income by sector county in each state of the analysis area, as reported by the U.S. Bureau of Economic Analysis (GRSG PRMPA/FEIS Appendix 13 pp. 13-A-13 – 13-A-116). Details are provided for revenue and economic contributions associated with BLM-administered lands and resources in the analysis area in Subsection 3.12.2, *BLM Land and Resource Use Revenue* (GRSG PRMPA/FEIS pp. 3-48 – 3-49). Additional details for current and historic levels of resource use are included in the respective resource sections of the GRSG PRMPA/FEIS.

The BLM analyzes the socioeconomic impacts that would result from the management actions under the Proposed Plan Amendment in Chapter 4, *Environmental Consequences*, Section 4.12, *Social and Economic Conditions (Including Environmental Justice)* (GRSG PRMPA/FEIS pp. 4-90 – 4-109) and from the other alternatives in Appendix 10 Section 10.12 (pp. 10-108 – 10-144). These sections include discussion of impacts to economic and social conditions from changes in mineral development (fluid minerals, locatable minerals, non-energy leasable minerals, etc.), and how these impacts would affect communities that are rely on these industries. The socioeconomic impacts that would result from the PRMPA are described in GRSG PRMPA/FEIS Section 4.12.2, and additional details for state-specific direct, indirect, and induced impacts are included in Appendix 18, *Social and Economic Impact Analysis Methodology and State-Specific Impact Analysis*.

The BLM has analyzed the environmental and economic effects associated with the proposed action and the alternatives for the GRSG PRMPA/FEIS, including the cumulative impacts consistent with

NEPA. The cumulative impact analysis in the GRSG PRMPA/FEIS reflects 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, which are provided in GRSG PRMPA/FEIS Appendix 14 Table 12-25 (pp. 14-58 – 14-75). The socioeconomics cumulative impacts section (Section 4.12.3) identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for social and economic conditions. The analysis 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 GRSG PRMPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

While decisions made from this GRSG PRMPA/FEIS will only apply to BLM-administered lands, the analysis was conducted regardless of land status to facilitate a broader examination of the total direct, indirect, and cumulative impacts on GRSG and resources considered in the FEIS. The GRSG PRMP/FEIS provides an updated and expanded discussion of indirect impacts in Chapter 4 and Appendix 10, including indirect impacts for checkerboard land patterns into Section 4.13 and Appendix 10 Section 10.13, *Air Resources and Climate Change*, Section 4.10 and Appendix 10 Section 10.10, *Minerals*, Section 4.9 and Appendix 10 Section 10.9, *Lands and Realty*, and Section 4.12 and Appendix 10 Section 10.12, *Social and Economic Conditions (Including Environmental Justice)*. Analysis of impacts on adjacent lands are described in cumulative impacts.

In Section 4.10.1 of the GRSG PRMPA/FEIS, the BLM discusses the potential for impacts to adjacent private lands and minerals due to restrictions proposed under the PRMPA that affect the development of federal lands and minerals and discusses the economic conditions and impacts on economic conditions under the Proposed Plan throughout the analysis area, including impacts on employment and economic output (GRSG PRMPA/FEIS, pp. 4-73 – 4-78). These impacts on economic conditions affect many individuals in the surrounding communities, especially in communities that rely on mining for economic stability and growth. Additionally, in Section 4.12.1 (GRSG PRMPA/FEIS, pp. 4-90 – 4-102) and Section 10.12.4 of Appendix 10 (GRSG PRMPA/FEIS, Appendix 10, pp. 10-125 – 10-133) the BLM discusses the potential for impacts on social and economic conditions on adjacent private lands and minerals due to restrictions under each alternative that affect the development of federal lands and minerals, including development of pipelines and transmission lines. Finally, in Section 4.12.3 (GRSG PRMPA/FEIS, pp. 4-104 – 4-109), the BLM explains how these impacts on social and economic conditions could result in cumulative impacts to the surrounding communities, including economic interests and conditions, nonmarket and social conditions, and communities with environmental justice concerns.

Further, in Appendix 13, the BLM discusses both the existing conditions and baseline market information for locatable minerals within the planning area (GRSG PRMPA/FEIS, Appendix 13, pp. 13-3-13 – 13-3-16). Appendix 13, Section 3.2, *Locatable Minerals*, includes information on locatable mineral types by state, legal background on how locatable minerals can be developed on federal land, locatable mineral annual production within the planning area, and economic contributions of locatable minerals within the planning area. Further, the BLM indicates that the “value of minerals and their contribution to local and regional economies vary based on market conditions and the volume extracted” which is why specific prices for locatable minerals were not identified in the baseline data for the GRSG PRMPA/FEIS. However, the BLM did consider information on direct economic contributions from locatable minerals within Nevada (GRSG PRMPA/FEIS, Appendix 13, p. 13-3-16).

While the GRSG PRMPA/FEIS includes information about mineral potential for oil and gas and other leasable minerals, potential for locatable minerals is very difficult to accurately determine due to the variety of locatable minerals and the constant variability of values of various metals and gems (GRSG

PRMPA/FEIS Appendix 22 p. 22-84). There is limited information available about locatable mineral development and it is not feasible to develop trends to accurately project future locatable mineral development. As such, information on the number, location and size of existing exploration and mining operations and related uses on public lands is not included in the reasonably foreseeable development scenario for GRSG PRMPA/FEIS. The reasonably foreseeable development scenario must rely on trends to develop estimates of potential future surface disturbance under the Mining Law. For consideration of oil and gas development in the reasonably foreseeable development scenario, because many leases expire before being developed, it is not reasonable to assume that all leases with medium and high oil and gas potential and a percentage of low oil and gas potential will be developed. Some leases are speculative. While some of the expired leases might be re-leased at a later date, management from this planning effort would apply and they might not be developed within the life of this document. A list of reasonably foreseeable actions are included in GRSG PRMPA/FEIS Appendix 14 Section 14.5 (pp. 14-57 – 14-75 and analyzed in cumulative impacts for each resource in Chapter 4 of the GRSG PRMPA/FEIS. In addition, applications and actions pending a decision are still uncertain in nature until a decision or permit is rendered.

The BLM appropriately analyzed the indirect, direct, and cumulative socioeconomic impacts from the GRSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA - Impacts Analysis -Waivers, Exceptions, and Modifications

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: The Bureau has failed to take a hard look at the impact of waivers, exceptions, and modifications of habitat conservation measures. We acknowledged in our DEIS comments that the 30-day review period for potential waivers, exceptions and modifications (WEM) was an improvement over current practices, but we expressed concern that granting WEMs in addition to already inadequate safeguards, will further fragment sagebrush habitat, and cause additional loss and degradation of sage grouse habitat. We protest also that the Bureau failed to take a hard look at the cumulative impacts of this issue. We also provided evidence in our comments that the Bureau failed to disclose and analyze the extent to which WEMs were already being granted. *Id.* at 55. See *Advocates et al.* 2024 at 51. See *Defenders of Wildlife DEIS comment letter* at 24. The Bureau responded to certain comments about the application of WEMs, but did not conduct the analysis we requested. See Appendix 22. We protest this failure to take a hard look at the baseline (i.e. current application of existing WEMs) and the likelihood of these being granted in the future, thus undercutting any certainty around conservation measures of the plans.

Summary:

A protestor stated that the BLM's approval of the GRSG PRMPA/FEIS would violate NEPA because the BLM failed to adequately address the impact of waivers, exceptions, and modifications (WEMs) of habitat conservation measures. The protestor stated that the granting of potential WEMs in addition to insufficient safeguards will cause further fragmentation and degradation of sagebrush habitat. Additionally, the protestor stated that the BLM did not address previously raised comments on the GRSG Draft RMPA/EIS regarding the application of existing WEMs and the cumulative impacts of WEMs.

Response:

Under NEPA and its implementing regulations, agencies evaluate data and conduct analyses commensurate with the importance of the impact (40 CFR 1502.15 (2022)), and NEPA documents concentrate on the issues that are relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, 1502.15 (2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GRSG PRMPA/FEIS.

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

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM would not authorize any on-the-ground implementation actions, the scope of the analysis was conducted at a regional level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Regulations at 43 CFR 3171.24 contain procedures for considering WEMs from specific stipulations for fluid mineral operations. The BLM evaluated the impact of WEMs associated with stipulations on new fluid mineral leasing (e.g., oil, gas, and geothermal) through a range of alternatives in the GRSG PRMPA/FEIS. See GRSG PRMPA/FEIS Chapter 2 and Appendix 21 for a full description of each alternative considered and Chapter 4 and Appendix 10 for the direct, indirect, and cumulative impacts evaluated for each alternative under each resource section. GRSG PRMPA/FEIS Appendix 21 Section 21.1.7 provides the full set of management directions for Fluid Mineral WEMs in Alternatives 1 through 6 (GRSG PRMPA/FEIS pp. 21-40 - 21-85). Under the Proposed Plan Amendment, WEMs would be granted at the discretion of the BLM Authorized Officer only when meeting specific criteria designed to advance the management goals and objectives in the RMPA (GRSG PRMPA/FEIS p. 2-24 – 2-29). The GRSG PRMPA/FEIS planning effort is limited to future fluid mineral leases that have stipulations associated with NSO, disturbance cap, and seasonal timing limitations. Per Appendix 21, GRSG fluid mineral stipulations not mentioned in the PRMPA/FEIS would continue where they apply. Additionally, under the PRMPA, the BLM would revise the GRSG Monitoring Framework to incorporate tracking of projects where WEMs are granted in GRSG habitat (GRSG PRMPA/FEIS Appendix 7, p. 7-18).

In response to public and cooperating agency comments on limiting, changing, or clarifying WEMs, Appendix 22 states, WEMs “would be granted only when meeting specific criteria designed to advance the management goals and objectives in the RMP Amendment. The Proposed RMP Amendment balances the risk of uncertainty against the benefits of management flexibility when considering whether to grant a WEM. Planning criteria identified for this amendment include consideration of how planning decisions may impact future listing determinations under the ESA” (GRSG PRMPA/FEIS p. 22-34). In addition, the “BLM continually meets with state wildlife agency and other appropriate state authorities on a local basis for individual projects, to clarify how BLM, project proponents, and state management agencies will collaborate to implement a mitigation hierarchy and compensatory mitigation. This allows consideration of local ecological and topographical information in determining how to best avoid and minimize impacts, and if needed, implement compensatory mitigation” (GRSG PRMPA/FEIS p. 22-34).

The BLM analyzed the environmental consequences of WEMs in the GRSG PRMPA/FEIS in compliance with NEPA. Accordingly, this protest issue is denied.

NEPA – Public Comment

Montana Mining Association

Matt Vincent

Issue Excerpt Text: However, as was true for similar references about SFAs (discussed above), there is no clarity in the Final RMPA/EIS about the broader applicability of density caps under the Proposed RMP Amendment in Montana or any other area. The BLM did not respond to similar comments on the Draft RMPA/EIS, and density caps are not discussed in Section 2.4, which should provide a “Detailed Description of the Proposed RMP Amendment.” Similarly, Table 2-9 (in Chapter 2.5), the state-specific section summarizing the impacts of Montana/Dakotas does not clarify whether density caps would apply in Montana. This lack of clarity again denied the public the chance to review and meaningfully comment on the Proposed RMP Amendment.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: MMA additionally notes that the 30-day time period (which includes the Thanksgiving holiday) provided to stakeholders to review the 2,839 pages of text and 199 pages of maps comprising the Final RMPA/EIS was woefully inadequate. As was true for the Draft RMPA/EIS, the amount of information in the Final RMPA/EIS, the way in which the information is provided, and the far-reaching implications all lead to a scenario where additional time should have been given. In particular, the BLM’s decision to craft a new alternative—with a host of brand new requirements and policies and brand new types of habitat designations not considered in the Draft RMPA/EIS—as its Proposed RMP Amendment frustrates the public review and comment process, and is contrary to the requirements of the Administrative Procedure Act (“APA”) to publish “the terms or substance of the proposed rule” and “give interested persons an opportunity to participate in the rule making” in meaningful way.³ Given that there was a 90-day public comment period on the Draft RMPA/EIS and given the significant changes made in the lengthy Final RMPA/EIS, the new alternative presented as the Proposed RMP Amendment should have been published as a supplemental draft EIS subject to at least a 60-day public comment period if not a 90-day public comment period, before issuing the Final RMPA/EIS with a public comment period, rather than the extremely short turnaround of 30 days for the entirety of the Final RMPA/EIS with its brand new alternative as the Proposed RMP Amendment.

American Petroleum Institute et al.

Amy Emmert et al.

Issue Excerpt Text: The public did not have fair notice and opportunity for comment on the new PHMA with Limited Exceptions Category. See Proposed RMPA/Final EIS at ES-6, 1-9, 2-3, 2-21, 2-53–55, 2-109–116, 2-127, 3-1–3, 4-10, 4-33–38, 4-47, 4-50–51, 4-59, 4-68, 4-71–72, 4-74, 4-78, 4-85–87, 4-111, 4-113, 4-115, 4-118–119, 4-120, 4-125, 4-130–135, 4-137–138, 4-142. Instead of adopting one of the alternatives detailed in the draft RMPA that the Associations and other interested stakeholders provided feedback on, BLM has selected a new alternative in its proposed RMPA. Without prior notice or vetting by interested stakeholders, BLM has introduced an entirely new type of habitat management area in its proposed RPMA – “PHMA with Limited Exceptions” – which are areas that include far more extensive land restrictions than other Priority Habitat Management Areas (PHMAs). Areas identified as PHMA with Limited Exceptions are subject to extreme limitations– the areas are to be managed as exclusion areas for major rights-of-way and with no exceptions to the solar and wind energy exclusion allocation or to the no surface occupancy allocation for fluid minerals. The creation of this new category poses serious concerns under the Administrative Procedure Act (APA). Under the APA, an agency generally must provide fair notice that it intends to promulgate a rule so that interested stakeholders have an adequate opportunity to

comment. The Associations and other stakeholders were given no such opportunity to comment on the new “PHMA with Limited Exceptions” category.

American Petroleum Institute et al.

Amy Emmert et al.

Issue Excerpt Text: Further demonstrating the lack of fair notice regarding this new category, BLM’s related rationale for the new category includes elements that are entirely outside the scope of the RMP. BLM states that the new category of restrictions “would be further strengthened by disallowing waivers, exceptions, and modifications, thus retaining carbon sequestration and limiting GHG emissions in these areas.” Thus, BLM’s rationale for such a category is clearly well beyond the scope of the RMP, which is intended to benefit the GRSG specifically.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Even worse, notification regarding publication of this information was not posted on ePlanning until May 24, 2024—71 days after the beginning of the comment period. This belated publication only gave the public twenty days to review the new data and analyze potential impacts before the closure of the comment period. And the link data and report were far from simple to digest, as they included thirty-four potential layers. The seventy-nine maps provided to the public to review as the basis for the comments were generated using interim shapefiles described as “draft” HMA categories and did not reflect the HMA ultimately provided in the data set. The final data shows significant errors and lack of quality control as well. For example, the data designates PHMA over significant and long-standing anthropogenic disturbance, such as the largest open pit gold mine in the state. The final data also included an additional category of habitat management—PHMA with limited exceptions—that was not subject to public review during the draft stage. The severe restrictions in these areas constitute a functional withdrawal for some uses and the public needed to be able to evaluate this option during the draft process. For 78% of the public comment period, participating members of the public were analyzing the wrong HMAs unless they were watching the USGS site for the official publication of the new data. The rushed publication of the draft document and delayed notification of the updated USGS data conflict with NEPA’s aims to encourage and facilitate public involvement in decisions that affect the quality of the human environment. 40 C.F.R. § 1500.2(c). One of the basic requirements of NEPA is that the public knows what environment is going to be impacted and how. But for Nevada, the information provided was inaccurate. And, despite having the updated in its possession for the comment period, BLM made no serious efforts to alert the public, revise its maps, or extend the comment period to allow for adequate scrutiny.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: To add to this error, BLM overwrote GIS data on ePlanning on multiple occasions without notification or explanation. The Draft RMPA/EIS and associated maps were first published on March 14, 2024. On March 20, 2024, all GIS data for Alternatives 3, 4, 5, and 6 were overwritten. It is unclear what changes were made in the data. The larger public was not aware of this change, and BLM did not explain why it occurred or even disclose the change on the ePlanning website. Publishing and then overwriting data set forth for public analysis without explanation creates confusion, consumes the time of individuals completing analytical reviews by causing duplicate efforts, and does not facilitate public involvement as required by 40 C.F.R. § 1500.2. BLM further failed to address the change in GIS data in the Final RMPA/EIS.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: Further, the quality control in this mapping has been lacking. The BLM’s refusal to address, clarify, or remedy them during the draft review period—much less extend the review period—was harmful to the public and in violation of NEPA. Under 40 C.F.R. § 1500.1, environmental information must be made available to public officials and citizens “before decisions are made and before actions are taken. . . . Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” The habitat designations in this planning appear discontinuous and disjointed, lacking the connectivity BLM is purports to seek to preserve through this effort. The results confirm that this exercise has been rushed and defective. Some areas of the final maps also show habitat delineation in vertical slices and right angles, indicating the model experienced errors incorporating satellite data imaged vegetation. These facts all underscore a lack of oversight and review of the data and information BLM has relied upon in this planning process. And the fact that BLM can still adopt these maps through Plan Maintenance further underscores the lack of mechanisms for the public to comment or correct underlying assumptions in a modeled state with incredibly limited options for ground-truthing habitat or categories thereof.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: The PRMPA includes a host of increased restrictions beyond what was considered in the DRMPA/EIS and available for public comment. As an initial matter, it creates significant extra restrictions within PHMA and identifies PHMAs with limited exceptions for development, categorizing them as exclusion zones for solar, wind, and major rights-of-way (ROW). These protections go beyond the measures in other DRMPA/EIS alternatives by imposing stricter limitations on land-use activities without having provided public notice and an opportunity to comment on such restrictions. See PRMPA/FEIS Section 2.4. For fluid mineral development specifically, the preferred alternative includes NSO stipulations for fluid mineral leasing within PHMAs, severely limiting development activities in certain habitats compared to other alternatives that allow more leniency or conditional exceptions. BLM cannot implement such overly burdensome restrictions without providing notice and an opportunity for the Associations and other members of industry to comment. The PRMPA expands disturbance caps, adds increased mitigation requirements, and layers additional regulatory hurdles on projects through mandatory adaptive management triggers. Under the PRMPA, strict disturbance caps would be enforced, limiting the extent of surface disturbance in GrSG habitats. See PRMPA/FEIS Section 2.6. Caps would then trigger adaptive management measures when exceeded, reducing operational flexibility for industries like mining or energy development. The PRMPA defines additional areas within PHMAs as exclusion zones, where major rights-of-way and surface-disturbing activities are prohibited. See PRMPA/FEIS 2-55. This contrasts with less restrictive alternatives analyzed that allow development with conditions. Lastly, the PRMPA emphasizes adaptive management, requiring immediate mitigation or additional restrictions if certain thresholds (e.g., population declines, habitat loss) are exceeded. See PRMPA/FEIS Appendix 7. This adds another layer of restriction compared to alternatives without such triggers. The Associations protest BLM’s additional restrictive measures to be implemented without notice and opportunity for meaningful comment. The Associations further protest BLM’s layering on additional restrictions to an already overly burdensome GrSG management plan that will not result in actual benefit to the species.

Western Energy Alliance et al.
Charlotte Sawyer et al.

Issue Excerpt Text: FLPMA requires federal agencies to provide adequate notice and opportunity to comment on land use plan amendments and revisions. 43 U.S.C. § 1712(f); 43 C.F.R. § 1610.2(a). Similarly, APA requires both notice and the opportunity to comment when an agency proposes a substantive rule. 5 U.S.C. § 553. The PRMPA/FEIS spans 3,026 pages, a nearly 600

page increase from the 2,428 pages in the DRMPA/EIS issued in March 2024, with a preferred alternative that is significantly changed from any of the alternatives analyzed. Thirty Days is an insufficient amount of time to review such voluminous new information. Limiting the protest period to a mere 30 days ensures that public review will be insufficient and incomplete. In so doing, BLM is again violating APA and FLPMA by truncating public review and comment periods to the detriment of the public and impacted stakeholders. The result of which is a PRMPA/FEIS that is unresponsive to the input received. The Associations request additional time to review the PRMPA/FEIS and provide meaningful comment, especially considering the fact of so many new management provisions from the DRMPA/EIS.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: The State of Wyoming protests the BLM's process for designating areas referred to as ""Priority Habitat Management Areas with limited exceptions."" These new designations were released to cooperating agencies on August 12, 2024, and those agencies were allowed one week to provide a ""fatal flaw"" analysis of the RMPA with these newly introduced designations. This newly introduced step between draft and final introduced a new designation, which was not subject to public review/comment. BLM is required to ""allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of public lands."" 43 USC 1712(f). ""Notice requirements are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review."" International Union, United Mine Workers of America v. Mine Safety & Health Admin., 407 F.3d 1250, 1259 (D.C. Cir. 2005). The combination of management prescriptions contemplated under these designations have not been properly vetted through the cooperating agency and public review process, as required by the National Environmental Policy Act (NEPA).

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: We commented that the DEIS lacked clarity. See Advocates et al. 2024 at 6 et seq. See Defenders of Wildlife DEIS comment letter at 6. The FEIS and PRMPA still lack sufficient clarity and detail to be understandable by the average reader. Among other issues, the full text of the proposed alternatives is nowhere disclosed. Rather, the DEIS and FEIS include confusing, imprecise, and discounted summaries in Table 2-14 which make it impossible for a member of the public to understand what sage-grouse management would actually look like under each alternative. In particular, the Bureau has not included a detailed side-by-side comparison of the existing management – 2015 and 2019 – with the new proposed RMPA. This makes it exceptionally difficult to figure out precisely how the proposed RMPA compares to the status quo, which prohibits meaningful public comment. The overlay of unchanged elements from the 2015 and 2019 plans just further frustrates the ability of any average reader to understand the FEIS and PRMPA. Although the FEIS includes a new appendix (Appendix 2) that identifies which RMP provisions from 2015 and 2019 are changed, it provides only a generic description such as “no change” or “completely revised.” A reader then has to actually locate a copy of each of those plans for every state, determine where the relevant provisions are located in each plan, and cross reference those provisions with the PRMPA to assess exactly how each plan element compares.

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: "[A]n EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS." Or. Env'tl. Council v. Kunzman, 817 F.2d 484, 493 (9th Cir.1987). "[T]he EIS's form, content and preparation [must] foster both informed decision-making and informed public participation." Id. at 492; see also Colorado Env'tl. Coal. v. Dombeck, 185 F.3d 1162, 1172 (10th Cir. 1999); 43 C.F.R. § 46.30 ("The proposed action . . . [m]ust be clearly described in order to proceed with NEPA analysis."). The type of "incomprehensible" land management plan and corresponding EIS the Bureau prepared here violates NEPA. See California ex rel. Lockyer v. U.S. Forest Serv., 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006). Example 1 showing incomprehensibility: Table 2-6 in Volume 1 of the FEIS provides a chart of management allocations and direction for GHMA. For fluid mineral leasing, the chart does not describe specific management direction and instead says "Management Objective, Allocation, and Management Actions: Same management direction as identified in 2015 and 2019 for all States except as noted in State-Specific Differences" column." Table 2-14 in Volume 1 of the FEIS compares the alternatives including alternative 1 (which is 2015 direction) and alternative 2 (which is 2019) direction. For fluid mineral leasing in GHMA, Table 2-14 lists that the alternative 1 and 2 direction as "varies, mainly closed, controlled surface use or NSO within certain lek buffers." However, Table 2-14 also says GHMA is "open, but with state variations." See FEIS Volume 1 at 2-58 and 2-110. The State-Specific Differences column in Table describes Utah's GHMA fluid minerals management as "NSO and seasonal limitations near leks (varies by office) based on pre-2015 management plans" which provides no clarity whatsoever. We simply cannot tell what the exact management of fluid mineral leasing (including geothermal) will be under the PRMPA. Example 2 showing incomprehensibility and inconsistency: The description of the management direction for GHMA and other lands outside of PHMA in Utah is provided in the FEIS, Volume 1, at 2-100 to 2-102. The text refers to existing direction in individual resource management plans (but does not state what the direction is or where it can be found) and appendices B and C from the 2019 and 2015 ARMPAs (but does not restate the direction). Incomprehensibly, the text states that "The Bureau will address GHMA management in Utah as a state-specific circumstance" and also offers a warning that "The applicability and overall effectiveness of each RDF cannot be fully assessed until the project level, once the project location and design are known. Because of site specific circumstances, some RDFs may not apply to some projects and/or may require slight variations." FEIS at 2-99 and 2-100. Even more confusing, the FEIS at 2-58 in regard to fluid mineral management in GHMA in Utah says "NSO and seasonal limitations near leks (varies by office) based on pre-2015 management plans" which makes no sense given two sets of sage-grouse amendments have gone into effect since. Taken together, none of this text describing management direction for Utah lands outside of PHMA can be understood.

Summary:

Protesters stated that the BLM failed to provide adequate notice, access, and opportunity to comment on significant new information or changes in the GRSG PRMPA/FEIS, as required by NEPA, APA, and FLPMA. The deficiencies include the introduction of new habitat designations; stricter disturbance caps; and exclusion zones for solar, wind, major rights-of-way, and NSO for fluid minerals, which were not disclosed in the GRSG Draft RMPA/EIS. Additionally, the GRSG PRMPA/FEIS contained substantive revisions to alternatives and new adaptive management triggers without prior notice, significantly altering the scope of the proposed plan.

Protesting parties stated that the 30-day protest period for reviewing the PRMPA/FEIS was inadequate, especially compared to the 90-day public comment period for the GRSG Draft RMPA/EIS. Furthermore, delays and errors in publishing updated GIS mapping and critical data,

such as habitat delineations, exacerbated confusion and hindered stakeholders' ability to provide informed feedback.

Protestors also stated that, despite these substantive changes, the BLM did not issue a supplemental EIS or extend the comment period to ensure adequate public involvement. Protesters stated that this failure violates NEPA's provisions relating to public participation, the APA's procedural requirements for fair notice, and FLPMA's requirement to provide an adequate notice and comment period for land use plan amendments.

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 seek and consider public comments in the NEPA process (e.g., 40 CFR 1501.9, 1503.1 (2022)), 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). 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 on a Draft EIS (40 CFR 1503.4 (2022)). 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).

The BLM followed all relevant public participation requirements. The specific opportunities for public involvement that were provided for the GRSG PRMPA/FEIS are described in the Chapter 5, *Consultation and Coordination*, and Appendix 22, *Draft RMPA/EIS Public Outreach and Responses to Substantive Public Comments* (GRSG PRMPA/FEIS pp. 5-1 – 4-8 and pp. 22-1 – 22-138). The BLM conducted two virtual public scoping meetings in January 2022. The BLM then released the GRSG Draft RMPA/EIS for a 90-day public comment period, which included a 60-day comment period on the ACECs being considered, from March 15, 2024, through June 13, 2024. The BLM notified the public and other agencies of this public comment period via *Federal Register* notices, public and informal meetings, individual contacts, media releases, and the BLM's National NEPA Register website. During the public comment period, the BLM hosted thirteen public meetings, including two virtual meetings and eleven in-person meetings throughout the planning area. All substantive comments on the GRSG Draft RMPA/EIS are documented in GRSG PRMPA/FEIS, Appendix 22, as are BLM's responses to those comments.

The BLM made some changes between the GRSG Draft RMPA/EIS and the GRSG PRMPA/FEIS partially as a result of public comments, including to clarify elements of the analysis and alternatives. These changes are documented in GRSG PRMPA/FEIS Appendix 20, *Changes between Draft RMP Amendment/Draft EIS and Proposed RMP Amendment/Final EIS* (pp. 20-1 – 20-6). However, none of the changes made by the BLM constitute significant new circumstances or information relevant to environmental concerns or result in significant effects outside the range of effects analyzed in the GRSG Draft RMPA/EIS.

Information regarding the application of density caps by state is available in GRSG PRMPA/FEIS Section 2.5, *State-Specific Circumstances*. As outlined in this section, "Disturbance cap will not apply in Montana (calculations can be used for tracking Objectives), however BLM will still require project proponents to submit projects to the state that fall in core areas, and the BLM will consider state findings and recommendations in decisions" (GRSG PRMPA/FEIS p. 2-83).

The management actions in the GRSG PRMPA/FEIS are either management actions that were included in the alternatives analyzed in the GRSG Draft RMPA/EIS, or they are management actions, such as HMA categories, that were within the range of alternatives analyzed in the GRSG Draft RMPA/EIS. Accordingly, the impacts associated with those management actions are within the scope

of the impacts disclosed in the GRSG Draft RMPA/EIS, and the BLM is not required to offer an additional public comment period or draft a supplemental EIS.

In developing the Proposed Plan Amendment, the decision maker may select various components from each of the alternatives analyzed in the GRSG Draft RMPA/EIS. The FEIS/PRMPA may also reflect changes and adjustments based on comments received on the GRSG Draft RMPA/EIS and to clarify the PRMPA. The GRSG PRMPA would increase protections for GRSG and its habitat from the Preferred Alternative (Alternative 5) in the GRSG Draft RMPA/EIS and does not result in significant effects outside the range of effects analyzed in the GRSG Draft RMPA/EIS. Accordingly, the BLM is not required to offer an additional public comment period or draft a supplemental EIS.

The BLM is not required to provide access to geospatial data associated with NEPA reviews or planning decisions but did so as a courtesy to facilitate the review of the GRSG Draft RMPA/EIS. The BLM further provided a public geospatial interface in conjunction with publication of the GRSG PRMPA/FEIS and is committed to providing tools, data, and assistance to help the public implement the plan. Further, as explained in the GRSG PRMPA/FEIS (p. 2-50), the maps for the PRMPA reflect large-scale modeling in some states. BLM will review the presence of habitat based on the latest data, including field investigations, where appropriate, during project-specific reviews.

The BLM complied with relevant public participation process requirements. Accordingly, this protest issue is denied.

NEPA – Purpose and Need

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: The FEIS does not meet the required BLM purpose and need described in the March 2024 Notice of Availability (NOA) of the GRSG RMP Amendment and Draft Environmental Impact Statement (DEIS),” to provide the BLM with locally relevant decisions that accord with range wide GRSG conservation goals”, nor does it consider the effects of the Proposed RMP Amendment on mineral resources at the appropriate level to determine cumulative effects. In order to be a locally relevant decision, it is critical that any decision which results in the removal of a potentially feasible mineral resource is thoroughly and quantitatively analyzed to determine the effects to the local economies that rely on these resources, but also the national implications to address the cumulative effects at a broader level as required by NEPA. The proposed RMP Amendment as well as other alternatives restricts access to locatable and nonenergy solid minerals leasing and fails to conduct the quantitative impact of these alternatives.

Western Energy Alliance et al.

Charlotte Sawyer et al.

Issue Excerpt Text: As an initial matter, BLM mischaracterizes its authority and obligations to manage GrSG and its habitat, and BLM’s directives under the Federal Land Policy and Management Act (FLPMA), Mineral Leasing Act (MLA), Energy Policy Act, Inflation Reduction Act (IRA), and other authorizing statutes. BLM further violates the National Environmental Policy Act (NEPA) by failing to review and recognize best available science that shows oil and natural gas development within GrSG habitat can lead to improved habitat for the species. BLM’s failure to recognize and follow the mandates contained in these statutes is arbitrary and capricious in contradiction of the Administrative Procedure Act (APA). Instead, the PRMPA/FEIS cites to policy contained in BLM-drafted manuals void of congressional direction, public notice and comment, or any other process that would make the direction legally binding under the APA.

***Montana Natural Resource Coalition of Counties
John Fahlgren***

Issue Excerpt Text: We are deeply concerned with the trend towards top-down land use planning which is pulling the process out of the local field offices. This runs counter to the regulations for land use planning at 43 C.F.R. § 1600 Planning which continually refers to the Field Manager as the primary agency official responsible for the key elements in developing and implementing Resource Management Plans, predominantly at the field office level in coordination with cooperating agencies (see attached comments). We protest the use of a single programmatic EIS to amend 77 RMPs across 10 states. As stated, this disenfranchises local county involvement who represent constituents who live and work within these planning regions. These top-down planning initiatives removes the public from the public process.

***Nevada Association of Counties
Vinson Guthreau and Jennifer Berthiaume***

Issue Excerpt Text: We maintain that a multi-state model for land use planning for the greater sage-grouse and conducting that planning out of BLM headquarters is not only ineffective but contrary to both the Federal Land Policy and Management Act (FLPMA) and congressional direction. 43 CFR § 1601.0-4 clearly states that BLM land use plans, plan revisions, and plan amendments, as well as supporting NEPA review, will be prepared at the Field Office level, considering that terminologies and management actions across the states are different, and each state retains authority over the management of the greater sage-grouse. Not only has this regionalized use of planning resulted in an unnecessarily complex plan, but it has also hindered public understanding and participation in the process.

The Nevada Counties: Churchill and White Pine Counties

Issue Excerpt Text: As previously conveyed in its previous comment letters (including attachments, specific to County Concern with BLM Multi-State Planning Efforts), the County was and remains extremely concerned with the "Rangewide" planning area for this effort and the Final EIS and Proposed RMPA. It was well intentioned by the BLM to make Sage-Grouse planning "consistent" across its range. However, the fact is that the habitats, threats, land uses, and local conditions are NOT consistent across the range of Sage-Grouse. Given that the States within the range of Sage-Grouse still have management authority over the bird, and that each State has a different approach to management to address its specific threats, it is nonsensical for the BLM to try to impose a "consistent" management prescription across the range of the bird. The County believes the planning area violates 43 CFR, Section 1610 as well as Congressional direction provided under the Congressional Review Act specific to the BLM's previous Resource Management Planning Rule (Planning 2.0 Rule).

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: The purpose and need for the PRMPA is to “amend certain goals, objectives, allocations, and management direction for GRSG management in its RMPs to respond to updated scientific information and changing land uses and provide for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability.” The need includes addressing continued GRSG habitat losses contributing to GRSG population declines. PRMPA/FEIS 1-4 and 1-5. The PRMPA fails to meet the stated purpose and need. First, the PRMPA fails to protect places critical for greater sage-grouse persistence consistently across the range. Specifically, as discussed elsewhere in this protest, the Bureau fails to consistently assure protection of leks and lek buffer zones that contain the majority of greater sage-grouse and high quality breeding and nesting habitat. The Bureau does not establish a rangewide lek buffer zone

management framework and instead adopts a confusing patchwork of management prescriptions that collectively do not assure lek and lek buffer zones across the range. Similarly and also discussed in more detail elsewhere in this protest, the Bureau fails to institute disturbance caps consistent with sage-grouse persistence or adequately protect GHMA. Second, by peppering the PRMPA with an array of state-based exceptions that are not biologically justified, the Bureau fails to provide a consistent and effective rangewide conservation. As described elsewhere in this protest, the Bureau in the PRMPA is proposing numerous state-based deviations from the rangewide direction, claiming without a documented biological basis that the deviations are based on local and regional biological variability. See Attachment B to this protest). As a result, the Bureau's PRMPA is a patchwork of management direction that collectively does not provide for effective and consistent rangewide conservation nor reflect best scientific understanding. Indeed, the PRMPA overall provides far weaker conservation than that provided for in the 2015 RMPAs.

Western Exploration
Darcy Murad

Issue Excerpt Text: WEX protests BLM's decision to undertake the current RMP A process instead of enforcing the 2019 RMP As. We raised this issue on pp. 13-15 of our comments on the DEIS/RMP A. BLM states in the DEIS/RMPA that it is not currently implementing the 2019 RMPAs because of a preliminary injunction issued by the United State District Comi for the District of Idaho in *Western Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). Until the court makes a final ruling in the case or otherwise lifts the preliminary injunction," BLM concludes, "BLM is enjoined from implementing the decisions from the 2019 RODs, and as such the actions contained in the 2015 RODs remain in effect. "In reality, as BLM recognizes,' the court never vacated the 2019 RMPAs and BLM has simply decided not to update the court on management actions that have clear bearing on *Schneider* and that could result in the court lifting the injunction. In May 2021, at BLM's request, the court stayed proceedings in *Schneider*. This was in part because, as BLM stated in an early status report, BLM "may take actions, or initiate planning, that would obviate the need to proceed to the merits of the claims regarding compensatory mitigation policy and the 2019 Plans." The status report BLM filed on May 21, 2024-BLM's most recent status report-said the same. BLM must explain why the 2020 SEIS it issued to supplement the 2019 Nevada RMP A and respond to issues raised in the District of Idaho litigation and the court's preliminary injunction, does not constitute an action or planning that obviates the need to proceed on the merits in that case. As a result of its SEIS analysis, BLM issued, in 2021, a ROD which "determined that [BLM's] decade-long planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation and no new land use planning process to consider additional alternatives or new information is warranted. "BLM does not explain why this conclusion has changed, thus why the 2024 planning effort is necessary. It offers vague descriptions of new science but does not cite specific and significant changes that require BLM to prolong uncertainty for regulated parties by-for the third time in less than a decade-engaging in a massive, landscape-scale land use plan for GRSG. In effect, and unlawfully, BLM has rescinded the 2019 RMPAs and the 2021 ROD by unilaterally deciding to implement the 2015 LUPAs. BLM does not have "inherent authority" to withdraw a ROD for a land use plan amendment "absent compliance with the FLPMA's formal notice and comment proceedings." BLM can amend land use plans, but to do so it must "follow[] procedures that," among other requirements, "require public participation." Particularly, BLM cannot withdraw a land use plan, absent proper process, as a result of a "legal error" in the plan revisions. BLM knows such rescission is unlawful: in the District of Idaho case that led to the preliminary injunction, the court held that where BLM does not provide a reasoned explanation to support itschange in position BLM's action was arbitrary and capricious. There, BLM was required to explain the new need for the proposed mineral withdrawal in light of its previous cancellation of that

withdrawal; here, BLM is required to explain the new need for the 2024 RMP As in light of BLM's 2019 SEIS and 2021 ROD determining that the 2019 RMP As should remain in effect.

Summary:

Protesters claimed the BLM's approval of the GRSG PRMPA/FEIS would violate the FLPMA, NEPA, Mineral Leasing Act, Energy Policy Act, Inflation Reduction Act, Congressional Review Act, and other statutes by developing a 10-state RMPA to manage GRSG and its habitat, which exceeds BLM's authority and obligations to engage in localized planning efforts. Additionally, protestors claim the BLM does not provide sufficient rationale as to why the GRSG PRMPA/FEIS was drafted instead of enforcing the 2019 RMPA and associated 2021 ROD, in violation of FLPMA.

Protesters also claim the BLM did not comply with the purpose and need described in the March 2024 NOA when drafting the GRSG PRMPA/FEIS, resulting in a patchwork of management direction that collectively does not provide for effective and consistent rangewide conservation nor reflect best scientific understanding.

Response:

The BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13 (2022); BLM Handbook H-1790-1, Section 6.2). Section 102 of FLPMA, as amended, requires the BLM to manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use." BLM policy further directs the BLM to proactively initiate conservation measures and to minimize or avoid potential adverse effects to prevent decline of sensitive species.

As discussed under *FLPMA – Consistency with Other Plans*, the GRSG planning effort is consistent with the BLM's planning regulations. The BLM's land use planning regulations allow planning at any appropriate geographic scale (43 CFR 1610.1(b); BLM Land Use Planning Handbook H-1601-1 p. 14). The planning area here, defined in coordination with relevant BLM state directors, includes all lands within the boundaries of BLM field offices that contain GRSG habitat, excluding the Bi-state distinct population segment (DPS) and the Columbia Basin DPS, which are addressed in other planning efforts. The planning area includes much of the western United States, comprising portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming (GRSG PRMPA/FEIS pp. 1-2 – 1-3).

As noted in GRSG PRMPA/FEIS Section 1.4.2, *Purpose and Need*, the purpose of this action is to "amend certain goals, objectives, allocations, and management direction for GRSG management in its RMPs to respond to updated scientific information and changing land uses and provide for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability" while improving efficiency and effectiveness of GRSG habitat management, providing for consistent conservation across state lines, and providing the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals (GRSG PRMPA/FEIS, pp. 1-4 – 1-6).

The BLM has prepared the GRSG PRMPA/FEIS to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission, and GRSG

management efforts with federal, state, local, and tribal partners. The 10-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort. The purpose of this amendment is focused on cross-cutting management actions/topics that are applicable throughout the planning area with variations for local, state-specific variation. RODs will be issued using a state-by-state approach that further accounts for site-specific variation (GRSG PRMPA/FEIS, pp. 1-4 – 1-5).

The BLM provided detailed analysis and supporting literature for land management actions to support the purpose and need of the GRSG PRMPA/FEIS including implementation of disturbance caps, lek buffers, RNAs, ACECs, and HAF units. A detailed description of the management actions under the GRSG PRMPA/FEIS is provided in Section 2.4 (GRSG PRMPA/FEIS, pp. 2-19 – 2-63) and in Appendix 21. State-specific management direction to respond to locally relevant habitat variability and circumstances, consistent with the purpose and need, are further detailed in Section 2.5 (GRSG PRMPA/FEIS, pp. 2-24 – 2-1). Additional detail related to the BLM’s use of the best available science and information is discussed above in this Protest Report under the heading *NEPA – Best Available Science*.

Furthermore, the BLM provides a detailed description of the historical context of the GRSG PRMPA/FEIS planning effort in Section 1.2, including the context for the preliminary injunction issued by U.S. District Court for the District of Idaho (GRSG PRMPA/FEIS, pp. 1-1 – 1-2). The BLM notes that it is “enjoined from implementing the 2019 RODs, and the actions contained in the 2015 RODs remain in effect. However, since the 2019 RODs were not vacated, the associated management actions are being considered for amendment in this planning process” (GRSG PRMPA/FEIS, p. 1-1). Further, the BLM determined that the 2019 Sage-Grouse Plan Amendments (and the 2015 Sage-Grouse Plan Amendments for Montana, North Dakota, and South Dakota) were potentially inconsistent with new science and rapid ecological changes affecting the BLM’s management of the public lands, including the effects of climate change (e.g., drought, loss of habitat, more frequent wildland fires, less riparian areas). In November 2021, the BLM initiated the GRSG PRMPA/FEIS under the authority of Section 202 of FLPMA and its implementing regulations at 43 CFR 1600, and in compliance with NEPA, to evaluate alternative management approaches to contribute to the conservation of GRSG and sagebrush habitats and to evaluate the impacts of any land use planning decisions directed toward GRSG and sagebrush habitat conservation.

The BLM properly established the purpose and need for the GRSG PRMPA/FEIS and analyzed a reasonable range of alternatives to meet the purpose and need. Further, the management actions proposed under the GRSG PRMPA/FEIS are consistent with the established purpose and need. Accordingly, this protest issue is denied.

NEPA – Reasonable Range of Alternatives

The Wilderness Society Ben Tettlebaum

Issue Excerpt Text: While the FEIS addresses several alternatives, it notably omits one obvious management approach: following the recommendations of the Interior Department’s own scientists for how to conserve the sage-grouse. To comply with NEPA, BLM should analyze an alternative that uses the recommendations of BLM’s 2011 National Technical Team Report (NTT), and the U.S. Fish & Wildlife Service’s 2013 Conservation Objectives Final Report (COT Report), as the basis for its management plan.

The Wilderness Society Ben Tettlebaum

Issue Excerpt Text: BLM also argues that the “NTT Report is not a land use plan, or an amendment or revision to a land use plan;” that the NTT and COT Reports were not accompanied by a NEPA analysis; and they were not developed according to FLPMA planning procedures. FEIS at 6-2 to 6-4; see also id. at 2-4 (asserting that the NTT and COT recommendations do not address how “implementation of their GRSG conservation measures would relate to other uses of the public lands—such as fluid mineral development and livestock grazing”). These excuses miss the point because those steps are exactly what the planning process accomplishes: BLM could and should have built a plan alternative based on the NTT and COT recommendations and considered it under FLPMA planning procedures along with a NEPA analysis. Indeed, most of the alternatives BLM did consider in the FEIS also had not previously been fleshed out as a formal plan, covered in a NEPA document, or developed according to FLPMA planning procedures. An NTT-COT alternative could have been analyzed in the FEIS just as readily as the other options BLM did consider. A management plan that follows the advice of the Interior Department’s scientific experts was a reasonable and obvious alternative. BLM violated NEPA by refusing to consider it.

***State of Utah Public Lands Policy Coordinating Office
Redge Johnson and Sindy Smith***

Issue Excerpt Text: The BLM further asserts that it has satisfied its NEPA obligations because the PHMA with limited exceptions designation is simply a new label and that each of the associated management restrictions was analyzed in one of the Draft EIS alternatives. This is an inaccurate representation of the requirements of NEPA and the facts behind the creation of the PHMA with limited exceptions designation. NEPA requires all aspects of a proposal to be included for public comment and review. As discussed above, the fundamental data behind the need for, and the creation of, the PHMA with limited exceptions designation has been withheld from public scrutiny. The fact that some of the management restrictions were reviewed, in unrelated contexts, is irrelevant. The PHMA with limited exceptions designation is not a minor variation of one of the alternatives in the Draft EIS, nor is it qualitatively within the spectrum of the various alternatives. Stated simply, the BLM cannot make use of this construct until the requirements of NEPA are satisfied. The State requests the designation be removed entirely or subjected to further NEPA review.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: Wyoming submitted a Wyoming Alternative (October 30, 2023) earlier in the NEPA process. This alternative included the framework where the BLM would coordinate with the WGFD and defer to the department's determination on exceptions from seasonal use restrictions. Sage-grouse seasonal use stipulation exceptions are tied solely to effects on individual birds or groups of birds not habitat. The WGFD is responsible for and has sole management authority for sage-grouse. Therefore, decisions that are limited to sagegrouse and not their habitat should be deferred to the appropriate management authority. The coordination necessary to enact this exception process is already in place as Wyoming already has a coordination process with Wyoming BLM for exception requests. The BLM did not include this concept in the draft RMP and did not provide justification for choosing not to include it. This is inconsistent with the Governor's Greater Sage-grouse Executive Order. (Wyo. Exec. Order 2019-3, Greater Sage-Grouse Core Area Protection, Appendix E (Aug. 21, 2019)) (detailing the timing and exceptions for seasonal use stipulations).

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: While the FEIS addresses several alternatives, it notably omits one obvious management approach: following the recommendations of the Interior Department’s own scientists

for how to conserve the sage-grouse. To comply with NEPA, the Bureau should analyze an alternative that uses the recommendations of the Bureau’s 2011 National Technical Team report (NTT), and the U.S. Fish & Wildlife Service’s 2013 Conservation Objectives Final Report (COT Report), as the basis for its management plan. WWP et al.’s 2022 scoping comments submitted for this project repeatedly referenced the science-based recommendations of the COT and NTT reports and encouraged them to be included in management alternatives. See also Advocates et al. 2024 at 7-9; PRMPA/FEIS at 2-4. NEPA requires the Bureau to develop and analyze alternatives “to the fullest extent possible” for “any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(E), 4332(2)(C)(iii). Agencies must “[e]valuate reasonable alternatives” and explain why any alternatives were eliminated. 40 C.F.R. § 1502.14(a). When a proposed action “is an integral part of a coordinated plan to deal with a broad problem, the range of alternatives that must be evaluated is broadened.” Nat. Res. Def. Council, Inc. v. Morton, 458 F.2d 827, 835 (D.C. Cir. 1972) (footnote omitted).

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau declined to analyze an NTT-COT alternative on the ground that it would not satisfy the purpose and need of this planning effort. PRMPA/FEIS at 2-4. This rationale is arbitrary and capricious. The Bureau’s stated purpose and need is “to respond to updated scientific information and changing land uses and provide for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability.” PRMPA/FEIS at 1-4. Developing a plan alternative based on the NTT and COT recommendations would satisfy these goals. These recommendations would provide “consistent and effective rangewide conservation.” And the NTT and COT recommendations could be incorporated in an alternative that addresses “locally relevant habitat variability:” addressing local “habitat variability” when applying the NTT and COT recommendations is much different from conforming the Bureau’s management to less protective state policies such as those in Wyoming. The Bureau also asserts that the NTT and COT recommendations “are not compendiums that, standing alone, represent best available or most current science and, therefore, they do not meet the purpose and need.” PRMPA/FEIS at 2-4. This excuse is a non sequitur. Whether or not they are a “compendium,” the measures called for by the NTT and COT reports would clearly provide for more “consistent and effective rangewide conservation,” FEIS at 1-4, than the Bureau’s proposed plan. When issued, these reports reflected the best available science on sage-grouse conservation, and the Bureau does not assert that more recent scientific research undercuts NTT’s and COT’s recommendations. To the contrary: the continued declines in sage-grouse populations since 2015 underscore the need to implement those recommendations (which are considerably more robust than the 2015 or 2019 plans). The Bureau also argues that the “NTT Report is not a land use plan, or an amendment or revision to a land use plan;” that the NTT and COT Reports were not accompanied by a NEPA analysis; and they were not developed according to FLPMA planning procedures. PRMPA/ FEIS at 6-2 to 6-4; see also *id.* at 2-4 (asserting that the NTT and COT recommendations do not address how “implementation of their GRSG conservation measures would relate to other uses of the public lands—such as fluid mineral development and livestock grazing”). These excuses miss the point because those steps are exactly what the planning process accomplishes: the Bureau could and should have built a plan alternative based on the NTT and COT recommendations and considered it under FLPMA planning procedures along with a NEPA analysis. Indeed, most of the alternatives the Bureau did consider in the FEIS also had not previously been fleshed out as a formal plan, covered in a NEPA document, or developed according to FLPMA planning procedures. An NTT-COT alternative could have been analyzed in the PRMPA/FEIS just as readily as the other options the Bureau did consider. A management plan that follows the advice of the Interior Department’s scientific experts was a reasonable and obvious alternative. the Bureau violated NEPA by refusing to consider it.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: In the PRMPA/FEIS section on Alternatives Considered but Not Analyzed in Detail, the Bureau explains that it did not analyze an alternative that designates a rangewide Sagebrush Sea ACEC nomination because the nominated area did not meet the ACEC relevance and importance criteria. PRMPA/FEIS at 2-15. The Sagebrush Sea ACEC nomination was submitted by several environmental organizations (see “ACEC Nomination”) and included a robust explanation of how the ACEC network met the relevant and important criteria (R&I) and thus qualified for consideration in the EIS. The Bureau states that the nomination fails to meet the importance criteria because the nomination is largely based on Priority Areas for Conservation (PAC) which the Bureau claims have been supplanted by more current science. We disagree with the Bureau’s claim that the PAC are outdated and do not apply. The PACs were and continue to serve as a scientifically justified basis for the PHMA delineations in all of the alternatives. This would belie the Bureau’s conclusion that the PACs are not scientifically relevant or somehow no longer reflect a network of important core habitats. PACs are based on lek breeding bird density and other population data and habitat data that continues to be biologically relevant and important. The COT’s cover letter stated that PACs, “were identified as highly important for long term viability of the species and should be a primary focus of our collective conservation efforts. The team, however, expressed in the report that new information may come to light indicating that some areas outside the identified PACs are also highly important.” This underscores the need to consider the Sagebrush Sea ACEC nomination because the scientists themselves understood PAC as a floor, not a ceiling, for areas that were critically important to protect. Further, we reviewed the citations that the Bureau used to support its decision not to analyze the Sagebrush Sea nomination. The cited studies do not discount or undercut the importance of the PACs but rather offer additional information about sage-grouse habitats and populations and amplify the importance of protecting intact habitats across the range. These studies offer new ideas for management that would be consistent with the nominated Sagebrush Sea network.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau also states that the Sagebrush Sea nomination was not analyzed because doing so would not meet the purpose and need to “amend a subset of 2015 and 2019 GRSG RMP Amendment decisions based on new scientific information or changes in land use.” PRMPA/FEIS at 2-16. However, at PRMPA/FEIS 1-4, the Bureau writes: “The Bureau’s purpose is to amend certain goals, objectives, allocations, and management direction for GRSG management in its RMPs to respond to updated scientific information and changing land uses and provide for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability.” Emphasis added. Reading the entire description of the purpose shows that in fact analyzing the Sagebrush Sea nomination is entirely within the scope of the PRMPA’s purpose. In addition, the Bureau’s failure to qualify and include within the range of alternatives the Sagebrush Sea nomination is inconsistent with previous decision-making. In the 2015 greater sage-grouse amendments, the Bureau found that 32.5 million acres of priority habitat, which were based on PACs, met the relevance and importance criteria and thus merited analysis in an alternative.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: The Bureau’s explanation for not analyzing an alternative that provides a consistent lek buffer management framework across the range is misguided. First, the science tells us that lek buffer zones contain the majority of the birds and are high quality nesting and breeding habitat. The science also tells us that disturbance within these crucial seasonal habitats can be

devastating for the birds. This is as true in Wyoming as it is in Oregon. The Bureau provides no evidence that updated science leads to the conclusion that a rangewide lek buffer management framework would be unwarranted. If anything, the science highlights just how important these zones are for sage-grouse persistence. Secondly, the Bureau claims that a consistent rangewide lek buffer framework would somehow undercut its ability to respond to locally relevant habitat variability. We do not see why these two factors are regarded as mutually exclusive. The Bureau can apply lek buffer zone sizes and management consistently across the range for various activities and infrastructure while providing limited exceptions that respond to local variability that would justify departures. Third, the Bureau claims that by not applying a rangewide lek buffer zone framework, it can better respond to local variability. However, the Bureau does not provide biological justifications for its variable lek buffer management approaches across the range, thereby failing to provide a rationale connecting the facts found with the decisions made. Instead, the Bureau simply establishes a patchwork of state-level approaches that appear untethered to biological factors. Finally, the Bureau states that it is not proposing to modify lek buffers in this FEIS. See, e.g., FEIS 2-5 to 2-6, 22-16 and 22-82. We remain confused by this statement since the size of buffers and their management are proposed to change in the PRMPA in some states. See charts 1 and 2 (Attachment B to this protest) viewed in concert. For all of these reasons, the Bureau erred in not analyzing an alternative that establishes a consistent approach to lek buffer zones across the greater sage-grouse range in violation of NEPA.

Summary:

Protesters stated that the BLM's approval of the GRSG PRMPA/FEIS would violate NEPA for the following reasons:

- Failing to consider an alternative based on the BLM's 2011 National Technical Team Report (NTT) and the USFWS's 2013 Conservation Objectives Final Report (COT) Report. The NTT and COT reports include the best available science on sage-grouse conservation and by considering it under FLPMA planning procedures and NEPA analysis, would be a reasonable alternative for the PRMPA/FEIS.
- Failing to allow public review and comment of PHMA with limited exceptions because it is not a minor variation of one of the alternatives.
- Failing to include coordination between BLM and the Wyoming Game and Fish Department (WGFD) on seasonal use stipulation exceptions for sage-grouse, due to the WGFD's management authority on sage-grouse populations. This process was omitted from the Draft RMPA and is therefore inconsistent with the Wyoming Governor's Greater Sage-grouse Executive Order 2019-3, Greater Sage-grouse Core Area Protection, Appendix E (August 21, 2019).
- Failing to adequately consider a plan alternative that designates a rangewide Sagebrush Sea ACEC nomination. Protesters assert that the Sagebrush Sea nomination is within the scope of the PRMPA's purpose and serves as a scientifically justified basis for PHMA delineations in all of the alternatives, despite BLM's previous claim that the nomination is outdated and does not qualify for consideration in the PRMPA/FEIS.
- Failing to adequately analyze and consider an alternative that establishes a consistent lek buffer management framework across the GRSG range.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate a reasonable range of alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for elimination (40 CFR 1502.14(a) (2022)). 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).

Similarly, agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14(a) (2022)). An alternative may be eliminated from detailed study if it is determined not to meet the proposed action's purpose and need; determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3).

The BLM has discretion to establish the purpose and need for action (40 CFR 1502.13 (2022)). CEQ regulations direct that an EIS "...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR 1502.13 (2022)). Also, the BLM is required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources" (42 U.S.C. 4332(2)(H)). The range of alternatives developed is intended to meet the purpose and need and address identified issues; thereby, providing a basis for eventual selection of an alternative in a decision.

The BLM analyzed a reasonable range of alternatives adequate to address the agency's purpose and need for considering these amendments, as described in Chapter 1, Section 1.4.2 of the GRSG PRMPA/FEIS. The action alternatives, including the preferred alternative, were developed based on the best available data and the latest science in order to further GRSG conservation. The alternatives identified and incorporated appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat, and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was recommended. This includes alternatives that provide a greater and lesser degree of restrictions in various use programs, in accordance with applicable law, and would not eliminate or invalidate any valid existing rights. The effects of the PRMPA on GRSG are described in Chapter 4, Section 4.2 of the GRSG PRMPA/FEIS and the effects of Alternatives 1 through 6 are described in Appendix 10. The analysis acknowledges when the preferred alternative from the GRSG Draft RMPA/EIS (Alternative 5) would result in greater effects on GRSG compared to existing management (Alternative 1). Further, BLM considered a number of alternatives and issues during scoping that the agency determined not to carry forward, as detailed in GRSG PRMPA/FEIS Section 2.3 *Alternatives Considered but Not Analyzed in Detail*.

The BLM developed the PRMPA in response to public and cooperating agency comments and in consideration of important habitat factors such as connectivity, population strongholds, and the potential for threats from development. The PRMPA proposed increased protections for GRSG in comparison to the preferred alternative (Alternative 5) in the GRSG Draft RMPA/EIS.

Regarding an alternative based on the NTT and COT reports, the BLM concluded that the reports, published in 2011 and 2013, do not represent the best available or most current science as standalone resources, and therefore, an alternative based on these reports would not meet the purpose and need of the PRMPA/FEIS to amend GRSG management direction to respond to updated scientific information (GRSG PRMPA/FEIS pp. 2-4). As a result, while the BLM relied upon the reports in development of the alternatives in the Draft RMPA/EIS, the BLM dismissed a standalone alternative based on these reports from detailed analysis. Additionally, the NTT and COT reports indicate the necessity to adapt GRSG conservation goals, objectives, and measures to local ecological site variability across range.

As detailed in Section 2.3, *Alternatives Considered but Not Analyzed in Detail*, the BLM considered the alternative proposed by the State of Wyoming and determined most of the actions were already evaluated among other alternatives the BLM analyzed in detail. In some instances, the exact language was already in the range of alternatives or was incorporated in Alternative 5. In other instances, the

proposed language was substantially similar to language already being considered, or that would result in substantially similar effects. In very few instances, the BLM determined the proposed alternative was not consistent with the purpose and need (e.g., removing the disturbance cap), and included recommendations that were not consistent with BLM policies. The RMP-level actions in the alternative proposed by Wyoming are already considered in the range of alternatives. Therefore, the BLM did not separately analyze the alternative proposed by the State of Wyoming.

Additionally, the BLM reviewed the proposed alternative that includes the nominated Sagebrush Sea Area of Critical Environmental Concern (GRSG PRMPA/FEIS p. 2-15). As indicated in this section, the BLM determined that the alternative is inconsistent with BLM policy objectives for management of the area and would not respond to the purpose and need. As discussed in the PRMPA/FEIS, the BLM ultimately determined consideration of the Sagebrush Sea ACEC was inconsistent with the BLM’s purpose and need of the PRMPA because the BLM determined the underlying data for the ACEC’s nomination no longer reflected the most up to date science on habitat connectivity, populations, effects to habitat from climate change, and genetic information across the range of the species.

See the *NEPA – Public Comment* and *NEPA – Supplemental EIS* sections of this Protest Report for a discussion of the BLM’s consideration of PHMA with limited exceptions. The BLM analyzed a reasonable range of alternatives and provided rationale for alternatives considered but dismissed from detailed analysis. Accordingly, this protest issue is denied.

NEPA – Response to Comments

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: On August 9, 2024, BLM HQ sent an email to a subset of CAs asking for "fatal flaw feedback" on the preliminary draft management direction, allocations, and mapping by August 19, 2024. This gave a subset of CAs 10-days (if you include both weekends) to review the newly generated documents and identify major issues with policy, law, regulations or major concerns related to implementing the management direction. Sublette County supported comments submitted on our behalf by the WCCA again expressing our concerns with the BLMs document pointing to insufficiencies focusing on meaningful engagement with CAs, consistency with the Wyoming EO, priority habitat management areas with limited exceptions—to no avail. BLM then released the FEIS and PRMPA on Friday, November 15, 2024, which identified a modified Proposed RMPA that specifically added protection measures that were not considered in the DEIS and did not sufficiently consider the Counties’ concerns in the AD of the FEIS.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: In response to the comment that comment that BLM needed to conduct a more detailed analysis of the impacts on locatable minerals, BLM referred to analysis in “Sections 3.12 and 4.12, with additional detail in Appendix 18.”⁴¹ However, Section 3.12 has only one paragraph on locatable minerals, generally stating that the value of minerals and their contribution to local economies vary and then describing the various taxes that may apply. ⁴² Similarly, Section 4.12.1 discusses the broad direct and indirect impacts that withdrawal of locatable minerals would have but does not get specific to Montana,⁴³ and includes a general statement that the Proposed RMP Amendment would have the same impact as described for Alternative 5.44 Appendix 18, which should describe the methodology for impacts on social and economic conditions due to changes in locatable minerals, instead merely states that the Proposed RMP Amendment would not recommend any areas for withdrawal. ⁴⁵ These responses fail recognize that restrictions like RDFs and BMPs on

mineral development and supporting infrastructure like ROWs—particularly those imposed in PHMA—even absent mineral withdrawals, can significantly, negatively impact local and state economies, sometimes even to the point of creating de facto withdrawals. The BLM’s responses also fail to examine Montana data specifically. Accordingly, the BLM must conduct additional analysis in conjunction with state and local experts and stakeholders, and incorporate these findings in the Record of Decision. While this still fails to provide the opportunity for more meaningful public comment, it is a better remedy than continuing to make decisions with little analysis of economic impacts.

Nevada Mining Association
Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: In responding to comments, BLM has a duty to modify its analysis based on a commenter’s reasoned objections or to “[e]xplain why the comments do not warrant further agency response.” 40 C.F.R. § 1503.4(a)(5); see also BLM, National Environmental Policy Act Handbook, H-1790- 1 (January 30, 2008), p. 67 (“If, after reevaluation, the decision-maker responsible for preparing the EA or EIS does not think that a change is warranted, we recommend that your response provide the rationale for that conclusion.”). BLM failed substantively to respond to several, if not most, of NVMA’s Comments. In fact, BLM’s responses in Appendix 22 of the Proposed RMPA/EIS were shockingly deficient, unhelpfully broad, and refused to consider the substantial technical information supplied by commenters. This failure is consistent with the overall trends of this planning process. It has been rushed, dismissive of local input, and prohibited meaningful public involvement.

Berkshire Hathaway Energy Company
Amy Harvey and Sherry Liguori

Issue Excerpt Text: BLM does not summarize or respond to BHE comments relating to perch and nest discouragers as a required design feature, or the infeasibility of undergrounding power lines. BHE resubmits all of the following original comments regarding Table 2-11, pg 2-99 of the DEIS [now Table 21-10, pg 21-92 of the PRMPA/FEIS]. See original comments below. BHE requests the BLM consider other more effective required design features (RDFs) and best management practices (BMPs) for sage-grouse conservation, such as those which focus on habitat conservation or enhancement efforts that are compatible with conservation measures for other protected species (e.g. electrocution prevention measures for raptors and other migratory birds). The sections below detail concerns related to RDFs, BMPs, and the Predator Management Plan as they are described in the DEIS. BHE’s subsidiaries have agreements in place with the U.S. Fish and Wildlife Service (FWS) regarding Avian Protection Plans (APPs) and efforts to prevent electrocutions and collisions, while increasing system reliability for customers. The use of perch discouragers is precluded in our APPs and agreements with FWS due to associated electrocution concerns. Therefore, BHE recommends the BLM remove the requirement to consider or recommend perch and nest discourager use in the DEIS. BHE also recommends the BLM seek additional information from APLIC and FWS regarding these concerns; BHE’s environmental staff is also available to discuss these concerns with BLM staff and provide associated documentation. Rather than call for the use of perch and nest discouragers and other RDFs and BMPs, BHE recommends the BLM reference the BMPs outlined in Best Management Practices for Electric Utilities in Sage-Grouse Habitat (Avian Power Line Interaction Committee [APLIC] 2015). BHE recommends the BLM clarify that the RDFs, BMPs, and Predator Management Plans target common raven (*Corvus corax*) predation on sage-grouse, as opposed to eagles or other raptor species. BHE also recommends that the BLM clarify the requirements described in the DEIS are transmission line focused and are not applicable to distribution voltages (<46kV). Kohl et al. (2019) found brooding female greater sage-grouse did not avoid distribution lines, sage-grouse nests success rates were higher when located close to distribution lines, and presence of distribution lines had no effect on brood success. Further, the majority of poles on a distribution

circuit would consist of tangent structures that have a reduced perching and nesting opportunity compared to larger transmission structures.

***State of Wyoming, Office of Governor Mark Gordon, et al.
Sara DiRienzo, et al.***

Issue Excerpt Text: The State of Wyoming notes the BLM ignored comments from Wyoming throughout the cooperators process, administrative draft, and public draft RMP A related to Adaptive Management. Furthermore, BLM's response to comments did not address many of Wyoming's comments on Adaptive Management. The BLM also did not address and justify the divergence from Wyoming's Sage Grouse Executive Order (SGEO) as required by The Federal Land Policy and Management Act. See 43 U.S.C. 1712(c)(9) ("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.").

***Western Watersheds Project et al.
Greta Anderson et al.***

Issue Excerpt Text: We object to the Bureau's incomplete response to comments. The Bureau responded to some comments and ignored others, many of which raised substantial and compelling issues with the analysis in the DEIS. We hereby incorporate by reference into this protest all substantive comments that were not adequately addressed in the Response to Comments, FEIS Appendix. In particular, the FEIS fails to adequately analyze and respond to comments from the protestors as to:

- The request for clarification as to if/how Appendix B from the 2015 ARMPAs would continue to apply and whether Alternatives 1-7 would prohibit the Bureau from approving actions within the applicable lek buffers or simply require analysis of impacts within those buffers [Advocates et al. 2024 at 10].
- Disturbance caps, including the comment that the Bureau is understating the potential for disturbance from existing authorizations (oil and gas leases) a request for explanation as to the scientific justification for the higher 5% cap in Wyoming and Montana [Advocates et al. 2024 at 13-19].
- The Bureau's explanation or analysis of changes to grazing management [Advocates et al. 2024 at 20-28]
- Failure to take a hard look at the cheatgrass, fire, livestock cycle [Advocates et al. 2024 at 29]
- Failure to take a hard look at mining management [Advocates et al. 2024 at 35-44]
- Failure to take a hard look at impacts of oil and gas leasing [Advocates et al. 2024 at 44]
- Failure to take a hard look at the effects of each alternative's approach to waivers, exceptions, and modifications [Advocates et al. 2024 at 55]
- Failure to take a hard look at the prevalence of Fee/Fee/Fed oil and gas wells [Advocates et al. 2024 at 55]
- Failure to take a hard look at the cumulative impacts of drought and climate change on sage-grouse [Advocates et al. 2024 at 55-58]
- Failure to take a hard look at the effectiveness of mitigation measures based on experience with 2015 plan implementation [Advocates et al. 2024 at 62]
- Inadequate cumulative effects analysis [Advocates et al. 2024 at 63]
- Improper segmentation of SFA mineral withdrawal analysis [Advocates et al. 2024 at 65]
- Adaptive Management [Advocates et al. 2024 at 66-69]
- Habitat Management Areas designations [Advocates et al. 2024 at 70]

- Violations of the Bureau’s Special Status Species policy [Advocates et al. 2024 at 74-76]
- ACEC Nominations [Advocates et al. 2024 at 76-80]
- The problems with the Bureau’s proposed reversal of Oregon key Research Natural Areas and lack of adequate NEPA analysis of that change [Advocates et al. 2024 at 80-81]
- The problems with the Bureau’s increased reliance on compensatory mitigation under various alternatives and failure to adequately analyze the impacts of this shift [Advocates et al. 2024 at 81]
- The request that the Bureau include a provision requiring the protection of new or newly-documented sage grouse habitat on the Bureau surface or split estate that was excluded from HMA designations. [Advocates et al. 2024 at 89]
- The argument that the plans must set the terms and conditions for the development of federal minerals from Fee/Fee/Fed wells in Habitat Management Areas [Advocates et al. 2024 at 89-92]
- The lack of reasoned explanation for state-by-state variations in plan measures [Advocates et al. 2024 at 92]
- The important reliance interests USFWS placed on the 2015 Plans in reaching its ESA “Not Warranted” finding for greater sage-grouse [Advocates et al. 2024 at 98]
- Establishing a consistent rangewide management framework for lek buffer zones [Defenders of Wildlife DEIS comment letter at 10 to 14]
- The request that the Bureau analyze the Sagebrush Sea ACEC nomination after we demonstrated that it met the importance criteria [ACEC comment letter at 2 to 6]

***Wyoming County Commissioners Association
Bill Novotny***

Issue Excerpt Text: the BLM did not respond to comments about inconclusive causal factor analysis (CFA) and its impact on permitting. There are no responses to any comments for inconclusive CFA under the Adaptive Management comment section. However, it appears the BLM may have made an amendment in the PRMPA to address part of our concern about inconclusive CFAs delaying permits if the BLM, for whatever reason, is unable to complete the analysis. The PRMPA provides, "CFAs that are not completed within the time frame identified by the CFA team will not be considered inconclusive and should be prioritized for completion." (2-50)

***Wyoming County Commissioners Association
Bill Novotny***

Issue Excerpt Text: The BLM failed to address our contention that the state of Wyoming should be able to submit habitat data to support limiting these potential restrictions made solely on population threshold data (vs. habitat data) if they can demonstrate the population analyses are incorrect." (21-122). The WGFD has specialized expertise and habitat data that should be able to be used to demonstrate if habitat analyses are incorrect. Through county government, and other regulatory agencies including the WGFD, the Wyoming Department of Environmental Quality, the Wyoming Oil and Gas Conservation Commission (WOGCC), and the Office of State Lands and Investments, the State of Wyoming has exclusive management authority over significant portions of the GrSG habitat in Wyoming.

***Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson***

Issue Excerpt Text: The BLM fails to respond substantively to Barrick’s concerns about its “west-wide” planning approach that would amend 77 local resource management plans. In responding to comments, BLM has a duty to modify its analysis based on a commenter’s reasoned objections or to

“[e]xplain why the comments do not warrant further agency response.” 40 C.F.R. § 1503.4(a)(5); see also BLM, National Environmental Policy Act Handbook, H-1790-1 (January 30, 2008), p. 67 (“If, after reevaluation, the decision-maker responsible for preparing the [Environmental Assessment (“EA”)] or [Environmental Impact Statement (“EIS”)] does not think that a change is warranted, we recommend that your response provide the rationale for that conclusion.”). The BLM failed specifically or substantively to respond to several, if not most, of Barrick’s Comments. This failure is emblematic of the overall planning process: rushed, inattentive to local conditions, and without meaningful public involvement. An illustrative criticism made by Barrick is BLM’s decision to amend 77 local RMPs in a single, unwieldy document that is manifestly incapable of providing the level of analysis required by NEPA. Barrick’s Comments, moreover, condemn BLM’s notable departure from prior planning efforts that used region- and state-specific EISs to provide more focused analysis on local conditions and potential impacts. The BLM—acting under presidential administrations representing both sides of the political spectrum—has previously recognized the value of a more localized strategy. See, e.g., BLM, Protest Resolution Report Nevada-Northeastern California Sub-Regional Greater Sage-Grouse Land Use Plan Amendment/Final Environmental Impact Statement (Sept. 15, 2015), pp. 146-47 (emphasizing how each Land Use Plan Amendment/Final Environmental Impact Statement (“LUPA/FEIS”) “takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests” in each sub-region); 2019 Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment (March 2019) (“2019 NV/CA ARMPA”), p. 1-2. (describing how the six different EISs “reflected the different approaches States are taking within their jurisdiction to conserve GRSG ...”). Here, BLM dismissively responds to Barrick’s concerns by claiming that the Proposed RMPA/FEIS “facilitates consistency across states.” See Proposed RMPA/FEIS, App’x 22, p. 22-67. But the need for greater “consistency” directly contradicts BLM’s own statements and the scientific literature on which BLM premised its need to once again amend its GRSG plans. For example, BLM relies on scientific research that identifies how “GRSG occupy large geographic extents and experience a high degree of spatial heterogeneity in biotic and abiotic variables across their range.” Proposed RMPA/FEIS, p. 3-10; *id.*, p. 3-8 (conceding that GRSG population trends “var[y] spatially”). However, BLM suggests that the Proposed RMPA/FEIS “provid[es] the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals,” without specifically identifying how its “top-down” approach leaves any discretion at the state- or local-RMP level. Proposed RMPA/FEIS, App’x 22, p. 22-67. In short, BLM’s response fails to demonstrate that it fully evaluated Barrick’s legitimate concerns about the rangewide planning process.

Summary:

Protestors stated that the BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA and FLPMA because the BLM did not adequately respond to public comments including:

- comments raising concerns about its rangewide planning approach.
- comments that pointed out insufficiencies regarding adequate and meaningful engagement with Cooperating Agencies.
- comments from Western Watershed Project et al. that raised issues with the analysis in the DEIS.
- comments relating to perch and nest discouragers as a required design feature, or the infeasibility of undergrounding power lines.
- comments from Wyoming throughout the planning process on an alternative related to Adaptive Management, and BLM did not address or justify the divergence from Wyoming’s Sage-Grouse Executive Order.

- comments suggesting that the state of Wyoming should be able to submit habitat data to support limiting potential restrictions made solely on population threshold data (vs. habitat data) if they can demonstrate the population analyses are incorrect.
- comments about inconclusive causal factor analysis (CFA) and its impact on permitting.
- comments calling for BLM to conduct a more detailed analysis of the impacts on locatable minerals and to examine data regarding impacts to Montana's locatable minerals specifically. Protestors noted that the BLM must conduct additional analysis in conjunction with state and local experts and incorporate these findings into the ROD.

Response:

The BLM is required to assess, consider, and respond to all substantive comments (40 CFR 1503.4 (2022)). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM NEPA Handbook H-1790-1, pp. 65-66).

In compliance with NEPA, the BLM considered all public comments submitted on the GRSR PRMPA/FEIS. The BLM complied with CEQ's NEPA implementing regulations (40 CFR 1503.4 (2022)) by performing a detailed comment analysis that assessed and considered all substantive comments. GRSR PRMPA/FEIS Appendix 22, *Draft RMPA/EIS Public Outreach and Responses to Substantive Public Comments*, presents the BLM's responses to all substantive comments. Within GRSR PRMPA/FEIS Appendix 22, Sections 22.2, *Rangewide Comment Responses*, and Section 22.3, *State-Specific Comment Responses*, the BLM summarized the substantive comments raised by commenters during the public comment period for the GRSR Draft RMPA/EIS, and provided a meaningful response to each comment summary.

The BLM's responses identify any modifications to the alternatives, improvements to the impact analysis, or factual corrections made in the GRSR PRMPA/FEIS as a result of public comments. The BLM's responses also explain why certain public comments did not warrant further agency response, stating "Some comments received throughout the comment analysis process expressed personal opinions or preferences, had little relevance to the adequacy or accuracy of the GRSR Draft RMPA/EIS, or represented commentary on management actions that are outside the scope of this NEPA analysis. These comments did not provide specific information to assist the BLM in making a change to the existing action alternatives, did not suggest new alternatives, and did not take issue with methods used in the GRSR Draft RMPA/EIS. These comments were considered and identified as not substantive. The BLM read, analyzed, and considered all comments of a personal or philosophical nature and all opinions, feelings, and preferences for one element or one alternative over another. However, because such comments were not substantive, the BLM has not prepared a written response to them" (GRSR PRMPA/FEIS Appendix 22 pp. 22-3). The BLM's comment response process ensures that every comment is considered when preparing the GRSR PRMPA/FEIS.

Rangewide Planning Approach

The BLM adequately responded to comments stating that the planning area encompasses too large an area to be meaningful and should utilize state-by-state GRSR plan variations instead of a rangewide approach (GRSR PRMPA/FEIS, Appendix 22 p. 22-67). In Section 1.4.2, *Purpose and Need*, the BLM states that the purpose of the GRSR PRMPA/FEIS is to provide "effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability", and while "some management concerns are localized to circumstances in individual States and the ecological diversity across the sagebrush ecosystem (pp. 1-4 – 1-5). As such, the purpose of this planning effort also includes amending specific RMP management actions associated with state-specific circumstances to facilitate GRSR habitat conservation efforts. Beyond the rangewide considerations detailed above, states considered additional targeted amendments to existing

management direction. Each state determined the need to amend management actions independently and based on a review of updated scientific information, changing land uses, and locally relevant habitat variability. Management actions targeted for amendment in some states include saleable minerals, fire and fuels, vegetation and invasives, lands and realty actions, project screening, lek buffers, and interagency coordination. Inclusion of a management category for amendment in one state does not necessitate consideration of this category in other states or the consideration of the category rangewide” (GRSG PRMPA/FEIS pp. 1-4 – 1-5).

Meaningful Coordination with Cooperating Agencies

The BLM adequately responded to comments stating that the BLM should incorporate cooperating agency comments and improve its cooperating agency process (GRSG PRMPA/FEIS, Appendix 22 p. 22-38). The GRSG PRMPA/FEIS Section 5.4, *Cooperating Agencies*, describes the BLM’s engagement with cooperating agencies in developing the GRSG PRMPA/FEIS. Neither NEPA nor BLM planning regulations include specific requirements for responses or review periods for cooperating agencies. More information related to how BLM adequately coordinated with cooperating agencies can be found in the *NEPA – Cooperating Agencies* section of this Protest Report.

Issues Raised by Western Watersheds Project et al.

Under the GRSG PRMPA/FEIS, the BLM analyzed a reasonable range of alternatives designed to meet the planning effort’s purpose and need, as required by NEPA. Under Alternative 1, the BLM would re-adopt the applicable GRSG habitat management area (HMA) boundaries, goals, objectives, and actions from the 2015 ROD/Approved RMPAs (as updated through plan maintenance) (GRSG PRMPA/FEIS, p. 2-1). The alternatives provide for a range of allowable uses within lek buffers, which are outlined and described throughout Chapter 2, *Alternatives*. For example, Section 2.4 and Section 2.5 of the GRSG PRMPA/FEIS identify PHMA as exclusion for solar and wind and NSO for fluid minerals with exceptions, meaning the BLM would not allow solar and wind projects to be developed in these areas and would require additional site-specific analysis before approving fluid mineral exploration or development subject to these exceptions (GRSG PRMPA/FEIS p. 2-3).

Regarding disturbance caps, please see the section *NEPA - Impacts Analysis – Disturbance Caps* in this Protest Report and the BLM’s response to comments in GRSG PRMPA/FEIS Appendix 22, Section 22.2.11.

The BLM took a hard look at potential impacts from management under the PRMPA to grazing, cheatgrass, fire and the livestock cycle in Sections 4.3, *Vegetation*, 4.4, *Wildland Fire Ecology and Management*, and 4.8, *Livestock Grazing* (GRSG PRMPA/FEIS pp. 4-48; 4-54, 4-65). Additional information is also discussed in Appendix 10, Sections 10.3, 10.4, and 10. and in Appendix 15, *Livestock Grazing BMPs and Supplemental Information*.

The BLM analyzed the potential for environmental and economic impacts to mineral resources, including oil and gas leasing, from the management proposed under each alternative in Section 4.10, *Mineral Resources*, Section 4.12, *Social and Economic Conditions (Including Environmental Justice)*, and Appendix 10 Section 10.10 and 12.12. Additional information can also be found in GRSG PRMPA/FEIS Appendix 13, *Socioeconomic Baseline Report* (GRSG PRMPA/FEIS p. 4-73; p. 4-90; Appendix 13, p. 13-3-1), Appendix 12, *Reasonably Foreseeable Development Scenario*, and Appendix 16, *Montana/Dakotas Oil and Gas Lease Stipulations*. The effects of each alternative’s approach to waivers, exceptions, and modifications are described throughout the GRSG PRMPA/FEIS as “Fluid mineral leasing waivers, exceptions, and modifications” are explicitly included in the document’s purpose and need (GRSG PRMPA/FEIS, p. 1-4). However, fluid mineral leasing waivers, exceptions, and modifications and their effects are specifically mentioned throughout Chapter 3 and Chapter 4; Appendix 10, *Chapter 4 Methodology, Assumptions, Indicators, and*

Environmental Consequences for Alternatives 1-6, and Appendix 21, Detailed Description of Draft EIS Alternatives in Section 21.1.7, Fluid Mineral Lease Stipulation Waivers, Exceptions, and Modifications (GRSG PRMPA/FEIS Appendix 21 p. 21-40 - 21-85).

The BLM took the required “hard look” at the cumulative impacts of drought and climate change on sage-grouse from the proposed alternatives in Chapter 4, Section 4.3, specifically under the *Wildfire, Fuels, and Vegetation/Habitat Management* subsection (GRSG PRMPA/FEIS pp. 4-44 – 4-45). In this section, the BLM states that “Increasing recurrence and severity of drought conditions have been predicted for much of the planning area as a result of climate change. These trends can contribute to increasing the occurrence, size, and severity of wildfires throughout the planning area.” (GRSG PRMPA/FEIS, p. 4-44)

The BLM took the required “hard look” at the effectiveness of mitigation measures, based on experience with the 2015 plan implementation, in Appendix 7 of the GRSG PRMPA/FEIS, *Greater Sage-grouse Monitoring Framework*, which begins by stating that “The revised BLM Greater Sage-Grouse (GRSG) Monitoring Framework was developed after five years of implementing the 2015 BLM and USFS GRSG Monitoring Framework which culminated in the 2020 Greater Sage-Grouse Five-year Monitoring Report” (GRSG PRMPA/FEIS, Appendix 7, p. 7-1). In addition, GRSG PRMPA/FEIS Appendix 8 establishes GRSG habitat objectives, indicators, and benchmarks for the GRSG which are used in the HAF and will inform the wildlife and/or sensitive species component of the Land Health Standards evaluation process (43 CFR 4180.2). The GRSG Monitoring Framework provides a consistent format for reporting if the GRSG PRMPA/FEIS objectives are being met or making progress to being met.

Cumulative effects from the GRSG PRMPA/FEIS under each alternative were analyzed for each resource in Chapter 4, *Environmental Consequences*, and Appendix 14, *Environmental Consequences Supporting Information*.

Cumulative impacts from the proposed SFA withdrawal project on the GRSG are described in Section 4.2.3, *Cumulative Effects* (pp. 4-42 – 4-47). The SFA withdrawal project is considered a reasonably foreseeable action as noted in Table 14-25 (GRSG PRMPA/FEIS, p. 14-58) and therefore is included in the cumulative analysis presented throughout Chapter 4 and Appendix 14. Projects built before 2018 are considered in the past actions contributing to cumulative effects, which are described throughout Chapter 4 and incorporated into the affected environment in Chapter 3. In addition, each treatment or other site-specific project or action mentioned would also be subject to an implementation-level NEPA analysis to assess additional impacts as the actions are proposed.

Adaptive Management is part of the purpose and need of the GRSG PRMPA/FEIS (p. 1-4) and is included throughout the proposed management direction under the alternatives analyzed in the GRSG PRMPA/FEIS.

The BLM analyzed a reasonable range of alternatives related to HMAs management. The alternatives are discussed throughout Chapter 2, *Alternatives*, and Appendix 21, *Detailed Description of Draft EIS Alternatives*, and analyzed through Chapter 4, *Environmental Consequences*, and Appendix 10, *Chapter 4 Methodology, Assumptions, Indicators, and Environmental Consequences for Alternatives 1-6*.

The BLM analyzed potential impacts to special status species from management proposed under each alternative in GRSG PRMPA/FEIS Section 4.6 (p. 4-62) and Appendix 10 Section 10.6 (pp. 10-52 – 10-54).

Please see the *Special Designations* section of this Protest Report for information related to BLM’s review of ACEC nominations and RNA analysis.

The BLM analyzed a reasonable range of alternatives related to compensatory mitigation. A summary of mitigation elements in each alternative is provided in GRSG PRMPA/FEIS Appendix 21 Table 21-4, *Comparison of Alternatives, Mitigation* (GRSG PRMPA/FEIS Appendix 21 pp. 21-16 - 21-17) and Chapter 2 (pp. 2-27, 2-32, 2-38). Under the PRMPA, “Where avoidance or minimization will not fully offset a project’s impacts compensatory mitigation is required and will at minimum meet the requirements of the state wildlife agency or other appropriate state authority, and BLM/DOI mitigation policy. Prior to identifying compensatory mitigation, BLM must document the avoidance and minimization applied and why they are not effective at eliminating all impacts (i.e., residual effects), as well as documenting how compensatory mitigation is an appropriate tool for the situation. Any impacts that cannot be avoided or minimized to no net habitat loss would be compensated at a level and in a manner to fully offset both direct and indirect (e.g., disturbance, noise, changes in water availability) impacts from the project to habitat function as identified at the project-level” (GRSG PRMPA/FEIS, p. 2-39). Additional information related to compensatory mitigation in the GRSG PRMPA/FEIS can be found in the *Monitoring and Mitigation* section of this Protest Report.

The BLM adequately responded to substantive comments about Fee/Fee/Fed wells in GRSG PRMPA/FEIS Appendix 22, *Draft RMPA/EIS Public Outreach and Responses to Substantive Public Comments*, stating “While the development of wells on non-BLM managed surface in GRSG habitat results in impacts on GRSG it is not appropriate to analyze these in the plan and is outside the scope and management area. For fluid minerals, the term ‘Fee/Fee/Fed’ refers to all situations where a well is located on non-Federal land overlying non-Federal minerals, but some portion of the wellbore enters and produces from the Federal mineral estate. Because fee/fee/fed wells are initially drilled on private surface and private minerals, they may be drilled without BLM knowledge or input, before being later extended into federal mineral estate. Therefore, even if BLM did not approve the Federal portion in these cases impacts to GRSG would already have occurred. Because of such issues it is not possible to accurately determine what impacts might result from fee/fee/fed wells under all the Alternatives” (GRSG PRMPA/FEIS, Appendix 22, p. 22-36).

In Section 5.2.2, *U.S. Fish and Wildlife Consultation*, the GRSG PRMPA/FEIS states that “the BLM has initiated development of a biological assessment and will coordinate with the USFWS to complete that analysis and initiate Section 7 consultation” for this PRMPA, which is separate from the 2015 Approved RMPA. The BLM has coordinated closely with the U.S. Fish and Wildlife Service throughout this planning effort, including in compliance with Section 7 of the Endangered Species Act. See the Endangered Species Act section of this Protest Report for more information about this consultation and the agencies’ work to protect GRSG.

The BLM is not proposing rangewide changes to lek buffers in the GRSG PRMPA/FEIS. The analysis in the GRSG PRMPA/FEIS Section 4.2 identifies impacts to lekking. Additional analysis of the impacts on lekking would occur during project-level NEPA analysis. The differences in lek buffers between states, described in Section 2.4 and 2.5 of the GRSG PRMPA/FEIS, are to allow for conformance with state wildlife agency management strategies for GRSG. GRSG PRMPA/FEIS Chapter 2 Tables 2-8, 2-9, 2-10, and 2-12 provide detailed discussion on the application of lek buffer distances during project level decision-making (GRSG PRMPA/FEIS p. 2-77, 2-86, 2-91, 2-100). Refer to the *NEPA – Impacts Analysis - GRSG* section of this Protest Report for more information related to lek buffers.

The BLM considered the Sagebrush Sea ACEC nomination in Appendix 5, *Areas of Critical Environmental Concern for Greater Sage-Grouse Habitat*, and determined that, “The BLM did not identify the Sagebrush Sea as potential ACEC in the Draft or Final EIS alternatives because the area does not meet the ACEC relevance and importance criteria (1610.7-2 (d)) because the BLM believes the PAC criteria utilized in identifying the Sagebrush Sea nomination no longer reflects the most up to date science on habitat connectivity, populations, effects to habitat from climate change, and genetic information across the range of the species.” (GRSG PRMPA/FEIS, p. 5-14).

Perch and Nest Discouragers

As described in the GRSG PRMPA/FEIS, predation from avian predators is a cause of mortality for GRSG (GRSG PRMPA/FEIS p. 3-5). To address this threat, and in response to anticipated threats from disturbance associated with rights of way, the PRMPA includes rangewide and state-specific management direction related to nest and perch deterrents. The PRMPA does not include design criteria for burying or co-locating power lines (GRSG PRMPA/FEIS p. 2-6). The PHMA and GHMA proposed management direction, including the PHMA disturbance cap management direction, accounts for potential impacts from rights of way, and impacts associated with burying and co-locating powerlines would be considered during project-specific review. For example, in Montana and the Dakotas, the PRMPA would provide that “All new utility and power lines that can be safely buried will be buried within 2 miles of sage-grouse leks and within sage-grouse winter range. When burial of power lines is not possible, above ground lines will be located and designed to minimize impacts of predation, collision, and other associated stressors to sage-grouse. Existing overhead lines within 2 miles of leks and within sage-grouse winter range will be evaluated for threats to sage-grouse and if necessary, modified to reduce the threat. If modification will not likely be effective, the overhead line may be relocated” (GRSG PRMPA/FEIS, Appendix 2 p. 2-MDS-2). In addition, nest discouragers are evaluated throughout Chapter 2 under all alternatives, in “conformance with RMP goals, objectives, stipulations, and required design features to avoid, minimize, and compensate impacts to GRSG” (GRSG PRMPA/FEIS, p. 2-25).

State of Wyoming Comments

The BLM evaluated consistency with the Wyoming Sage Grouse Executive Order in Appendix 23, *Consistency with State and Local Land Use Plans*, Section 23.2.7, *Wyoming* (GRSG PRMPA/FEIS p. 23-21). The BLM determined that the PRMPA’s “use of a population threshold as a proxy for habitat condition does not supersede the responsibility of the state for monitoring populations and identifying population areas of concern. The BLM must consider all available information regarding population threshold status. This includes state wildlife agency population trend analyses and annual population trend results published using the Hierarchical Population Monitoring Framework (currently the Targeted Annual Warning System procedures) or subsequent updates or revisions which provides a consistent and objective rangewide tool incorporating state lek count data and is able to identify if habitat conditions, not climatic conditions, are likely influencing populations. This model was developed with the cooperation of state wildlife agencies to provide an objective and consistent tool to alert land managers to potential habitat issues affecting population trends anywhere within the range of the species. The BLM will additionally use results from population trend analyses provided by state wildlife agencies in determining if habitat concerns may be affecting populations. If a soft or hard population trend threshold is identified by either source, the BLM will coordinate with the state wildlife agency to verify the trend as the first step in an initial causal factor analysis” (GRSG PRMPA/FEIS, p. 21-115). Table 2-4, *Priority Habitat Management Area (PHMA) Allocations and Management Direction*, includes a column specifically discussing state-specific management differences (GRSG PRMPA/FEIS, p. 2-23). For more information related to consistency with state and local plans, refer to the *FLPMA – Consistency with Other Plans* section of this Protest Report.

Regarding the Wyoming-proposed alternative, as detailed in Section 2.3, *Alternatives Considered but Not Analyzed in Detail*, the BLM considered the alternative proposed by the State of Wyoming to develop a “state alternative” and determined most of the actions were already evaluated among other alternatives the BLM analyzed in detail (GRSG PRMPA/FEIS p. 2-5, Appendix 22 p. 22-80). In some instances, the exact language was already in the range of alternatives or was incorporated in Alternative 5. In other instances, the proposed language was substantially similar to language already being considered, or that would result in substantially similar effects. In very few instances, the BLM determined the proposed alternative was not consistent with the purpose and need (e.g., removing the disturbance cap), and included recommendations that were not consistent with BLM policies. The

RMP-level actions in the alternative proposed by Wyoming are already considered in the range of alternatives. Therefore, the BLM did not separately analyze the alternative proposed by the State of Wyoming.

Causal Factor Analysis

The BLM discusses CFA and its impact on permitting throughout Chapter 2, Table 2-4, *Priority Habitat Management Area (PHMA) Allocations and Management Direction*, specifically under the heading *Causal Factor Analysis*, and throughout Appendix 21 (GRSG PRMPA/FEIS, p. 2-46). Impacts from CFA are discussed in further detail in relation to permitting and modifications in Appendix 16, *Montana/Dakotas Oil and Gas Lease Stipulations* of the GRSG PRMPA/FEIS.

Locatable Mineral Analysis

An analysis of impacts on locatable minerals from the PRMPA was included in the GRSG PRMPA/FEIS in Chapter 4, Section 4.10.4, *Locatable Minerals* (GRSG PRMPA/FEIS, p. 4-82 – 4-84). This section does include a subheading specifically discussing *Rangewide Environmental Consequences*, but explains that “Under the Proposed RMP Amendment, no areas would be recommended for withdrawal. All public domain lands would be open unless currently withdrawn. This would result in no effects on locatable minerals”, therefore a state-specific discussion of impacts was not necessary (GRSG PRMPA/FEIS, p. 4-83). However, as the GRSG PRMPA/FEIS explains, “other actions that increase the costs of locatable mineral development would cumulatively impact locatable mineral development as these actions ultimately could decrease the amount of locatable mineral resources produced in the planning area during the planning period” (GRSG PRMPA/FEIS p. 4-83). For more information related to the analysis of locatable minerals, refer to the *NEPA – Impacts Analysis – Locatable Minerals* section of this Protest Report.

Conclusion

Consistent with the BLM’s planning regulations, NEPA and its implementing regulations, and applicable policy, the BLM provided multiple opportunities for public involvement in the development of the GRSG RMPA/EIS as explained in Chapter 5, *Consultation and Coordination*, of the GRSG PRMPA/FEIS. This includes public scoping, public meetings, and a 90-day public comment period on the Draft RMPA/EIS. The PRMPA and FEIS were substantially shaped by input provided by the public.

During the scoping period, which began on November 22, 2021, and closed on February 8, 2022, the BLM received 258 total submissions containing 1,865 unique comments. The issues identified during public scoping and outreach helped inform the development of the alternatives and the resource issues analyzed in the Draft RMPA/EIS. The BLM released the Draft RMPA/EIS for a 90-day comment period from March 15, 2024 through June 13th, 2024. Over 38,000 submissions were received, including approximately 6,000 individual comments. The BLM considered all public comments and responded to all substantive comments in the GRSG PRMPA/FEIS (refer to Appendix 22 in the GRSG PRMPA/FEIS). Public comments and stakeholder coordination significantly shaped the GRSG PRMPA/FEIS.

The BLM released the GRSG PRMPA/FEIS on November 8, 2024, and published an associated Federal Register Notice (89 FR 90311) on November 15, 2024, beginning a 30-day protest period, which ended on December 16, 2024. The FEIS was also identified in the Environmental Protection Agency’s November 15, 2024, EIS Availability Federal Register Notice (89 FR 90280). This report documents the BLM’s responses to the valid protest issues on the GRSG PRMPA/FEIS.

The BLM adequately responded to all substantive public comments throughout the development of the GRSG RMPA/EIS. Accordingly, this protest issue is denied.

NEPA – Supplemental EIS

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: To address these deficiencies, Sublette County strongly protests the BLM’s inadequate socioeconomic analysis and urges the agency to take immediate action to rectify these shortcomings. Specifically, the County requests that the BLM prepare a Supplemental Environmental Impact Statement (SEIS) to provide a comprehensive evaluation of the Plan Amendment’s socioeconomic impacts. This SEIS should thoroughly assess the cumulative effects of overlapping restrictions on mineral development, grazing, and recreation, including detailed analyses of the impacts on tax revenues, employment, public services, and overall community stability.

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: The County emphasizes the necessity of enforceable socioeconomic mitigation plans that address both direct and indirect impacts. These plans should be developed in collaboration with local governments and revised over time to respond to on-the-ground conditions. Furthermore, the BLM must reevaluate its proposed rights-of-way (ROW) restrictions to better account for their economic consequences and ensure alignment with local land-use priorities and economic goals. Without these remedies, the GrSG Plan Amendment risks imposing severe and long-lasting economic harm on Sublette County, undermining our ability to sustain vibrant communities while adhering to the multiple-use mandate. The BLM did not sufficiently disclose all the impacts that the GrSG management decisions in this FEIS PRMPA will have on other resource uses, which will consequently harm state and county socioeconomics and revenues. The BLM must conduct a Supplemental EIS to take a “hard look” and accurately reflect those impacts to socioeconomics in the County and state.

Montana Mining Association Matt Vincent

Issue Excerpt Text: Compounding the confusing document structure and substance is the fact that the Final RMPA/EIS is still riddled with information gaps, including but not limited to failures to: (i) clarify whether density caps are proposed to continue in the Proposed RMP Amendment;⁹ (ii) clarify that disturbance caps, density caps, and lek buffers cannot apply to development of locatable minerals;¹⁰ and (iii) analyze in any depth the state and local economic impacts of restricted mineral development, particularly for locatable minerals. These failures are further detailed in our comments below. Not only must the BLM resolve these specific gaps in a revised draft RMPA and supplemental draft EIS, the BLM needs to conduct a comprehensive proofreading of the entire document and allow for another round of public comments. As was true for the Draft RMPA/EIS, the Final RMPA/EIS’s scattered, opaque, and haphazard approach makes it difficult to accurately assess and provide meaningful comments on the Proposed RMP Amendment, and makes compliance determinations and planning difficult for agencies, industry, and conservationists alike. Moreover, such disarray does not comport with the National Environmental Policy Act (“NEPA”) and the APA—without publishing complete information and providing the public and itself with a clear understanding of what is being proposed, the BLM cannot give the requisite “hard look” at the impacts of its proposal under NEPA, nor has BLM met its APA obligations to publish “the terms or substance of the proposed rule” and “give interested persons an opportunity to participate in the rule making” in meaningful way. Given the lack of clarity and potential NEPA and APA implications, MMA urges the BLM to eliminate unclear sections from the Record of Decision or otherwise clarify these ambiguities and errors. At the very least, the 30-day protest period must be extended.

***Nevada Cattleman’s Association
Hanes Holman and Martin Paris***

Issue Excerpt Text: Proposed Areas of Critical Environmental Concern (ACEC): The Association appreciates that BLM elected not to designate ACECs within the State of Nevada. However, the Association is concerned with the designation of “Areas with Limited Exceptions”. This is a concept that was not thoroughly vetted between the Draft and Final EIS, and as such warrants a Supplemental Draft EIS.

***Perkins Coie LLP on behalf of the Idaho State Legislature
Erika Malmen***

Issue Excerpt Text: The newly Proposed RMP Amendment Alternative is also a marked departure from the Draft EIS’s preferred Alternative 5 and other examined alternatives. Under National Environmental Policy Act (“NEPA”) regulations, any newly proposed alternatives must be within the spectrum of alternatives discussed in the Draft EIS. If not, the agency is required to issue a supplemental EIS that analyzes the impacts of the newly proposed alternative and give the public the opportunity to comment. Here, the Proposed RMP Amendment Alternative included restrictions that were not previously considered under any of the Alternatives examined in the Draft EIS. For example, the Proposed RMP Amendment Alternative creates new restrictions on wind and solar development and expands No-Surface Occupancy restrictions in PHMA+. None of these widespread PHMA+ restrictions were analyzed in the Draft EIS. As such, BLM should have issued a supplemental EIS to analyze these new restrictions and gather public input on the Proposed RMP Amendment Alternative prior to issuance of the final RMPA. Failure to do so runs contrary to the requirements of NEPA.

***State of Utah Public Lands Policy Coordinating Office
Redge Johnson and Sindy Smith***

Issue Excerpt Text: The State protests the inclusion of two new legal constructs in the Final EIS. Each of these constructs – PHMA with limited exceptions and GHMA connectivity – must be made available to the public for review in a Supplemental EIS before the BLM may make use of them in a final decision. These constitute wholly new planning features and are not themselves simply items within the spectrum of alternatives analyzed in the Draft EIS.

***JRB, LLC
Vance Broadbent***

Issue Excerpt Text: The Council of Environmental Quality (CEQ) regulations implementing NEPA state that “[a]gencies . . . [s]hall prepare supplements to either draft or final environmental impact statements if . . . [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns . . .” 40 C.F.R. § 1502.9(d)(1)(i); see also *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011), cert. denied, 132 S. Ct. 2439 (U.S. 2012) (“If the final action departs substantially from the alternatives described in the draft EIS, however, a supplemental draft EIS is required. . .”). CEQ guidance clarifies that a supplemental draft EIS is not required where (1) the final proposed alternative is a “minor variation” from the alternatives discussed in the draft EIS, or (2) the final proposed alternative is “qualitatively within the spectrum of alternatives that were discussed in the draft.” *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 705 (10th Cir. 2009) (quoting *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981)); see also *Western Exploration, LLC v. U.S. Dep’t of the Interior*, 250 F. Supp. 3d 718, 748-50 (D. Nev. 2017). For the first time in the plan revision process, the BLM introduced the subset of PHMA – i.e. “PHMA with limited exceptions” – in the Proposed RMPA and FEIS (pp. 1-9, 2-3). There are about 4.2 million acres of PHMA with limited exception rangewide, and about 273,000 acres proposed

Wyoming. Id. at 2-127 – 2-128. The BLM stated that “areas within PHMA that require additional protection have been identified as PHMA with limited exceptions, to be managed as exclusion areas for major rights-of-way, and with no exceptions to the solar and wind energy exclusion allocation or to the no surface occupancy allocation for fluid minerals.” Id. at 1-9. The BLM alleges the additional protection was necessary because of “anticipated development threats and negative impacts from climate change” to key areas of Greater Sage-Grouse habitat. Id. The BLM fails to expand upon this rationale anywhere in the FEIS or to explain how these particular PHMAs are most susceptible to development threats and climate change. This new category of Greater Sage Grouse habitat overlapped some of the previously identified SFA and proposed ACECs. See id. at Maps 2.1, 2.6, and 2.7. However, the BLM concluded the areas were “less suited to ACEC” because the changes in management were consistent across the range and not site-specific as to locations and/or different values. Id. at 1-9. The BLM’s identification and proposed management direction for PHMA with limited exception was not within the qualitative spectrum of previously analyzed alternatives. In the DEIS, all habitat was analyzed as either PHMA, GHMA, SFA, or state-specific habitat areas. There was no specific subset of PHMA or SFA, and specifically in Wyoming, that was identified by the BLM in the DEIS that required any additional protection that came through management direction that did not allow for exceptions to restrictions on development. In addition, only certain areas previously proposed as SFA and ACECs were identified as PHMA with limited exceptions and no explanation was provided to the public as to how these areas were chosen or differed from other areas proposed as SFA or ACEC designation. At the DEIS stage, the public had no way of anticipating this change or specifically what areas the BLM was going to propose for more restrictive management. See *Western Exploration LLC*, 250 F. Supp. 3d at 750 (“While the addition of SFA did not change the management decisions already contemplated in the DEIS, the change affect where those decisions would apply such that the public did not have enough information to meaningfully participate in the EIS process.”); see also *New Mexico ex rel. Richardson*, 565 F.3d at 707 (“If a change to an agency’s planned action affects environmental concerns in a different manner than previous analyses, the change is surely “relevant” to those same concerns.”). The BLM’s last-minute introduction of PHMA with limited exception habitat requires a Supplemental EIS to provide the public with adequate opportunity to comment on this new designation. JRB further objects to the PHMA with limited exceptions that are identified in Wyoming. The BLM has failed to provide any information or discussion as to the specific importance of these specific areas that contain PHMA for Greater Sage Grouse, and more specifically why they warrant additional protection above and beyond the other hundreds of thousands of acres of Greater Sage Grouse PHMA found throughout Wyoming.

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: Pursuant to the NEPA regulations, agencies “[s]hall prepare supplements to either draft or final environmental impact statements if . . . [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns . . .” 40 C.F.R. § 1502.9(d)(1)(i); see also *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011), cert. denied, 132 S. Ct. 2439 (2012) (“If the final action departs substantially from the alternatives described in the draft EIS, however, a supplemental draft EIS is required.”). A supplemental draft EIS is not required where (1) the final proposed alternative is a “minor variation” from the alternatives discussed in the draft EIS, or (2) the final proposed alternative is “qualitatively within the spectrum of alternatives that were discussed in the draft.” *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 705 (10th Cir. 2009) (quoting *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981)); see also *Western Exploration, LLC*, 250 F. Supp. 3d at 748-50. The BLM first introduced the subset of PHMA – “PHMA with limited exceptions” – in the Proposed RMPA and FEIS (pp. 1-9, 2-3). There are about 4.2 million total acres of PHMA with limited exception rangewide, including 273,000 acres

in Wyoming and 5,000 acres in Colorado. Proposed RMPA and FEIS at 2-127 – 2-128. The BLM explains that “areas within PHMA that require additional protection have been identified as PHMA with limited exceptions, to be managed as exclusion areas for major rights-of-way, and with no exceptions to the solar and wind energy exclusion allocation or to the no surface occupancy allocation for fluid minerals.” *Id.* at 1-9. The additional protection was deemed necessary due to broad concerns for “anticipated development threats and negative impacts from climate change” to key areas of Greater Sage-Grouse habitat. *Id.* However, no additional analysis or discussion is provided as it relates to each specific area proposed as “PHMA with limited exception.” The new category of Greater Sage Grouse habitat also overlaps previously identified SFA and proposed ACECs. See *id.* at Maps 2.1, 2.6, and 2.7. However, the BLM concluded the areas were “less suited to ACEC” because the changes in management were consistent across the range and not site-specific as to locations and/or different values. *Id.* at 1-9. The BLM’s identification and proposed management direction for PHMA with limited exception was not within the qualitative spectrum of previously analyzed alternatives. In the DEIS, all habitat was analyzed as either PHMA, GHMA, SFA, or state-specific habitat areas. There was no specific subset of PHMA or SFA that was identified by the BLM in the DEIS that required any additional protection that came through more restrictive management direction that did not allow for exceptions to no surface disturbance management in specific areas now delineated as PHMA with limited exception. In addition, only some of the areas in PHMA were identified as “PHMA with limited exceptions” and no explanation was provided to the public as to how these areas were chosen or differed from other PHMA or those areas previously proposed for SFA and/or ACEC designation. At the DEIS stage, the Coalition and the rest of the public could not have anticipated this change nor were they aware of the specific areas the BLM was going to propose for more restrictive management. See *Western Exploration LLC*, 250 F. Supp. 3d at 750 (“While the addition of SFA did not change the management decisions already contemplated in the DEIS, the change affected where those decisions would apply such that the public did not have enough information to meaningfully participate in the EIS process.”); see also *New Mexico ex rel. Richardson*, 565 F.3d at 707 (“If a change to an agency’s planned action affects environmental concerns in a different manner than previous analyses, the change is surely ‘relevant’ to those same concerns.”). The BLM’s last-minute introduction of “PHMA with limited exception” habitat requires a Supplemental EIS to provide the public with adequate opportunity to comment on this new designation.

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: NEPA commands that an agency prepare a supplemental NEPA document where substantial changes to a proposed action are relevant to environmental concerns. For example, the Nevada district court held regarding BLM’s 2015 ARMPAs that designation in the FEIS but not in the DEIS “of 2.8 million acres as Focal Areas in Nevada amount[ed] to a substantial change relevant to environmental concerns, requiring the Agencies to prepare an SEIS.” “The decision to designate certain lands as particular kinds of sage-grouse habitat affects subsequent management decisions on those lands,” and the “public should have had an opportunity to review [mapping] determinations and comment on the decision to change or add new designations.” Here, BLM has made substantial changes to the proposed action that are relevant to environmental concerns: while some components of the PHMA with limited exceptions designation are similar to management in ACECs, the ACEC and PHMA with limited exceptions are still different geographically and managerially, and they have not been subject to public review and comment. See *Eureka County Fatal Flaw Comments* at Row 6. For example, as we describe below, the Proposed Plan would not designate as PHMA with limited exceptions the Eureka North and South ACEC proposed in Alternatives 3 and 6. Paired with other management decisions in the FEIS/RMPA, this means that the area would be open to renewable energy development. Further, as we also note below, some PHMA

with limited exceptions boundaries about the “fence line” of current mining operations and multiple county gravel pits, and county paved roads, gravel roads and other public roads, major and minor power transmission and distribution lines, and major state highways. NEPA requires that the County have opportunity to comment on these new management decisions.

N-4 State Grazing Board

Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: The Board is not only disappointed that the BLM did not take its previous suggestion to issue a Nevada-specific Supplemental Draft EIS but believes in not doing so the BLM has violated NEPA, skirted its own policies, and implemented a planning process that was not open and transparent.

N-4 State Grazing Board

Jeremy Drew and Gracian Uhalde

Issue Excerpt Text: The Board is concerned with the designation of "Areas with Limited Exceptions". This is a concept that was not thoroughly vetted between the Draft and Final EIS, and as such warrants and Supplemental Draft EIS.

The Idaho Cattle Association (ICA)

Cameron Mulrony

Issue Excerpt Text: Priority Habitat Management Areas with Limited Exceptions Chapter 1, Section 1.7, Page 1-9 The inclusion of the new management zone and new terminology “Priority Habitat Management Areas with Limited Exceptions” in the Proposed Plan was not presented in the Draft Plan. Because of this additional change that did not benefit from public review and comment, a Supplemental Environmental Impact Statement (SEIS) is warranted, as described in 40 CFR § 1502.9(c)(1)(i-ii).

Hog Ranch Minerals, Inc. - Rex Minerals

Cherie Leeden

Issue Excerpt Text: BLM must prepare a supplemental EIS to evaluate PHMA with limited exceptions. The FEIS/RMPA explains that PHMA with limited exceptions are “areas within PHMA that require additional protection” and will be “managed as exclusion areas for major rights-of-way [ROWS].” FEIS/RMPA at 1-9. The FEIS/RMPA also provides some rationale for designating PHMA with limited exceptions: because restrictions associated with HMAs “were consistent across the [planning area] range, the areas [that became PHMA with limited exceptions] were less suited to being identified as proposed ACECs, which are generally tailored to different values and locations.” At least in BLM’s understanding, PHMA with limited exceptions appears to replace areas of critical environmental concern (ACECs), which BLM now does not propose designate. DEIS/RMPA. BLM must prepare a supplemental NEPA document where substantial changes to a proposed action are relevant to environmental concerns. Our review of BLM’s mapping and restrictions for PHMA with limited exceptions indicates that this new management designation requires BLM to issue a supplemental EIS (SEIS) further analyzing this substantial change and permitting public comment.³ See 40 C.F.R. § 1502.1; id. § 1502.9(d)(1)(i) (BLM must prepare a SEIS where a major federal action, such as a RMPA, remains to occur and where BLM “makes substantial changes to the proposed action that are relevant to environmental concerns”); see also id. § 1502.9 (“If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion.”).

Hog Ranch Minerals, Inc. - Rex Minerals

Cherie Leeden

Issue Excerpt Text: BLM's new mapping is inconsistent with the actual habitat conditions in the Hayes Canyon area. As we described at pp. 1-2 of our DESI/RMPA comments and have also noted above, BLM has recently conducted an on-the-ground GRSG habitat baseline survey in the Hog Ranch Project area. This survey showed that much of the Hog Ranch Project area is not high-value GRSG habitat... This means that BLM did not rely on best available information- including information produced by BLM itself- in making the PHMA with limited exceptions (as well as the PHMA) designation in the Hog Ranch Project area. BLM's expansion of the Hayes Canyon PHMA/PHMA with limited exceptions area beyond the Hayes Canyon PHMA/ACEC area proposed in the DEIS/RMPA requires analysis in a SEIS available for public comment. In that document, BLM must further analyze the propriety of its habitat mapping in the Hog Ranch area, including the recent GRSG habitat baseline survey. This should lead BLM to de-designate the area. As noted below, an agency is generally not authorized to designate habitat where that area is not also habitat for the species"" See *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018).

Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden

Issue Excerpt Text: The FEIS/RMPA must- but has failed to- include and analyze mineral potential data for the planning area. BLM must prepare a SEIS to analyze this data... Because much of the Hog Ranch area is mapped incorrectly as PHMA, Rex is especially concerned that the restrictions associated with PHMA with limited exceptions would interfere with exploration and development of the lithium target in the portion of the Hog Ranch property that overlaps the Hayes Canyon PHMA with limited exceptions. We also worry that the PMHA and PHMA with limited exceptions designations in the area would affect exploration and development of the lithium, possibly rubidium, and gold resources at Hog Ranch. This would be contrary to statute, which provides for access to (including pre-discovery access to) use of, and occupancy rights on lands open to location for mineral exploration and development. 11 BLM must assess in the SEIS the impact of its restrictions on valid existing rights such as our mining claims. 11. See 30 U.S.C. S 22 (generally, ""all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase."")

Hog Ranch Minerals, Inc. - Rex Minerals
Cherie Leeden

Issue Excerpt Text: BLM must- but has failed to- address how reduced mineral production would increase the country's reliance on foreign sources for minerals and would impede the energy transition. It must prepare a SEIS to do so... This analysis is required by NEPA, which demands that an EIS's environmental consequences analysis address, ""[w]here applicable, economic and technical considerations.""¹² ""[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.""¹³ 40 C.F.R. S 1502.16(a)(10)¹³ Id. S 1502.16(b) We additionally note that NEPA's basic requirement that an agency assess the environmental effects of a proposed action generally means that it must assess the effects on climate change of a proposed action. See *350 Mont. v. Haaland*, 50 F.4th 1254, 1263 (9th Cir. 2022); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017). In a supplemental analysis, BLM should assess the climate change impacts of any aspect of the alternatives it is considering (especially restriction on surface disturbance in PHMA and PHMA with limited exceptions) that might reduce the possibility of exploration for and development of critical mineral deposits.

Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC
Michael McCarthy and Hiliary Wilson

Issue Excerpt Text: Barrick restates its concerns over the lack of explanation concerning how the HAF fine-scale boundaries were delineated, as neither the Proposed RMPA/FEIS nor the underlying source document (Habitat Assessment Framework Technical Reference (TR2710-1) (Stiver et al., 2015)) clearly describe how to undertake this process. See *Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (“NEPA requires that the Environmental Impact Statement contain high-quality information and accurate scientific analysis.”); *W. Watersheds Project v. Bureau of Land Mgmt.*, 2:10-CV-02896 KJM, 2014 WL 119189, at *1 (E.D. Cal. Jan. 9, 2014) (“NEPA requires agencies to ensure professional and scientific integrity by setting forth the methodologies used”). Much like HMAs, the HAF fine-scale areas profoundly impact substantive rights because they will be used to calculate the disturbance cap and adaptive management thresholds. The HAF fine-scale units also ignore state-borders, which will inevitably lead to competing resource use priorities between neighboring states. Adoption of the HAF fine-scale areas likewise oust state-delineated “biologically significant units” (“BSU”) and Population Management Units that were determined by state wildlife agencies steeped in GRSG expertise. Relatedly, the Proposed RMPA/FEIS still does not analyze how adopting the HAF fine-scale—a much narrower geographic assessment area than BSUs in most regions—will impact valid existing rights and other reliance interests. For example, adoption of the HAF fine-scale area will lead to more disturbance cap exceedances in Nevada where single BSUs contain as many as six HAF fine-scale areas. Similarly, southwestern Montana will move from one BSU to two HAF fine-scale units, and the number of assessment areas will more than double in Idaho. See Proposed RMPA/FEIS, App’x 1, Map 3.6. As noted in Barrick’s Comments, more detail, discussion, and data on the status of the disturbance and density caps in the proposed HAF fine-scale areas should be included in state-specific draft supplemental EISs with additional opportunity for public comment. In response to this comment about the need to share information under NEPA, BLM seems to answer an entirely different question about whether the information it used was sufficiently accurate and describes the efforts it undertook to ensure it was using the “best available information.” *Id.*, App’x 22, p. 22-68. Without providing more specifics on the current conditions of the cap percentage, the Proposed RMPA/FEIS cannot—and does not—comport with NEPA’s “hard look” requirements or the Administrative Procedure Act’s notice and comment requirements because it is impossible for stakeholders to fully understand and provide meaningful comments on the impacts of the cap changes being proposed. And while BLM claims that “use of HAF in and of itself does not affect the rights of 3rd parties,” quite the opposite is true. Proposed RMPA/FEIS, App’x 22, p. 22-48. Existing authorization holders that wish to expand their projects and prospective developers will be forced to compete when adoption of the HAF fine-scale immediately lessens disturbance availability, leading to imprudent development patterns. The BLM’s only response to this legitimate concern is that “[t]here is no evidence that project approval rates are influenced by the scale at which disturbance is measured, and exact project location is an implementation level decision.” Proposed RMPA/FEIS, App’x 22, pp. 22-27 to -28. This response seems to suggest that project approvals would not be affected by any change in the scale at which disturbance is measured, a hypothetical that is plainly false and defers the responsibility for considering BLM’s cumulative effects caused by a rangewide plan to “implementation level decisions.”

Barrick Gold of North America, Inc. and Nevada Gold Mines, LLC

Michael McCarthy and Hiliary Wilson

Issue Excerpt Text: Similarly, the proposed update to Nevada’s HMA mapping in the Proposed RMPA/FEIS was undertaken without serious analysis by BLM and without making critical information available to the public. As explained in Barrick’s Comments, BLM only made available the “draft” results of the U.S. Geological Survey’s Nevada HMA model (i.e., Milligan et al., 2024) because the “final version ... was not published in time for inclusion in the BLM’s 2024 Draft EIS.” Proposed RMPA/FEIS, p. 3-15. The GIS maps for these draft results were mere “estimate[s] of how HMA would change in comparison to the 2015 and 2019 ARMPA versions” and did not include the

“PHMA with limited exceptions” designation identified in the Proposed RMPA/FEIS. See Proposed RMPA/FEIS, p. 3-15. And BLM did not notify the public when the final model was made publicly available on March 22, 2024 (eight days after publication of the Draft RMPA/EIS, on March 14, 2024), and instead waited more than two months to identify and to circulate the final model. The public therefore had little opportunity to examine and to meaningfully comment on the model’s inputs, assumptions, and calibrations. The BLM also did not release GIS data or pdf maps for the final model during the public comment period on the Draft RMPA/EIS. Not only do the final maps now have considerable differences in total habitat designations by HMA-type, but they also introduce a new concept to Nevada’s HMA mapping: “PHMA with limited exceptions.” The BLM’s failure to provide similar mapping during previous GRSG planning was condemned by a federal district court in Nevada. See *W. Expl., LLC*, 250 F. Supp. at 750 (finding that the addition of a new habitat designation in the 2015 FEIS “affect[ed] where [management decisions] would apply such that the public did not have enough information to be able to meaningfully participate in the EIS process.”). These changes have significant impacts on project proponents, and BLM’s lack of transparency greatly affects Barrick’s decision to locate infrastructure on public lands and in the United States. Accordingly, BLM must prepare a supplemental EIS that analyzes the underlying model and gives the public a meaningful opportunity to adequately evaluate the same.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: BLM should have complied with its regulations and guidance by publishing a Nevada specific supplemental draft EIS that included the newly completed USGS mapping updates and analyzed the impacts of the new habitat designations. See 43 C.F.R. § 1502.9(d). The BLM added new HMA areas that were not in the draft, including almost 42,000 acres of PHMA, 234,000 acres of GHMA, and 1.15 million acres of HMA. Final RMPA/EIS at p. 22-116. The BLM concluded “this updated information does not constitute a substantial change to the alternatives or the environmental effects analysis.” *Id.* But these mapping updates were not within the realm of alternatives analyzed in the draft and contained significant new information related to the environmental impacts of the proposed plan amendments, and BLM needed to develop a supplemental EIS that accounted for almost one and a half million acres of new GRSG habitat that appeared between the draft and the final.

Summary:

Protestors stated that the BLM’s approval of the GRSG PRMPA/FEIS would violate NEPA and the BLM must prepare a supplemental EIS for the following reasons:

- The BLM did not adequately assess the GRSG PRMPA/FEIS’ direct, indirect, and cumulative impacts to local, state, and the United States’ economies and socioeconomic conditions. This includes failing to address the cumulative impacts of restricting mineral production and the associated economic impacts from reliance on foreign mineral development, which would restrict development of renewable energy technologies.
- The GRSG PRMPA/FEIS is confusing and contains a number of information gaps and inconsistencies. This lack of complete information has made it challenging for the public to make informed comments on the GRSG PRMPA/FEIS, in violation of NEPA and the APA.
- The Proposed Amendment under the GRSG PRMPA/FEIS is not within the spectrum of alternatives considered in the GRSG Draft RMPA/EIS and should be considered a “substantial change”. Accordingly, the public was not given adequate opportunity to comment on the management actions under the GRSG PRMPA/FEIS. Specifically, the PHMA with limited exceptions and GHMA Connectivity classifications were introduced in the GRSG PRMPA/FEIS and the public was not provided information about how these areas were chosen or differed from

SFA and/or ACEC designation and were not able to comment on these classifications during the public comment period for the GRSG Draft RMPA/EIS.

- The BLM must prepare a state-specific supplemental EIS for the State of Nevada, in compliance with NEPA. The public was not provided adequate opportunity to review and comment on the final USGS Nevada HMA GIS model during the public comment period for the GRSG Draft RMPA/EIS as they were not made available until the public comment period was underway. Additionally, the supplemental EIS should include an analysis of the habitat mapping data and rationalization that it is based on the best available science.
- The BLM did not adequately analyze mineral potential data for the planning area or the potential impacts of restrictions on valid existing rights and mining claims.

Response:

NEPA requires agencies to prepare supplements to a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)(i)-(ii) (2022)). “Substantial changes” to the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed in the EIS (BLM Handbook H-1790-1, p. 29). In addition, per the BLM NEPA Handbook (H-1790-1), substantive comments, among other things, can present reasonable alternatives outside of those analyzed in the EIS. The CEQ NEPA regulations recognize that in response to substantive comments, the BLM may develop and evaluate suggested alternatives not previously given serious consideration by the agency (40 CFR 1503.4(a)(2) (2022)).

Additionally, the effects analysis 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 reliable and accurate (40 CFR 1502.23 (2022)). 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 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 BLM’s proposed planning decisions described in the GRSG PRMPA/FEIS would not authorize any projects, and all projects are subject to further review. The analysis in this land use planning effort provides the basis to make informed decisions regarding individual project applications.

As the land use planning decisions under consideration by the BLM are rangewide in nature, the scope of the analysis was conducted at a regional, rangewide 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.

Socioeconomic Impacts

In accordance with NEPA and BLM policy, the socioeconomic analysis was conducted commensurate with the level of decision making. The BLM used the best available data at the time of preparing the GRSG PRMPA/FEIS for the baseline socioeconomic discussion and the impacts on social and economic conditions. While management actions proposed under the GRSG PRMPA/FEIS will only apply to BLM-administered lands, the impact analysis was conducted regardless of land status to facilitate a broader examination of the total direct, indirect, and cumulative impacts on GRSG and resources considered in the GRSG PRMPA/FEIS, including socioeconomics.

Chapter 4 and Appendix 10 of the GRSG PRMPA/FEIS provide an updated and expanded discussion of indirect impacts, including analysis of indirect impacts for checkboard land patterns in the Air Resources and Climate Change, Minerals, Lands and Realty, and Socioeconomic sections. Analysis of impacts on adjacent lands are described in the cumulative effects sections for each issue/resource topic analyzed in detail. In Section 4.10.1 of the GRSG PRMPA/FEIS, the BLM discusses the potential for impacts to adjacent private lands and minerals due to restrictions that affect the development of federal lands and minerals and discusses the economic conditions and impacts on economic conditions under each alternative throughout the analysis area, including impacts on employment and economic output (GRSG PRMPA/FEIS, pp. 4-73 – 4-78). These impacts on economic conditions affect many individuals in the surrounding communities, especially in communities that rely on mining for economic stability and growth. Additionally, in GRSG PRMPA/FEIS Section 4.12.1 (pp. 4-90 – 4-102) and Appendix 10 Section 10.12.1 (pp. 10-125 – 10-133) the BLM discusses the potential for impacts on social and economic conditions on adjacent private lands and minerals due to restrictions that affect the development of federal lands and minerals, including development of pipelines and transmission lines. Finally, in Section 4.12.3 (GRSG PRMPA/FEIS, pp. 4-104 – 4-109), the BLM explains how these impacts on social and economic conditions could result in cumulative impacts to the surrounding communities, including economic interests and conditions, nonmarket and social conditions, and communities with environmental justice concerns.

While some protestors requested a more granular assessment of impacts to socioeconomic conditions throughout the planning area, consistent with BLM policy, the GRSG PRMPA/FEIS analysis was conducted commensurate with the level of decision making.

Information Gaps and Inconsistencies

Before beginning the GRSG RMPA/EIS and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The data needed to support broadscale analysis of the planning area are substantially different from the data needed to support site-specific analysis of projects. The BLM has incorporated the latest science into the discussion of impacts in Chapter 4, including an analysis of both the potential for beneficial and adverse effects on GRSG habitat and other resources (GRSG PRMPA/FEIS, pp. 4-1 – 4-144). The BLM provided adequate analysis of potential impacts at the planning area scale and offered adequate opportunity for the public to comment on the proposed management actions. The BLM will conduct subsequent project-specific NEPA analyses for projects proposed for implementation under the land use plan. Project-specific analyses may utilize field-verified data as appropriate. The BLM may tier to relevant analysis in the GRSG PRMPA/FEIS when evaluating project impacts at the appropriate site-specific level (40 CFR 1501.11 (2024)). As required by NEPA, the public will have the opportunity to participate in the NEPA process for site-specific actions.

Substantial Change - PHMA with Limited Exceptions and GHMA Connectivity

As stated above, Federal agencies must prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS:

- The agency makes substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(d)(1)(i) (2022)), where “substantial changes” are of a type that would result in environmental impacts outside the range analyzed in the draft or final EIS (BLM Handbook H1790-1, p. 29).
- The agency adds a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, Council on Environmental Quality [CEQ] Forty Most Asked Questions Concerning CEQ’s NEPA Regulations (March 23, 1981)); or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(d)(1)(ii) (2022)).

However, if the BLM adds a new alternative after the circulation of a Draft EIS that is within the range of alternatives analyzed in the Draft EIS or is a minor variation of an alternative analyzed in the Draft EIS, supplementation is not required (BLM NEPA Handbook, H-1790-1, 5.3.2, *When Supplementation is Not Appropriate*). The BLM developed the GRSG PRMPA/FEIS in response to public and cooperating agency comments and in consideration of important habitat factors such as connectivity, population strongholds, and the potential for threats from development. The GRSG PRMPA/FEIS proposed increased protections for GRSG in comparison to the preferred alternative (Alternative 5) in the GRSG Draft RMPA/EIS. These increased protections were primarily covered under the GRSG Draft RMPA/EIS Alternative 3 analysis.

Under the GRSG PRMPA/FEIS, specific areas within PHMA would have more limited exceptions than the rest of PHMA and are called PHMA with limited exceptions (GRSG PRMPA/FEIS Appendix 3 p. 3-1). The PHMA with limited exception management direction would provide strengthened protections by removing exceptions described in the PHMA exclusion language for Utility Scale Solar, Utility Scale Wind, and Fluid Mineral No Surface Occupancy direction. In addition, the management direction for Major Rights of Way would be “exclusion with exceptions” rather than “avoidance with exceptions and conditions” as described in PHMA. Additionally, the GHMA-Connectivity classification introduced in the GRSG PRMPA/FEIS are “areas within GRSG GHMA habitat that contain an increased level of biological importance because they provide for connectivity between localized areas of PHMA, above that of regular GHMA, based on new science and telemetry studies” (GRSG PRMPA/FEIS, Appendix 3, p. 3-26). Management in GHMA-Connectivity is consistent with the GHMA designation under the GRSG Draft RMPA/EIS, except for Utility Scale Wind and Solar and Major ROWs (GRSG PRMPA/FEIS, Appendix 3, p. 3-26). Appendix 3 of the GRSG PRMPA/FEIS includes details on how the PHMA with limited exceptions and GHMA-Connectivity designations were identified at the state-specific level (GRSG PRMPA/FEIS, Appendix 3, pp. 3-1 – 3-27). Management of lek buffers and non-habitat remains unchanged to remain aligned with best available science. Regarding ACECs, sensitive resources in areas nominated as ACECs may be protected under other management decisions in the PRMPA/FEIS, and the BLM may review areas nominated as ACECs during site-specific project reviews or during future land use planning efforts. Refer to the *Special Designations* section of this Protest Report for more information related to ACECs.

The BLM has determined that the GRSG PRMPA/FEIS does not constitute a substantial change to the alternatives or the environmental effects analysis as the potential impacts of increased protection were discussed in the GRSG Draft RMPA/EIS under Alternative 3. Therefore, a supplemental EIS is not warranted. Although the management direction for PHMA with limited exceptions under the PRMPA was analyzed within the range of alternatives in the GRSG Draft RMPA/EIS, and while the BLM found that no changes to the GRSG PRMPA/FEIS were necessary as a result of the protest issues, the BLM nonetheless will modify elements of the Approved RMPA regarding PHMA with limited exception in consideration of feedback received from various states during the governor’s consistency review process. The BLM will provide further explanation in the BLM’s Record of Decision (ROD).

Nevada-Specific Supplemental EIS & Final USGS Nevada HMA GIS Model

As discussed under *FLPMA – Consistency with Other Plans*, the scale of the GRSG planning effort is consistent with the BLM's planning regulations, which allow planning at any appropriate geographic scale (43 CFR 1610.1(b); BLM Land Use Planning Handbook H-1601-1 p. 14). The planning area here, defined in coordination with relevant BLM state directors, includes all lands within the boundaries of BLM field offices that contain GRSG habitat, including portions of Nevada. In addition, the GRSG PRMPA/FEIS identifies state-specific management within these areas by activity type (e.g., oil and gas leasing, right-of-way management), and will complete additional state-specific step-down actions in the state-specific RODs.

The data and process used to identify HMA boundaries across the planning area, and the definitions of each of the HMA types is described in detail in Appendix 3, *Greater Sage-grouse Habitat Management Area State-by-State Mapping Strategies* (GRSG PRMPA/FEIS, Appendix 3, pp. 3-1 – 3-27). The BLM reviewed this new data and coordinated with state wildlife agencies to propose adjustments to the habitat management areas to enhance GRSG conservation as a component of the GRSG PRMPA/FEIS (GRSG PRMPA/FEIS, Appendix 3, p. 3-1). Appendix 3 outlines the state-specific data sources and best available science that informed the BLM's HMA mapping and designation efforts.

In late 2022, the BLM worked with the USGS and other state, local, and federal partners to begin updating the 2016 HMA model. This update is consistent with the approach from the previous two efforts while also incorporating new data and information related to habitat selection and space use. It also includes survival rates during reproductive life stages and specific seasons (e.g., brood-rearing or winter) and identifies corridors that link seasonal habitats. This update allows areas of high importance to current population dynamics (i.e., source areas) to be mapped (GRSG PRMPA/FEIS, Appendix 3, p. 3-15). The final version of the USGS HMA model was not published in time for inclusion in the BLM's 2024 GRSG Draft RMPA/EIS. However, USGS provided BLM with unpublished results for use in preparing the GRSG Draft RMPA/EIS range of alternatives and impact analyses. This ensured that the BLM was using the best science available at the time (GRSG PRMPA/FEIS, Appendix 3, p. 3-15). While the USGS HMA model was not finalized until March 22, 2024 (during the initial public comment period for the GRSG Draft RMPA/EIS), the acres from the final USGS model fall within the range of HMA acres analyzed across the alternatives in the GRSG Draft RMPA/EIS and updating HMAs with the now-published USGS data resulted in some areas becoming HMA that were not analyzed as such in the GRSG Draft RMPA/EIS. This is limited to 41,936 acres of PHMA (0.24 percent of PHMA identified on NV/CA BLM-administered lands only), 233,840 acres of GHMA (1.35 percent), and 1,142,018 acres of OHMA (6.58 percent). These changes reflect consideration and application of new GRSG information based on data received since publication of the GRSG Draft RMPA/EIS.

The BLM has determined that this updated information does not constitute a substantial change to the alternatives or the environmental effects analysis because the information would not result in environmental impacts outside the range analyzed in the Draft RMPA/EIS.

Mineral Potential Data and Impacts to Existing Mineral Rights

While the GRSG PRMPA/FEIS includes information about mineral potential for oil and gas and other leasable minerals, potential for locatable minerals is very difficult to accurately determine due to the variety of locatable minerals and the constant variability of values of various metals and gems (GRSG PRMPA/FEIS Appendix 22 p. 22-84). There is limited information available about locatable mineral development and it is not feasible to develop trends needed to accurately project future locatable mineral development. As such, information on the number, location and size of existing exploration and mining operations is not included in the GRSG PRMPA/FEIS.

The GRSG PRMPA/FEIS does not include any recommendations for withdrawals. The BLM will apply management actions in the Proposed RMP Amendment only to the extent that they are consistent with the Mining Law of 1872, as amended, and the BLM's regulations. Withdrawals are considered under a separate process by the Secretary consistent with FLPMA and applicable regulations.

As stated in Section 4.10.4 (pp. 4-82) and Appendix 10 (pp. 10-128) of the GRSG PRMPA/FEIS, "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts. However, the BLM could ask the Secretary of the Interior to propose and make a withdrawal of the land from location and entry under the Mining Law of 1872 pursuant to Section 204(a) of FLPMA. Proposing and making a withdrawal is not a land use planning decision. Should the Secretary propose a withdrawal, the proposal would require environmental and other analysis under NEPA and other applicable authorities before the land could be withdrawn. For purposes of this planning initiative, the alternatives analysis includes a description of the likely environmental effects should the Secretary propose and make a withdrawal in the future (e.g., reduced potential for behavioral disturbance and habitat loss/alterations)".

Conclusion

The BLM complied with NEPA and the APA in the preparation of the GRSG PRMPA/FEIS and is not required to prepare a supplemental EIS. Accordingly, this protest issue is denied.

Planning Regulations

Wildlands Defense

Katie Fite

Issue Excerpt Text: We also Protest the violations of FLPMA under the 2024 plans and failure to conserve sensitive species as required on Land Use Plans and the BLM's own sensitive species policies, and the failure to effectively balance competing uses of public land, and the failure to take a hard look under NEPA at the scale and extent of those violations. The 2015 plans did not strip existing protective management direction in RMPs (or the MFPs that are 40 years old that BLM still clings to). Many of these Land Use Plans have language that requires BLM to protect and prevent adverse impacts to a host of species and other values of public lands. Instead, this 2024 FEIS persists in scapegoating trees and dense sage habitat required by many sensitive species, and claims to be doing something positive for Sage-grouse. But BLM's scorched earth chaining, mastication, fuelbreaks, burning, herbiciding "treatments" instead have been highly detrimental to a host of other species – from Pinyon Jay to Pygmy Rabbit. WLD has watched as Ely BLM, Elko BLM and others have mowed, rollerbeat, Tebuthiuroned and otherwise destroyed sagebrush in occupied Pygmy Rabbit, Sage Thrasher, Sagebrush Sparrow, Brewer's Sparrow, and Loggerhead Shrike habitat under the guise of "saving" Sage-grouse by "thinning"/fragmenting the structurally diverse and denser sage all of these species (and Sage-grouse) require.

Montana Natural Resource Coalition of Counties

John Fahlgren

Issue Excerpt Text: We addressed this concern at the draft stage of this planning effort. BLM justifies this programmatic effort in their comment response on pg. 22-70 pointing to 43 CFR 1610.1(b) which states,¹ "A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area." The response also points to BLM Land Use Planning Handbook which states, "State Directors may also establish regional planning areas that encompass several field offices and/or states, as

necessary.” First off, the BLM planning handbook is not regulatory and expresses language found nowhere in the CFRs or Statute. A state Director may authorize a more appropriate planning area, but this is still confined within the state. Second, the logic behind BLMs answer is that state directors coordinated and authorized this planning effort and established the regional planning areas. Montana State Director John Mehlhoff spoke to the counties at the Montana Association of Counties Fall Conference in 2021 and said his office will do all that they can to keep the Montana Dakotas Sage Grouse Plans from being opened up, and then went on to signify that if a new administration can open up all these plans after they have been recently finalized through full public process we are in trouble. The Montana State Director communicated this to the counties and two months later BLM published a Notice of Intent on the federal register to amend all sage grouse plans programmatically through 10 states. We would like to see verifications of record that shows the 10 state BLM directors coordinated this effort to establish regional planning areas that encompass dozens of field offices and 10 states per 43 CFR 1610.1(b) and BLM handbook. Based on what was told to the counties from the MT state director at the MACo conference, we do not believe such coordination of directors happened.

JRB, LLC

Vance Broadbent

Issue Excerpt Text: The language in the proposed management direction for livestock grazing and adaptive management are inconsistent with current BLM rules and regulations related to Land Health Standards. See Proposed RMPA and FEIS at 2-33 – 2-34 (Allocation RM-1; Management Direction RM-2; Management Direction RM-3); 2-47 – 2-48 (Adaptive Management Responses)...While the BLM recognizes and incorporates the Land Health Standard regulations in Allocation RM-1, it fails to recognize that adjustments to “active AUMS, timing, intensity, duration, and frequency of grazing” are only necessary and/or required when livestock grazing is determined to be a significant causal factor to the rangeland not meeting Land Health Standards for special status species. The BLM cannot just assume that the Land Health Standards are not being met when it is renewing a grazing permit. The BLM must revise this language to be consistent with the regulations and consistent with the Management Actions RM-1 and RM-2 (Id. at 2-34).

JRB, LLC

Vance Broadbent

Issue Excerpt Text: The language in the proposed management direction for livestock grazing and adaptive management are inconsistent with current BLM rules and regulations related to Land Health Standards. See Proposed RMPA and FEIS at 2-33 – 2-34 (Allocation RM-1; Management Direction RM-2; Management Direction RM-3); 2-47 – 2-48 (Adaptive Management Responses)...This is equally applicable to the Adaptive Management Responses section of the Proposed RMPA. Livestock grazing has generally been removed from the Adaptive Management discussion, but there is still language included in the alternatives table that conflicts with existing regulations and Livestock Grazing Management Actions RM-1 and RM-2. In the “exceptions to limitations imposed for exceeding thresholds” it states: “Grazing permits that will expire within the same year the threshold is identified. A permit or lease to extend the current grazing practice for less than 10 years may be renewed until the causal factor analysis is completed. If grazing is not determined as a causal factor to an adaptive management threshold, grazing permit or lease renewal can proceed normally. If grazing is a contributing cause to an adaptive management threshold, the terms and conditions of the grazing permit or lease will need to be examined and modified to reduce or eliminate the impact.” Id. at 2-48. The BLM must revise this language to be consistent with the regulations – livestock grazing must be identified as a “significant causal factor,” and not just a “causal factor” or “contributing cause,” to require revisions to a grazing permit or grazing operations.

JRB, LLC**Vance Broadbent**

Issue Excerpt Text: The language in the proposed management direction for livestock grazing and adaptive management are inconsistent with current BLM rules and regulations related to Land Health Standards. See Proposed RMPA and FEIS at 2-33 – 2-34 (Allocation RM-1; Management Direction RM-2; Management Direction RM-3); 2-47 – 2-48 (Adaptive Management Responses)...Finally, Livestock Grazing Management Action RM-3 directs the BLM to “consider the removal or modification of [range improvement] projects that negatively affect GRSG or GRSG habitat.” Id. at 2-34. Properly approved and existing range improvements cannot be removed or modified until it is determined that the rangeland is failing to achieve standards and the existing grazing management practices are a significant factor in failing to achieve the standards. 43 C.F.R. 4180.2(c)(1). The standard is not “negatively affect” when the BLM is considering removing or modifying existing range improvements from public lands – it is finding of a “significant causal factor.” In addition, range improvements are generally put in place to help ensure a rangeland is meeting or making progress towards meeting the Land Health Standards. See 43 C.F.R. § 4100.0-5 (Range improvement is defined as “an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife.”); see also BLM Handbook 4180-1 at III-15 (If existing livestock grazing is determine to be a significant factor in not meeting Land Health Standards, then appropriate actions to address it include “implementing restoration project and range improvements.”).

Wyoming Coalition of Local Governments**Eric South**

Issue Excerpt Text: Federal grazing permittees are required to comply with the Land Health Standards, including those in the regulations or as developed at the state or regional level. 43 C.F.R. § 4180.2(b), (f). The fallback standard for special status species is the promotion of the species “by the restoration and maintenance of their habitats” and the overall maintenance of “healthy, productive and diverse populations of native species.” 43 C.F.R. § 4180.2(f)(1)(iv), (2)(viii). The regulations also require that any state or regional standards must address habitat for special status species and restore, maintain, or enhance their habitats. 43 C.F.R. § 4180.2(e)(9). If a standards assessment indicates that the rangeland is failing to achieve the standards, the BLM will use monitoring data to identify the “significant factors that contribute to failing to achieve the standards.” 43 C.F.R. § 4180.2(c)(1). A “significant factor” is defined as a “principal causal factor in the failure to achieve the land health standard(s) and conform with the guidelines” and “would typically be a use that, if modified, would enable an area to achieve or make significant progress toward achieving the land health standard(s).” BLM Handbook 4180-1 at I-7 (Jan. 19, 2001). If existing grazing management practices or levels of grazing use on public lands are identified as “significant factor,” then appropriate action will be formulated, proposed, and analyzed in compliance with applicable laws to address the failure to meet standards. 43 C.F.R. § 4180.2(c)(1). The BLM is to consult with the permittee to determine appropriate actions that will be analyzed under NEPA when any proposals modify the terms and conditions of a grazing permit or involve restoration and range improvement projects. BLM Handbook 4180-1 at III-15 (Jan. 19, 2001). The Proposed RMPA and FEIS incorporates the Land Health Standard Regulations (Proposed RMPA and FEIS at 2-33), but then fails to articulate the standards correctly. Allocation RM-1 states: The presence of GRSG HMAs would not affect whether an area is available for livestock grazing; maintain existing areas designated as available or unavailable for livestock grazing. During grazing authorization renewals, Allotment Management Plan development, or other appropriate implementation-level planning, BLM will follow all applicable livestock grazing regulations

including 43 CFR Subpart 4120 – Grazing Management and 43 CFR 4180.2 Standards and Guidelines for Grazing Administration or any subsequent revisions. In conformance with these regulations, BLM will consider adjustments to active AUMs, timing, intensity, duration, and frequency of grazing are completed at the allotment scale based on site-specific conditions to meet or make progress towards meeting Land Health Standard for special status species. Additionally, temporary adjustments of timing, intensity, duration, and frequency of grazing can be made annually to livestock numbers, the number of AUMs, and season of use within the range of the terms and conditions and in accordance with applicable regulations.” Id. The BLM fails to recognize that adjustments to “active AUMs, timing, intensity, duration, and frequency of grazing” are only necessary and/or required when livestock grazing is determined to be a significant causal factor to the rangeland not meeting Land Health Standards for special status species. The BLM cannot just assume that the Land Health Standards are not being met when it is renewing a grazing permit. The BLM must revise this language to be consistent with the regulations and consistent with the Management Actions RM-1 and RM-2 (id. at 2-34).

Wyoming Coalition of Local Governments
Eric South

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not meeting Land Health Standards, then appropriate actions to address it include “implementing restoration project and range improvements.”).

Wyoming Coalition of Local Governments
Eric South

Issue Excerpt Text: Federal grazing permittees are required to comply with the Land Health Standards, including those in the regulations or as developed at the state or regional level. 43 C.F.R. § 4180.2(b), (f). The fallback standard for special status species is the promotion of the species “by the restoration and maintenance of their habitats” and the overall maintenance of “healthy, productive and diverse populations of native species.” 43 C.F.R. § 4180.2(f)(1)(iv), (2)(viii). The regulations also require that any state or regional standards must address habitat for special status species and restore, maintain, or enhance their habitats. 43 C.F.R. § 4180.2(e)(9). If a standards assessment indicates that the rangeland is failing to achieve the standards, the BLM will use monitoring data to identify the “significant factors that contribute to failing to achieve the standards.” 43 C.F.R. § 4180.2(c)(1). A “significant factor” is defined as a “principal causal factor in the failure to achieve the land health standard(s) and conform with the guidelines” and “would typically be a use that, if modified, would enable an area to achieve or make significant progress toward achieving the land health standard(s).” BLM Handbook 4180-1 at I-7 (Jan. 19, 2001). If existing grazing management practices or levels of grazing use on public lands are identified as “significant factor,” then appropriate action will be formulated, proposed, and analyzed in compliance with applicable laws to address the failure to meet standards. 43 C.F.R. § 4180.2(c)(1). The BLM is to consult with the permittee to determine appropriate actions that will be analyzed under NEPA when any proposals modify the terms and conditions of a grazing permit or involve restoration and range improvement projects. BLM Handbook 4180-1 at III-15 (Jan. 19, 2001). The Coalition also objects to any modification or removal of existing range improvements under Management Action RM-3 and RM-5. See Proposed RMPA and FEIS at 2-34 – 2-35. These range improvements were approved by the BLM through a cooperative range improvement agreement or range improvement permit, and were further reviewed under NEPA prior to approval. 43 C.F.R. §§ 4120.3-1(b), (f). They have also been approved to support livestock grazing management on federal lands and should not otherwise be removed if the improvement still fulfills this purpose. 43 C.F.R. § 4120.3-6(b). Requiring any changes to range improvements is also inconsistent with Wyoming Executive Order 2019-3, which concludes that livestock grazing and the associated range improvements have a de minimis impact on Greater Sage Grouse and its habitat. Wyoming Executive Order 2019-3, Appendix G at 1.

Wyoming County Commissioners Association
Bill Novotny

Issue Excerpt Text: Unfortunately, the scale of this GrSG planning effort complicated the analysis. Most planning efforts occur at the field office level as described in 43 CFR § 1601.0-4. This allows for more meaningful engagement and analysis at a more local level. With the striking down of Planning Rule 2.0 in January 2017, Congress appears to have spoken as to whether the BLM should conduct landscape scale planning. (See attachment 6). The BLM disagrees that multi-state planning is not allowable, and points to its own planning manual. (22-67). However, regardless of its ultimate legal sufficiency, the PRMPA does not illustrate how the state director authorized a more appropriate area under 43 CFR § 1610.1(b). The BLM simply states that the planning area was “defined in coordination with relevant BLM state directors.” However, there is no evidence of any authorization from state directors, nor is there a discussion as to why 121 million acres of BLM-administered lands across ten states is “more appropriate” than a single field office or state planning area.

Eureka County, Nevada
Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: The County protests BLM’s unlawful decision to proceed with the FEIS/RMPA at this westwide scale, directed by BLM’s Washington Office. Indeed, BLM’s protest regulations confirm that land use planning cannot take place at the headquarters level. The regulations state that a land use plan protest must include “reasons for protesting the State Director’s decision.” The FEIS/RMPA gives no evidence that the Proposed Plan was a decision of the Nevada State Director—or, for that matter, the State Director of any of the ten states implicated in the FEIS/RMPA. BLM argues, in its response to comments, that its “land use planning regulations allow planning at any appropriate geographic scale.” For support, it cites the direction in 43 C.F.R. § 1610.1(b) that “[a] resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area” and its Land Use Planning Handbook, which states that “State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.” BLM states that the planning area for the PEIS/RMPA was “defined in coordination with relevant BLM state directors.” *Id.* But BLM headquarters defining a broader planning area in coordination with state directors is not what the regulation commands. Instead, the regulation explicitly lodges responsibility for authorizing a broader area with the State Director. As we have repeatedly stated, we see no indication in any version of the PEIS/RMPA or in BLM’s responses to comments that any State Director authorized the 11-state planning area. BLM also relies on FLPMA’s command that the Secretary of the Interior develop, maintain, and revise land use plans. But in the regulations cited above, the Secretary delegated that authority. And the Supreme Court has made clear that once a cabinet officer has delegated authority, the officer cannot resume that power without amending the delegating regulation: where “regulations of the Attorney General delegated certain of his discretionary powers to the Board of Immigration Appeals and required that Board to exercise its own discretion on appeals in deportation cases . . . so long as the Attorney General’s regulations remained operative, he denied himself the authority to exercise the discretion delegated to the Board even though the original authority was his and he could reassert it by amending the regulations.” Here, the Secretary has delegated land use planning to Field Officers supervised by State Directors, has not reserved planning authority to herself, and BLM has not amended its land use planning regulations to return that delegated power to the Secretary.

Eureka County, Nevada
Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: BLM maintains the erroneous view that the 2019 ARMPAs are not effective because they were preliminarily enjoined in *Western Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). But the court never vacated the 2019 ARMPAs. And BLM has acknowledged in court filings that a BLM “action” or “planning” other than a decision on the merits (such as a land use plan) could resolve any issues with the 2019 ARMPAs, mooted the injunction. BLM does not explain in the DEIS/RMPA why the 2020 SEIS that it prepared specifically to address issues raised in the preliminary injunction order, upon a change in administration, suddenly was ignored by the agency. It does not explain why its 2021 ROD deciding that the SEIS did not require any changes to the 2019 ARMPAs is not BLM’s most current, effective decision on GRS habitat conservation. Nor does BLM explain why it has not taken any action to move forward the case—which has been stayed since 2021. BLM has unilaterally (and unlawfully) simply decided not to implement its decision in its 2021 ROD. BLM must make these explanations in the FEIS/RMPA and demonstrate how it is not in violation of NEPA.

Eureka County, Nevada
Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: In brief, and as we explain in more detail in our DEIS/RMPA comments, BLM does not have “inherent authority” to withdraw a land use plan revision ROD “absent compliance with the FLPMA’s formal notice and comment proceedings.” Though BLM can amend land use plans, it must “follow[] procedures that,” among other requirements, “require public participation.” Nor does an injunction, without vacatur, allow BLM to withdraw a land use plan without following the usual procedures. BLM cannot withdraw a land use plan, absent proper process, as a result of a “legal error” in the plan revisions. The Supreme Court has held much the same: it recently rejected as arbitrary and capricious the Department of Homeland Security’s reversal of policy to determine that the Deferred Action for Childhood Arrivals (DACA) “program should be terminated” because the Fifth Circuit had concluded that a similar program was unlawful. Moreover, BLM does not provide the requisite evidence, in the FEIS/RMPA, to support its decision to engage in this new RMPA process. FLPMA states that BLM “shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” In accord with FLPMA, the amendment must be appropriate; indeed, a State Director “may terminate an ongoing plan amendment at any point if the Field Manager provides documentation that the amendment is no longer necessary or appropriate.” The pattern of conducting a west-wide amendment of RMPs involves massive and repeated expenditure of resources and time by both BLM and coordinating agencies. BLM acknowledges that preparation of an amendment may be onerous: “In reaching a decision to amend a land use plan, the BLM must not only consider the resource, but also other workload priorities, budgetary constraints, and staff capabilities.” BLM does not offer sufficient reasons for engaging in this successive time- and resource-intensive land use planning process.

National Mining Association

Katie Sweeney

Issue Excerpt Text: Another attempt to insert Planning 2.0 concepts is stretching BLM headquarters authority in the preparation of RMPs and EISs. BLM’s regulations explicitly vest authority in field managers to prepare RMPs and EISs and only state directors can authorize an RMP beyond a resource or field office basis – as was done here. BLM’s headquarters role is limited to the development of national level planning policy and guidance, but does include preparation or approval of land use plans or accompanying NEPA documents. The BLM must abandon this attempt at circumventing Congressional intent, and address the NMA’s concerns on the legality of the RMPA.

Western Watersheds Project et al.

Greta Anderson et al.

Issue Excerpt Text: We protest the PRMPA/FEIS’s failure to conform to the Bureau’s Special Status Species (SSS) policy. We raised this issue in our 2024 comments on the DEIS and encouraged the Bureau to adopt Alternative 3. Advocates et al. 2024 at 74. Defenders of Wildlife raised the issue in its DEIS comment letter at 7-8, 14, 38, 39, 42, 43-46. We identified all the violations of the SSS policy that were inherent in this plan, such as the need to provide proactive conservation measures to reduce threats to Bureau sensitive species without deferring conflict resolution to implementation level planning. However, the PRMPA/FEIS does just that by failing to ensure that the plan provides adequate regulatory mechanisms to preclude the likelihood of Endangered Species Act listing and by failing to maintain the provisions of the 2015 plan on which the not warranted finding for sage grouse was based. (See discussion in the section on adequate regulatory mechanisms elsewhere in this protest.) Moreover, it doesn’t provide any evidence that the plan will conserve as required other special-status species with overlapping habitat. Both the pinyon jay and the pygmy rabbit are currently under review for Endangered Species Act listing

(both have positive 90 day findings) and both are affected by management of sage-grouse and its habitats. The FEIS provides no evidence that the PRMPA will ensure compliance with the Bureau's SSS policy by reducing the likelihood of future listing for these species. In the past, the Bureau's removal of pinyon and juniper woodlands, which is home to the pinyon jay, has adversely impacted pinyon jay habitat. This plan provides no evidence that sufficient safeguards exist to preclude further damage to pinyon jay populations and likelihood of listing. The PRMPA/FEIS claims, in response to comments, at 22-29 that the biological assessment will be made available to the public on the project's ePlanning website. In fact, the biological assessment has not been available on the website for the duration of the protest period.

Humboldt County Board of Commissioners
Jessie Hill

Issue Excerpt Text: The County protests BLM's unlawful decision to proceed with the FEIS/RMPA at this westwide scale, directed by BLM's Washington Office. Humboldt County has repeatedly commented that the current centralized, multi-state planning process is inconsistent with BLM planning regulations, which require land use plan amendments and attendant NEPA documents to be developed locally by Field Managers with oversight and approval by State Directors. See Humboldt County Fatal Flaw Comments at Row 4; Humboldt County DEIS/RMPA Comments at 3–4, 27–32. BLM's protest regulations themselves confirm that land use planning cannot take place at the headquarters level. The regulations state that a land use plan protest must include "reasons for protesting the State Director's decision." The FEIS/RMPA gives no evidence that the Proposed Plan was a decision of the Nevada State Director—or, for that matter, the State Director of any of the ten states implicated in the FEIS/RMPA. BLM argues, in its response to comments, that its "land use planning regulations allow planning at any appropriate geographic scale." For support, it cites the direction in 43 C.F.R. § 1610.1(b) that "[a] resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area" and its Land Use Planning Handbook, which states that "State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary." BLM states that the planning area for the PEIS/RMPA was "defined in coordination with relevant BLM state directors." *Id.* But BLM headquarters defining a broader planning area in coordination with state directors is not what the regulation commands. Instead, the regulation explicitly lodges responsibility for authorizing a broader area with the State Director. As we have repeatedly stated, we see no indication in any version of the PEIS/RMPA or in BLM's responses to comments that any State Director authorized the 11-state planning area.

Oregon Natural Desert Association
Peter Lacy et al.

Issue Excerpt Text: The PRMPA provides some level of protections for PHMA from most other major land disturbances—such as exclusion for utility solar and wind development, no surface occupancy for fluid mineral leasing, closure to saleable minerals, and avoidance for new major rights-of-way. Yet, it fails to provide any protections for PHMA from locatable mineral development. See 2024 FEIS 2-23 to -31, 2-95 to -98. This omission similarly fails to "[a]ddress continued GRSG habitat losses contributing to GRSG population declines" (2024 FEIS ES-3 and 1-5) and fails to fulfill the direction from the Bureau's Manual 6500 (Wildlife and Fisheries Management) and Manual 6840 (Special Status Species Management) specifically highlighted in the PRMPA. See, e.g., 2024 FEIS ES-2 to -3 (noting that M-6500 "directs the BLM to conserve rare, vulnerable, and representative habitats, plant communities, and ecosystems . . . and to collaborate with other agencies and States, and private groups, to ensure protection of the best representative habitats/ecosystems/plant communities" and that M-6840 "directs the BLM . . . to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species

to minimize the likelihood of and need for listing these species under the ESA”) (emphases added; internal quotation marks omitted). Given the decades-long recovery required from mineral operations, “including notice-level operations” (2024 FEIS Appx. 22-61), and continued sage-grouse population declines, the lack of any protective management allocation in the PRMPA falls short of the Bureau’s responsibility to “provide for consistent and effective rangewide conservation” of sage-grouse habitat (2024 FEIS ES-1 and 1-4) and is inconsistent with the PRMPA goal to “[c]onserve, enhance, restore, and manage GRSG habitat to support persistent, healthy populations” (2024 FEIS 2-20, 2-109). To address this problem, the Bureau should adopt a requirement that operators must submit a plan of operations for any mineral operations greater than casual use in PHMA in Oregon. This will support ODFW’s requested protection for sage-grouse and consistency with state policies and plans, comply with Bureau policy directing management to conserve wildlife and special status species, and fulfill important PRMPA goals.

Montana Mining Association

Matt Vincent

Issue Excerpt Text: In addition to being inconsistent with state policies and contrary to logic, the mitigation proximity requirement in the Proposed RMP Amendment also conflicts with BLM’s Mitigation Handbook H-1794-1 (as reinstated by Instruction Memorandum 2021- 046), which states that: The BLM should identify a compensatory mitigation site without implying a preference for siting it closer to or farther from the impacted site, as long as a reasonable relationship is maintained between the impacts of the public land use and the compensatory mitigation measure(s) being implemented at that site ... The maximum benefit to the impacted resource might be achieved at a compensatory mitigation site either geographically close or geographically far from the impacted site, so long as the mitigation at that site has a reasonable relationship to benefiting the public land resources where the resource impact is expected to occur or is occurring. The site that provides the maximum benefit to the public land resources does not need to be near the site where the resource impact occurred. Removing the mitigation proximity requirement (or, at minimum, aligning it with existing state requirements) will bring BLM’s chosen management approach in line with its own mitigation policy and allow for more robust mitigation systems.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: For example, NVMA criticized BLM’s decision to amend seventy-seven local RMPs in a single, unwieldy document. This effort is incapable of providing the level of analysis required by NEPA. Further, it is illegal. FLPMA’s implementing regulations direct development of resource management plans and their amendments to the Field Managers for this reason. See 43 C.F.R. § 1601.0-4(c). Further, only State Directors may authorize a resource management plan beyond a resource or field office area basis. See 43 C.F.R. § 1610.1(b). Therefore, regional planning efforts are constrained geographically and are under a State Director’s authority. The BLM’s National Headquarters is restricted to developing national-level planning policy and guidance; under the regulations, Headquarters does not prepare or approve land use plans or accompanying NEPA documents. 43 C.F.R. § 1601.0-4(a). This approach was previously rejected during BLM’s attempted Planning 2.0 effort. On January 30, 2017, Congress struck down Planning 2.0 by using the Congressional Review Act (5 U.S.C. §§ 801-808). This nullification of the Planning 2.0 rule rejected the shift to centralized planning and large regional planning areas. Yet BLM is illegally using that rejected structure here.

Nevada Mining Association

Nikki Bailey-Lundahl and Amanda Hilton

Issue Excerpt Text: NVMA’s Comments highlight BLM’s notable departure from prior planning efforts. The 2015 and 2019 planning processes used region- and state-specific EISs to provide more focused analysis on local conditions and potential impacts. Acting under presidential administrations representing both sides of the political spectrum, the BLM has previously recognized the importance of a more localized strategy. See, e.g., BLM, Protest Resolution Report Nevada-Northeastern California Sub-Regional Greater Sage-Grouse Land Use Plan Amendment/Final Environmental Impact Statement (Sept. 15, 2015), pp. 146-47 (emphasizing how each Land Use Plan Amendment/Final Environmental Impact Statement (“LUPA/FEIS”) “takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests” in each sub-region); 2019 Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment (“ARMPA”) (March 2019), p. 1-2 (the six different EISs “reflected the different approaches States are taking within their jurisdiction to conserve GRSG . . .”). Here, BLM dismissively responds to NVMA’s concerns by claiming that the Proposed RMPA/FEIS “facilitates consistency across states.” See Proposed RMPA/FEIS, p. 22-67. But the need for greater “consistency” directly contradicts BLM’s own statements and the scientific literature on which BLM premised its need to once again amend its GRSG plans. For example, BLM relies on scientific research that identifies how “GRSG occupy large geographic extents and experience a high degree of spatial heterogeneity in biotic and abiotic variables across their range.” Proposed RMPA/FEIS, p. 3-10; id. at p. 3-8 (conceding that GRSG population trends “var[y] spatially”). However, BLM suggests that the Proposed RMPA/FEIS “provid[es] the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals,” without specifically identifying how its “top-down” approach leaves any discretion at the state- or local-RMP level. Proposed RMPA/FEIS, p. 22-67. In short, BLM’s response fails to demonstrate that it fully evaluated NVMA’s legitimate concerns about the rangewide planning process.

***State of Utah Public Lands Policy Coordinating Office
Redge Johnson and Sindy Smith***

Issue Excerpt Text: FLPMA established requirements for land use planning on public land. Specifically, it requires the BLM, under the direction of the Secretary of the Interior, to “develop, maintain, and, when appropriate, revise land use plans” to ensure that land management be conducted “on the basis of multiple use and sustained yield.” The process for developing, maintaining, and revising resource management plans is controlled by federal regulations at 43 C.F.R. §§ 1610.1-1610.8. Under FLPMA, if BLM wishes to make changes to a resource management plan, it can only do so by formally amending the plan pursuant to 43 C.F.R. § 1610.5-5. Section 1610.5-5 states, in relevant part: An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan. An amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary, public involvement as prescribed in § 1610.2 of this title, interagency coordination and consistency determination as prescribed in § 1610.3 of this title and any other data or analysis that may be appropriate . . . Thus, pursuant to regulation, the BLM must amend a management plan whenever there is a “need to consider monitoring and evaluation findings, new data, new or revised policy, [or] a change in circumstances.” Additionally, amendment is required when an action is proposed that changes either “the scope of resource uses” or the “terms, conditions and decisions of the approved plan.” On the other hand, refining a plan based on minor data changes does not require an amendment or analysis under NEPA. 43 C.F.R. § 1610.5-4 states: Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance

shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records. Accordingly, maintenance can only reflect minor data changes, not actions that change the scope of the resource uses or the terms, conditions, and decisions of the plan. As written, the BLM's plan contemplates alteration of the Resource Management Plan without completion of an amendment process. This is contrary to FLPMA's requirement for proposed revisions based on changed circumstance. The BLM simply cannot circumvent the requirement of an amendment process under FLPMA by drafting an adaptive management strategy of the type proposed.

Summary:

Protestors claim the BLM violated a number of BLM regulations and policies in the GRSG PRMPA/FEIS, including:

- BLM regulations and policy by developing a Headquarters-led, multi-state proposed plan without express concurrence or authorization by State Directors.
- The established purpose and need, stating the BLM did not provide sufficient rationale for undertaking this planning process as well as BLM's view that the 2019 Approved RMPAs are not effective.
- Failure to conform to the BLM's Special Status Species policy, BLM Manual Section MS-6500, and Manual Section 6840 and failure to ensure that the GRSG PRMPA/FEIS provides adequate regulatory mechanisms to maintain the provisions of the 2015 plan on which the not-warranted finding for GRSG was based.
- 43 CFR 4180, 43 CFR 4100.0-5, and BLM Handbook H-4180-1 by failing to provide consistent management direction for livestock grazing and rangeland health by attempting to adjust active Animal Unit Months, which is only necessary and/or required when livestock grazing is determined to be a significant causal factor to the rangeland not meeting Land Health Standards for special status species, by failing to consult with grazing permittees over proposed modifications to terms and conditions of their permits, and by requiring range improvements that are inconsistent with Wyoming Executive Order 2019-3.
- BLM's Mitigation Handbook H-1794-1 (as reinstated by Instruction Memorandum 2021- 046) regarding conflicts in direction for compensatory mitigation.
- The formal amendment process required under FLPMA through adaptive management strategies rather than adhering to proper RMP amendment procedures outlined in 43 U.S.C. 1712.
- FLPMA's coordination requirement (43 U.S.C. 1712(c)(9)) through the use of a centralized, top-down planning approach for GRSG habitat management which conflicted with prior locally focused planning efforts.

Response:

As discussed under *FLPMA – Consistency with Other Plans*, the GRSG planning effort is consistent with the BLM's planning regulations, which allow planning at any appropriate geographic scale (43 CFR 1610.1(b); BLM Land Use Planning Handbook H-1601-1 p. 14). The BLM Land Use Planning Handbook (BLM Handbook H-1601) defines the various scales of planning that may occur and explicitly notes that planning and decision-making may vary geographically and that planning on a variety of scales may be required. This variation in scales is often used to help the BLM “understand priority resource issues, tailor decisions to specific needs and circumstances, and analyze cumulative

impacts” (BLM Handbook H-1601-1, p. 14). The planning area here was defined in coordination with relevant BLM state directors, in accordance with the BLM’s planning regulations and Handbook. Moreover, this planning area is appropriate because it facilitates consistency across states in the West and seeks to provide the BLM with locally relevant management actions and allocations that achieve rangewide GRSG conservation goals consistent with the agency’s multiple use and sustained yield mission and in support of coordinated GRSG management efforts with federal, state, local, and Tribal partners

The BLM has prepared the GRSG PRMPA/FEIS to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency’s multiple use and sustained yield mission, and GRSG management efforts with federal, state, local, and tribal partners. The 10-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort. See Section 1.2 for a detailed history of the GRSG planning background (GRSG PRMPA/FEIS pp. 1-1 – 1-2), and Section 1.6 for how this planning effort fits into the statutory and regulatory framework (GRSG PRMPA/FEIS p. 1-8). GRSG PRMPA/FEIS Section 1.7 (p. 1-9) and Appendix 20 (pp. 20-1 – 20-6) detail changes between the GRSG Draft RMPA/EIS and the GRSG PRMPA/FEIS, including clarifying how management direction provided in the 2015 and 2019 planning efforts were amended.

This amendment effort recognizes the importance of including RMP actions that address GRSG threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions. This effort also recognizes the legal and functional imperative of coordinating management with state, federal, tribal, and local plans and policies. The purpose of this land use planning process is to amend a sub-set of the GRSG management actions to ensure management actions on BLM-administered lands support GRSG conservation goals, respond to changing land uses in GRSG habitats, improve the efficiency and effectiveness of GRSG management actions, provide for consistent conservation outcomes in GRSG habitat, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals. The purpose of this amendment is focused on cross-cutting management actions/topics that are applicable throughout the planning area with variations for local, state-specific variation.

The GRSG PRMPA/FEIS provides adequate regulatory mechanisms to maintain the provisions of the 2015 plan on which the not-warranted finding for GRSG was based, as well as adheres to the BLM’s Special Status Species policy, outlined in BLM Manual Section MS-6840, which is aimed at identifying species that require special management in order to prevent them from becoming listed under the ESA. BLM Manual Section MS-6500 provides additional guidance for the BLM’s approach to managing wildlife and fisheries resources on public lands. As a planning document there are no direct impacts to any listed species or designated critical habitat in the GRSG PRMPA/FEIS. The BLM will conduct site-specific ESA Section 7 consultation should any project require it. The GRSG PRMPA/FEIS does not address enforcement of protections of ESA, but the BLM does comply with any regulations associated with ESA for projects and actions on BLM-administered lands. Nothing in the GRSG PRMPA/FEIS negates any current action for conservation of listed species and the BLM commits to continuing conservation of listed species. To ensure the GRSG PRMPA/FEIS provided adequate regulatory mechanisms to protect the GRSG, the BLM coordinated with the USFWS and state agencies throughout the planning process (GRSG PRMPA/FEIS pp. 5-2 – 5-6). BLM also utilized data from the USFWS’s IPaC tool and from their Environmental Conservation Online System, as well as other sources to determine potentially affected ESA listed species, see discussions in Section 3.6, *Special Status Species* (GRSG PRMPA/FEIS pp. 3-23 – 3-29) and listed in Appendix 11 (GRSG PRMPA/FEIS pp. 11-1 – 11-81). Finally, the BLM has prepared a Biological Assessment,

in accordance with the ESA Section 7(a)(2), evaluating impacts on ESA listed species, which was submitted to the USFWS on November 19, 2024 and is available on the project's ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2016719/510>. Further discussion of ESA Section 7 compliance will be provided in the ROD.

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 U.S.C. 1711 Sec 201 (a)). 43 CFR 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as "available" or "unavailable" for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). Although lands have been identified as "chiefly-valuable-for-grazing" per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (see, 43 U.S.C. § 315) this does not negate the BLM's authority or responsibility to manage those lands to achieve resource condition goals and objectives under the principles of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans may include making some or all of the land within grazing districts unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives.

The GRSG PRMPA/FEIS does not make any lands unavailable to livestock grazing. The action alternatives as outlined within the GRSG PRMPA/FEIS were developed to focus on the threat to GRSG from improper livestock grazing. The BLM will continue to comply with all existing laws related to livestock grazing, including 43 CFR 4100 and the Taylor Grazing Act. Land Health Standards are a standard part of the BLM livestock grazing program. All the alternatives within the GRSG PRMPA/FEIS comply with all applicable laws, including the Taylor Grazing Act and 43 CFR 4180 (BLM Handbook, *Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration*). The BLM is not proposing to create nor eliminate designated grazing districts and the GRSG PRMPA/FEIS does not make changes to specific grazing permits. The Taylor Grazing Act requires a separate process to close areas to grazing, which includes giving affected permittees two years' notice. The BLM continues to manage grazing in accordance with FLPMA and the Taylor Grazing Act. The BLM will also comply with its own regulations when conducting land health evaluations. To clarify the GRSG PRMPA/FEIS management directions regarding livestock grazing, the BLM made several changes to Chapter 2 (GRSG PRMPA/FEIS RM-3 p. 2-34), Section 4.8 (GRSG PRMPA/FEIS pp. 4-65 – 4-70), and Appendix 10 Section 10.8 (GRSG PRMPA/FEIS pp. 10-56 – 10-66).

Regarding consultation with grazing permittees, BLM decision making is a collaborative process which involves general direction, policy and advice from BLM Headquarters, and implementation decisions primarily at the field and district office level. BLM provides guidance that field and state managers incorporate as they make decisions, which allows for more local assessment of resources and impacts. Permittees will be involved in decisions that affect their permits through the implementation process and will work with Field Office specialists which will ensure their concerns are heard and made available to inform the decision making process. In general, all proposed actions will be subject to valid existing rights, including those associated with grazing. Accordingly, the BLM will ensure that its implementation of the management actions in the PRMPA is consistent with the terms and conditions in existing leases or permits, as well as will conduct a consistency review with state-specific policies and regulations, such as Wyoming Executive Order 2019-3.

BLM's Mitigation Handbook H-1794-1 (as reinstated by IM 2021- 046) provides comprehensive guidance on implementing mitigation strategies to address impacts on resources from public land uses. The GRSG PRMPA/FEIS specifically incorporates continued coordination and collaboration

with state agencies throughout multiple aspects of the implementation process, including mitigation considerations, to ensure consistency across land managers wherever possible. Compensatory mitigation would be specifically targeted to areas where key resources would receive the greatest benefits; by definition this implies mitigation efforts could vary. The BLM will follow its own mitigation policy as outlined in BLM-MS-1794 but has deferred to state agencies regarding additional mitigation requirements. Compensatory mitigation may involve the use of mitigation banks and identifies the need to provide mitigation in the area of impact. However, in some areas, mitigation would not necessarily be geographically bound to areas of impacts based on local situations. Although the BLM is not required to follow state programs or requirements that conflict with federal law and policy, all applicable state mitigation requirements will be met. While presenting detailed information on or responding to the past success of specific mitigation methods is not within the scope of the GRSG PRMPA/FEIS, mitigation measures are selected based on peer-reviewed science and demonstrated efficacy.

The GRSG PRMPA/FEIS planning effort, including the geographic scale, is consistent with FLPMA and the BLM's planning regulations and policies. In addition, GRSG PRMPA/FEIS management actions related livestock grazing, special status species, and mitigation are likewise consistent with applicable law, including the BLM's planning regulations. Accordingly, this protest issue is denied.

Special Designations

Sierra Club

Robert Joyce

Issue Excerpt Text: In its comments submitted June 13, 2024, Sierra Club urged the Bureau to utilize designation and protection of areas of critical environmental concern (“ACECs”) to provide special management. FLPMA directs the Bureau to “give priority to the designation and protection of areas of critical environmental concern” in the development and revision of land use plans. In promulgating the Conservation and Landscape Health Rule, the Bureau elaborated on the role of ACECs as the principal administrative designation for public lands where special management is required to protect and prevent irreparable damage to important resources such as wildlife habitat identified as having “relevant” and “important” values. The rule also requires the Bureau to administer designated ACECs in a manner that protects and enhances the values identified as relevant and important. Through its “Evaluation of Areas of Critical Environmental Concern for Greater Sage-Grouse Habitat,” the Bureau found that about 11 million acres met the relevance and importance criteria for ACEC designation. Given the continued decline in sage-grouse populations, special management attention is necessary to protect and prevent irreparable harm to priority core habitat and connectivity lands. Instead of designating these areas as ACECs, BLM provided arbitrary and capricious reasons for reducing the acreage meeting the relevance and importance criteria, and further provided arbitrary and capricious reasons for not designating any areas as ACECs. As Sierra Club previously urged, BLM should have designated the areas within those 11 million acres as ACECs.

Sierra Club

Robert Joyce

Issue Excerpt Text: Between the draft and final versions of the EIS, BLM further reduced the acreage found to meet the relevance and importance criteria for ACEC designation. The reasons offered for doing so are arbitrary and capricious, and contradict the recommendations of numerous scientific studies and conservation organizations. By disregarding expert advice, the BLM is putting the health of our ecosystems at risk. We urge the BLM to prioritize science-based decision-making and protect sage-grouse habitat. The reduction in acreage considered to meet the relevance and

importance criteria for ACEC designation is a clear indication that the BLM is prioritizing the interests of the oil and gas industry over the protection of wildlife. We demand that the BLM uphold its mandate to protect public lands and the species that depend on them.

Sierra Club
Robert Joyce

Issue Excerpt Text: For Idaho, BLM eliminated the potential Triangle ACEC for consideration between the draft and final EIS on the grounds that it did not meet the importance criteria, but the description provided for “importance” for Triangle ACEC states the same features in terms of importance to sage grouse. Compare DEIS at 5-13 (“Good habitat; high Resistance and Resilience; BBD 25%, and 50%; High value in Combined model. Genetic hub and keystone. Adjoins Castle Creek Canyon Lands With Wilderness Characteristics”) to FEIS at 5-24 (“Good habitat; high Resistance and Resilience; BBD 25%, but 50% rangewide; High value in Combined model. Genetic hub and keystone. Adjoins Castle Creek Canyon with Wilderness Characteristics. Threats are related to juniper encroachment and wildfire. Lacks importance criteria.”). In short, BLM has failed to provide a rational explanation as to why this 92,000 acre area of “Good habitat; high Resistance and Resilience; BBD 25%, and 50%; High value in Combined model. Genetic hub and keystone” was found to have importance in the DEIS but to “lack importance criteria” in the FEIS based on those same characteristics.

Sierra Club
Robert Joyce

Issue Excerpt Text: Similarly, for Upper Snake Complex (247,491 acres), the key difference between the descriptions of importance between the DEIS and FEIS is that BLM added “Land ownership is extremely patchy...most large leks are not on BLM lands, therefore, not considered further.” Compare DEIS at 5-14 to FEIS at 5-25. This rationale for finding the area to lack importance is arbitrary and capricious because (1) plainly some proportion of the “large leks” are indeed on BLM lands and (2) activities on the BLM lands plainly can affect the leks on private lands, since sage grouse are sensitive to disturbance occurring at a distance. This rationale also fails to consider movement of the leks between private and public lands.

Sierra Club
Robert Joyce

Issue Excerpt Text: For Nevada and California, BLM similarly reversed its importance conclusion for Little Butte Long Valley (85,510 acres) despite the lack of changing any of its factual findings about that area. Compare DEIS at 5-23 to 5-48. The highway and proposed ROW BLM relied on in finding the area no longer important in the FEIS were already recognized in the DEIS. BLM has failed to provide any rational reason for why it reversed its importance conclusion without any apparent change in facts. Moreover, it is arbitrary to rely on a proposed threat to this area to find that it is not important and therefore fail to protect it from that threat and others.

Sierra Club
Robert Joyce

Issue Excerpt Text: In its prior comments, Sierra Club urged BLM to finalize the ACEC designation for Wyoming’s proposed “Golden Triangle,” “Little Sandy,” and “Red Desert” ACECs. Sierra Club protests BLM’s proposed decision not to finalize ACEC designation as arbitrary and capricious, and contrary to FLPMA and its implementing regulations.

Sierra Club
Robert Joyce

Issue Excerpt Text: BLM’s rationale for reducing the acreage of the proposed Little Sandy ACEC is also arbitrary and capricious and contrary to FLPMA and its implementing regulations. In Appendix 5 of the FEIS, BLM states: “Between the Draft and Final EIS, the BLM refined the acreage of the Little Sandy ACEC (which is also commonly referred to as the Golden Triangle) to align more closely with the boundaries that had been identified for the area in the concurrent plan revision for the Rock Springs RMP. This resulted in a change from 475,284 acres in the Draft EIS to 272,557 acres in the Final EIS. The selection of this ACEC boundary alignment for both planning efforts was in response to the proposed management direction in the Rock Springs RMP that would provide oil and gas leasing restrictions and viewshed protections for the 202,727 acres that were removed from the potential ACEC identified in the GRSG Draft RMPA/EIS. The change in boundary also responds to the special recreation management area direction proposed in the Rock Springs RMP.” Having previously found that the area within the boundaries identified in the draft EIS met the relevance and importance criteria, it is arbitrary for BLM to rely on the prospect that other planning processes may provide some (lesser) protections for portions of that area as a reason for refusing to protect those areas as ACECs in the current planning process, despite the remaining and unaddressed need for special management to benefit sage grouse, and the biological importance.

Sierra Club
Robert Joyce

Issue Excerpt Text: The BLM's failure to designate these ACECs violates FLPMA and is arbitrary and capricious. The agency has a legal obligation to protect areas of critical environmental concern, and the Little Sandy and Red Desert clearly meet these criteria. The BLM's decision to reduce the ACEC acreage fails to comply with the National Environmental Policy Act (NEPA), and is arbitrary and capricious, in violation of the Administrative Procedure Act. By failing to adequately consider the environmental impacts of this action, and explain its reasons, the BLM is violating its legal obligations.

Wildlands Defense
Katie Fite

Issue Excerpt Text: We Protest that BLM in the 2024 GRSG EIS process and in evaluating all ACEC proposals failed to take a science-based hard look at the highly significant adverse footprint of the vast and destructive agency and other vegetation treatments as a cumulative impact and threat to sensitive species (including the collateral damage resulting from such projects – such as pile burning amid sagebrush creating tens of thousands of new sites for weed invasion annually) and persistence of sustainable habitats and populations at the local and regional level.

American Petroleum Institute et al.
Amy Emmert et al.

Issue Excerpt Text: PHMA with Limited Exceptions is essentially an ACEC and should meet ACEC criteria. See Proposed RMPA/Final EIS at 3-1–3-3, 4-10, 5-18–19, 5-26, 5-27–28, 5-31, 5-40–44, 5-53–60, 5-72–73, 5-93–97, 16-9.9 The Associations’ comments on the proposed ACECs emphasized BLM’s failure to explain how the various ACEC criteria are met for the areas identified as ACECs in Alternatives 3 and 6. In the Proposed RMPA/Final EIS, BLM declined to respond to the Associations’ comments and address how the ACEC criteria are met while also declining to identify any new ACECs. At the same time, BLM established the new “PHMA with Limited Exceptions”

category. This new category essentially serves as a means to finalize ACECs without meeting the various ACEC criteria and following procedures necessary to designate ACECs.

American Petroleum Institute et al.

Amy Emmert et al.

Issue Excerpt Text: As discussed in the Associations’ May 14 comments, the Bureau’s existing regulations require that, to be eligible for designation as an ACEC, an area must have (i) relevance, such as a fish or wildlife resource, and (ii) importance, i.e., substantial significance. As BLM recognized in the Proposed RMPA/Final EIS, in order to qualify as an ACEC, an area of relevance and importance must also require special management. This requirement – long described in BLM’s ACEC Manual – has now been codified through the Bureau’s recent revisions to its ACEC regulations as part of the Public Lands Rule. The preamble to the Public Lands Rule emphasizes that special management attention must be necessary for the protection of the values in question, not just beneficial. “Special management attention” means management prescriptions that protect and prevent irreparable damage to the relevant and important values of the area that would not be prescribed if the relevant and important values are not necessary. “Irreparable damage” is defined in the Public Lands Rule as harm to a resource that substantially diminishes the relevance or importance of the resource in such a way that recovery of the resource to the extent necessary to restore its prior relevance or importance is impossible. While Appendix 5 of the Proposed RMPA/Final EIS addresses the relevance and importance of areas that were proposed for designation as ACECs as part of Alternatives 3 and 6, the analysis of eligibility status is incomplete, particularly with respect to the need for special management protection. In order to qualify as ACECs, BLM would have to demonstrate that the areas require special management attention in order to prevent irreparable damage, i.e., harm that would make recovery of the relevant and important values of the area impossible. While BLM concludes in some places in Appendix 5 that designation of areas as ACECs would protect them from irreparable harm, the Bureau has not demonstrated that ACEC designation is required to protect areas from irreparable harm.

American Petroleum Institute et al.

Amy Emmert et al.

Issue Excerpt Text: Thus, BLM has not established a basis for designating additional ACECs, particularly in response to any perceived threats from oil and gas development. BLM instead proposes to achieve the same result by simply creating a new category of restrictions – PHMAs with Limited Exceptions – out of whole cloth without any public input. BLM acknowledges that ACECs are “the mechanism by which relevant and important GRSG attributes could be identified and protected.” At the same time, the Bureau notes that the areas covered by the new PHMA with Limited Exceptions designation are made up of 12 of the areas that had been identified as ACECs under Alternatives 3 and 6 and that “with the new designation the relevant and important values in ACECs will be protected. In other words, these areas will receive protections equivalent to those they would have received if they had been designated as ACECs but BLM will not need to demonstrate that the areas meet the criteria for ACEC designation. This last-minute switch violates not only fundamental rulemaking principles but procedural requirements regarding designation of ACECs as well. For this reason, the Associations protest BLM’s adoption of the PHMA with Limited Exceptions category.

Western Energy Alliance et al.

Charlotte Sawyer et al.

Issue Excerpt Text: As explained in the Associations’ comment letters on BLM’s proposal to designate certain GrSG habitat as ACECs, GrSG habitat does not meet the criteria for ACEC designation because of the strength of the conservation measures already included in existing GrSG

management plans. BLM cannot justify ACEC designation. Instead, the PRMPA intends to create a new land use designation of PHMA with limited exceptions, which further restricts oil and natural gas development in such areas, akin to what ACEC designation would have contained. FLPMA defines an ACEC as an area “within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish or wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” 43 U.S.C. § 1702(a). FLPMA’s implementing regulations require that an ACEC designation meet both relevance (containing important wildlife resources) and importance (qualities of special worth) criteria. 43 C.F.R. § 1610.7-2(a). Further, the lands must require special management attention. 43 C.F.R. § 1610.7-2(d)(3). As BLM rightfully recognized, GrSG habitat does not meet the ACEC relevance and importance criteria because BLM already manages these lands for GrSG, and additional, more restrictive measures are not warranted nor supported. Instead, the PRMPA/FEIS proposes PHMA with limited exceptions as a more restrictive overlay on certain PHMA designated lands, acting as de facto ACECs. BLM could not justify ACEC designation, and it should not be allowed to designate de facto ACECs as PHMA with limited exceptions. Such designation violates the ACEC process and FLPMA.

Eureka County, Nevada

Jake Tibbitts and J.J. Goicoechea

Issue Excerpt Text: BLM relied on regulatorily-defined criteria when it proposed ACEC designation. Though we explained at length in our comments on the DEIS/RMPA that the proposed ACECs did not meet the requisite relevance, importance, and special management criteria for ACEC designation, see Eureka County DEIS/RMPA Comments at 53–53, 57–63, applying these criteria to specific features of each ACEC proposed for designation at least gave BLM some field-level justification for designating ACECs and for the heightened management restrictions that come with them. By contrast, for PHMA with limited exceptions, BLM does not provide an area-by-area justification for the habitat designation nor does it substantially justify the PHMA with limited exceptions designation except with the statement that it is “designed to provide the necessary protections for GRSG and its habitat in light of anticipated development threats and negative impacts from climate change such as drought.” This justification is not sufficient to support PHMA with limited exceptions. As the DEIS/RMPA noted, “BLM decided not to designate PHMA as ACECs in the [2015 RMPAs] because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required. During the 2019 planning process, ACEC nominations were not reconsidered.” The decision to develop a habitat designation beyond PHMA thus changes BLM policy. But BLM does not provide a reasoned explanation for its departure from this decision.

State of Wyoming, Office of Governor Mark Gordon, et al.

Sara DiRienzo, et al.

Issue Excerpt Text: Pages 1-9, describes Priority Habitat Management Areas with limited exceptions as: ... The statement, ""These additional protections will provide the necessary conservation ... "" is problematic. This area does not meet the ACEC standard; the novel Priority Habitat Management Areas with limited exceptions designation is a poorly disguised attempt to include ACECs rangewide for Greater sage-grouse, which could not be justified through specific, anticipated threats, and/or science for the individually proposed areas. In our review of the FEIS, the WGFD was unable to identify any explicit discussion about the anticipated threats, which the proposed Priority Habitat Management Areas with limited exceptions area in Wyoming will be specifically subjected to that are greater than those threats, which other areas protected as PHMA may be subjected to in the reasonably foreseeable future. Further, as BLM has opened up the most recent regulations with its

discussion of 43 CFR 1610.7-2(j)(2) and (j)(3), which were added for the first time in the 2024 regulations, BLM's PHMA with limited exceptions designation would likely fail both the test under FLPMA and the 2024 regulations. (pg. 3-44); see also 43 USC 1702(a) (defining an ACEC as an area "where special management attention is required ... to protect and prevent irreparable damage."). Under the 2024 regulations, part of the test to designating an ACEC is the "harm to a value, resource, system, or process that substantially diminishes the relevance or importance of that value, resource, system, or process in such a way that recovery of the value, resource, system, or process to the extent necessary to restore its prior relevance or importance is impossible." 43 CFR 1610.7-2(d)(3)(ii). Because it is extremely unlikely that BLM could claim recovery of sage grouse or its habitat would be irreparable or restoring it would be impossible, BLM's proposed PHMA with limited exceptions would fail the statutory and regulatory test for an ACEC.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: In the PRMPA, the Bureau fails to adhere to FLPMA's direction to prioritize the designation and protection of ACECs and related regulations that establish a presumption in favor of designating qualifying ACEC nominations. The Bureau failed to meet these obligations in several ways. First and most obviously, the PRMPA does not propose the designation of ACECs. In the FEIS, the Bureau nominates and analyzes over eight million acres that it considers significant for the greater sage-grouse as ACECs but fails to designate these acres in the PRMPA. Instead, the Bureau allocates about half of these acres as a subset of PHMA with enhanced protections ("PHMA+") because the Bureau deems them particularly important and in need of special protection. FEIS at 2-3 and FEIS appendix 22-4. Paradoxically, areas with relevant and important values in need of special protection are the criteria set forth in FLPMA for places deserving of ACEC designation. Thus, instead of designating these qualifying areas as ACECs, the Bureau instead chose to designate them as PHMA+ in defiance of FLPMA's plain language. Second, as argued elsewhere in these comments (see section on Range of Alternatives), the Bureau failed to analyze the 48 million acre Sagebrush Sea ACEC nomination, thus denying the opportunity for the designation and protection of some or all of these acres, in violation of FLPMA and implementing regulations. This issue was raised in the ACEC comment letter starting on page 2, and in *Advocates et al.* 2024 at 76.

Western Watersheds Project et al.
Greta Anderson et al.

Issue Excerpt Text: As explained in more detail in the Oregon Natural Desert Association's ("ONDA") comment letters and administrative protest, we protest the Bureau's failure to conduct required "conservation benefit" analyses with regard to implementation of fenced-off research areas, the Bureau's failure to explain why reducing the statistically significant minimum number of sites and areas closed to grazing is justified, the fact that abandoning scientific research and re-allocating areas to livestock grazing is inconsistent with the Bureau's ACEC and RNA regulations, the fact that allocating portions of Wilderness Study Areas as available to livestock grazing is inconsistent with FLPMA and binding Bureau policy on the FLPMA non-impairment mandate, and the Bureau's reliance on incorrect, unsupported, and otherwise arbitrary and capricious contentions with regard to wildfire risk, continued unauthorized grazing in closed Key RNAs, and Visual Resource Management class and WSA impacts.

Oregon Natural Desert Association
Peter Lacy et al.

Issue Excerpt Text: Bureau regulations provide that, once established, an RNA shall not be managed "in a manner inconsistent with the purpose of the research natural area." 43 C.F.R. § 8223.1(b). ...Once the Bureau established the ungrazed research sites in thirteen specially identified Key RNAs,

and recognized that they represented the “minimum number” sites and areas necessary to generate usable information, the Bureau could not disestablish or abandon them (by reallocating portions or all of those areas to livestock grazing) without a reasoned explanation for that about-face. See *Transp. Div. of the Int’l Ass’n of Sheet Metal, Air, Rail, & Transp. Workers v. Fed’ R.R. Admin.* (Transp. Workers), 988 F.3d 1170, 1183 (9th Cir. 2021) (agency decision arbitrary and capricious when it reversed its prior decision and failed to address “previously recognized” facts or determinations); see also *State Farm*, 463 U.S. at 43 (silence in a decision indicative that an agency has “failed to consider an important aspect of the problem” that the agency itself had previously identified).

Oregon Natural Desert Association

Peter Lacy et al.

Issue Excerpt Text: ONDA commented that not only would fencing off Key RNAs fit easily within Manual 6330 non-impairment exception (f) for actions that “clearly benefit” a Wilderness Study Area (“WSA”) “by protecting or enhancing [wilderness] characteristics,” but that the Bureau in fact cannot now allow livestock grazing in WSAs that are unallocated to grazing unless that grazing meets the FLPMA non-impairment standard or one of the exceptions enumerated in the manual. Where grazing is currently not allocated (and therefore not presently allowed), new grazing cannot satisfy the non-impairment requirement. This is because (1) it is more than temporary, and (2) it would create surface disturbance. 6330 Manual at 1-10. This means the Bureau cannot legally allocate the approximately 6,695 acres of public lands, currently closed to livestock grazing, in the Fish Creek Rim, Twelvemile, Camp Creek, and Oregon River Canyon Wilderness Study Areas, as proposed under the PRMPA. See 2024 FEIS Appx. 17 at Maps 3, 5, 9, 16 (showing areas proposed to be “reallocated” to grazing in the Fish Creek Rim, Dry Creek Bench, Lake Ridge, and Toppin Creek Butte Key RNAs). The Bureau completely fails to respond to this comment—a hallmark of arbitrary and capricious decisionmaking. *State Farm*, 463 U.S. at 43. Any decision to “reallocate” these areas to livestock grazing would violate FLPMA. 43 U.S.C. §§ 1732(a), 1782(c) (land use plan consistency and WSA non-impairment requirements).

Oregon Natural Desert Association

Peter Lacy et al.

Issue Excerpt Text: The Bureau suggests that because there is little grazing use in several of the RNAs, that supports reducing or eliminating the grazing closure areas, and not fencing off closed areas. See 2024 FEIS Appx. 17-11 to -12, 17-13, 17-16, 17-18, 17-20, 17-22, 17-44, 17-74 (Black Canyon, Dry Creek Bench, East Fork Trout Creek, Lake Ridge, Spring Mountain). This makes no sense. If an area is already receiving “little to no use” by livestock, see *id.* at 17-11, then what reason is there for re-allocating that area to grazing? The FEIS fails to answer this question. A decision to reduce or eliminate an ungrazed scientific research area, in order to allocate it to livestock grazing that is not actually occurring, would be irrational. See *Greater Yellowstone Coal.*, 665 F.3d at 1023 (an agency’s decision is arbitrary and capricious where it has failed to “articulate[] a rational connection between the facts found and the choices made”).

Wyoming County Commissioners Association

Bill Novotny

Issue Excerpt Text: ...we disagreed that the proposed ACECs (now PHMA+) are required "to protect and prevent irreparable damage to the relevant and important values." 43 U.S.C. S 1702(a)... There is no analysis in the DEIS nor the FEIS showing how existing mangement under the prescription of PHMA would allow "irreparable damage" to occur in such a way that it is impossible to restore.

Wyoming County Commissioners Association

Bill Novotny

Issue Excerpt Text: The Little Sandy ACEC was converted into the Little Sandy/Golden Triangle PHMA+ in the PRMPA. The BLM describes the areas as, "a large expanse of intact sagebrush that supports portions of the densest population of GRSG across its entire range, has limited invasive annual grasses and anthropogenic infrastructure, and faces potential threats from fluid mineral development." (5-93) The potential threats from fluid mineral development appear to be BLM's sole justification for the new PHMA+ designation. Unfortunately, the BLM does not include additional information about the potential threats from fluid mineral development. Chiefly, what exactly those threats are and the likelihood of negative impacts to the area. The BLM conclusory states that, "The No Surface Occupancy (NSO) with no exceptions management direction identified for these limited exception areas would protect the potential ACEC from the threat of fluid mineral development." (5-95) In this instance, the BLM appears to conflate any fluid mineral development on BLM managed lands as a threat. However, the BLM should also consider the value of fluid mineral resource in the management area. 43 CFR S 1610.7-2(j)(1)(ii). Additionally, the BLM should consider existing management under PHMA. The State Director is required to take into consideration "The relationship to other types of designations and protective management available" 43 CFR S 1610.7-2(j)(1)(iv).

The Wyoming Counties: Sublette, Crook, Hot Springs, Niobara, Weston, Converse, Campbell, and Johnson Counties

Issue Excerpt Text: BLM Failed to Provide an Adequate Analysis or Consistency Review Regarding the Designation of the Priority Habitat Management Areas with Limited Exceptions, or de facto ACEC, known as the "Golden Triangle" The BLM's creation of Priority Habitat Management Area with Limited Exceptions (PHMA +) for an area commonly known as the "Golden Triangle" in southwest Wyoming was developed without any input or discussion with Wyoming's CAs. BLMs rationalization for creating a PHMA + designation is that it has identified "special areas" where they warrant additional protections, and its perception is that the public would be more accepting of a PHMA+ designation than an Area of Critical Environmental Concern (ACEC). However, the BLM is unable to articulate a clear scientific standard for PHMA + that would qualify the "Golden Triangle," or other locations, for this new designation. Notably, the PHMA+ management approach has not been evaluated in the NEPA process. While the BLM has indicated that the "Golden Triangle" has already been evaluated as an ACEC with similar restrictions to PHMA+, that is not sufficient legal basis for a newly fabricated designation. To the extent the BLM is truly concerned about the public's reaction to ACEC nominations in a final PRMPA, it is doubtful that the BLM's bait and switch strategy has been better received by the public. Further, it is unreasonable to suggest that an agency can comply with NEPA's requirements for thorough analysis and public comment by evaluating huge swaths of land as ACECs, and then isolating smaller sections and creating entirely new management approaches for them.

Summary:

BLM violated FLPMA, the APA, and the Conservation and Landscape Health Rule (aka Public Lands Rule) in the GRSG PRMPA/FEIS by:

- Establishing the new PHMA with limited exceptions (PHMA+) special designation, which protestors state serve as a means to either avoid the BLM's obligations to designate these areas as ACEC or to create de-facto ACECs without adhering to the established procedures for documenting relevance, importance, and special management criteria required for ACEC designations.
- Not adequately protecting areas identified in the GRSG PRMPA/FEIS as meeting the relevance and importance criteria for ACEC designation.

- Providing arbitrary and capricious reasons for not designating areas as ACECs or for reducing the acreage found to meet relevance and importance criteria.
- Failing to analyze the nominated Sagebrush Sea ACEC.
- Failing to conduct the required “conservation benefit” analyses with regard to implementation of fenced-off research areas, nor explain why reallocating areas to livestock grazing is consistent with WSAs, ACEC, and RNA regulations, and instead only stating there is little current grazing use in several of the RNAs to justify reopening the areas to grazing.

Response:

Section 202(c)(3) of FLPMA requires that the BLM give priority to the designation and protection of ACECs in the development and revision of land use plans (43 U.S.C. 1712(c)(3)). FLPMA defines ACECs as “areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” 43 U.S.C. § 1702(a). The BLM’s planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of RMPs and during amendments to RMPs when evaluation and designation of ACECs are within the scope of the amendment. As reflected in the regulations and existing policy, the BLM shall review nominated ACECs to determine whether they have relevant and important values and need special management (43 CFR 1610.7-2(a); BLM IM 2023-013; and BLM Manual Section MS-1613, *Areas of Critical Environmental Concern*).

However, the BLM determines the appropriate time for and may defer the evaluation of ACECs nominated outside of the planning process, including if evaluation and designation of ACECs are not within the scope of a RMPA associated with the BLM’s review of a proposed activity (43 CFR 1610.7-2(i); Manual 1613). Under these circumstances, the BLM has discretion in the selection of ACECs for the various alternatives and may defer consideration of a nominated ACEC to a future planning process (43 CFR 1610.7-2(i)(2)).

The recently promulgated Conservation and Landscape Health Rule (aka Public Lands Rule; 89 FR 403080) guides implementation of the BLM’s longstanding statutory authority to manage lands for conservation, including by taking account of certain resource values explicitly addressed in the rule. Since the NOA for the GRSG Draft RMPA/EIS was published prior to the effective date of the Public Lands Rule, this planning process is not incorporating Public Lands Rule elements into the FEIS. As stated in BLM Information Bulletin 2024-048 “The incorporation of the Public Lands Rule into ongoing land use planning efforts in FY 2024 will occur on a case-by-case basis, where scope, schedule, and budget of the planning effort allow. Generally, planning efforts for which the BLM has published a Notice of Availability (NOA) for a draft RMP prior to the effective date of the rule would not be expected to incorporate otherwise required elements or include those required elements in the final RMP and EIS. In such situations, the authorized officer may still exercise discretion to include elements of the rule, subject to planning and NEPA requirements.” Regardless, the management actions considered in the GRSG PRMPA/FEIS are consistent with the Public Lands Rule, which confirms that ACECs are to be addressed in revisions or amendments of land use plans and establishes a clear and comprehensive framework for identifying, evaluating, and considering the need for special management attention for each ACEC during the land use planning process.

The BLM considered 32 ACECs during the GRSG PRMPA/FEIS planning process as a mechanism by which relevant and important GRSG habitat attributes could be identified and protected, consistent with the BLM’s planning regulations. The BLM initiated an extensive internal review of updated scientific data to identify potential ACECs and solicited external nominations for areas that had relevant and important GRSG values for potential designation as an ACEC (GRSG PRMPA/FEIS Appendix 5 Section 5.4 pp. 5-5 – 5-99). As part of this process, the BLM considered but dismissed

from detailed analysis the Sagebrush Sea nomination, as described in GRSG PRMPA/FEIS Appendix 5, *Areas of Critical Environmental Concern for Greater Sage-Grouse Habitat* (GRSG PRMPA/FEIS Appendix 5 pp. 5-13 – 5-14). As discussed in the PRMPA/FEIS, the BLM ultimately determined consideration of the Sagebrush Sea ACEC was inconsistent with the BLM’s purpose and need of the Proposed RMPA because the BLM determined the underlying data for the ACEC’s nomination no longer reflected the most up to date science on habitat connectivity, populations, effects to habitat from climate change, and genetic information across the range of the species.

Under the Proposed RMPA, the BLM is not proposing to designate any potential ACECs. In response to public and cooperating agency comments and in consideration of important habitat factors such as connectivity, population strongholds, and the potential for threats from development, the BLM identified areas within PHMA that would most benefit from management that would provide additional protection from uses highly likely to occur in those areas and adjusted the PHMA allocation in the Proposed Plan Amendment to reflect these areas, which would have more limited exceptions than the rest of PHMA. These areas are made up of 12 of the areas identified as ACECs under Alternatives 3 and 6 and are discussed in detail in Appendix 3 (GRSG PRMPA/FEIS, pp. 3-1 – 3-27) and Appendix 5 (GRSG PRMPA/FEIS, Appendix 5, pp. 5-1 – 5-99). Within these PHMA with limited exception areas, the relevant and important values of the potential ACECs would be protected, making special management of these areas through ACEC designations unnecessary. Even absent the limited exceptions associated with these areas, the relevant and important values of the potential ACECs would receive significant protection under management associated with PHMA designation more generally in the PRMPA, which includes managing for avoidance for major rights-of-way, as exclusion for utility-scale solar and utility scale-wind, and as closed to saleable minerals/material management and non-energy leasable mineral development, with exceptions. Further, new fluid mineral leasing in these areas will be subject to No Surface Occupancy (NSO) stipulations, with Waivers, Exceptions, and Modifications, further protecting relevant and important values in these areas. Accordingly, under the Proposed RMP, the BLM would not designate any of the potential ACECs.

In the GRSG Draft RMPA/EIS, 32 areas were analyzed as potential ACECs under Alternatives 3 and 6. In the GRSG PRMPA/FEIS, ACEC acreages were refined in some States; four ACECs were removed from consideration in Idaho; and one ACEC was removed from consideration in Nevada as result of updates and refinements in data. The identification, evaluation, and analysis of the effects of the alternatives on the nominated and proposed ACECs are described in Appendix 5 (GRSG PRMPA/FEIS Appendix 5 pp. 5-1 – 5-99). GRSG PRMPA/FEIS Chapters 3 and 4, Appendix 10, and Appendix 5 were updated and clarified in response to comments between the GRSG Draft RMPA/EIS and GRSG PRMPA/FEIS. Specific analysis for each externally nominated ACEC can be found in Appendix 5, Section 5.4.2 (GRSG PRMPA/FEIS pp. 5-11 – 5-85). Rationale for final ACEC decisions will be published in the GRSG ROD/Approved RMPA.

GRSG PRMPA/FEIS Appendix 5 describes the effects of the alternatives (including the Proposed Plan Amendment) on the potential ACECs proposed for designation under Alternatives 3 and 6 (GRSG PRMPA/FEIS, Appendix 5, pp. 5-1 – 5-99). Relevant and important values in areas proposed as ACECs in the GRSG PRMPA/FEIS would be protected under other management decisions, and the BLM may review areas nominated as ACECs during site-specific project reviews or during future land use planning efforts. In the future, when the BLM is evaluating an ACEC nomination that overlaps with a project, the BLM will evaluate the ACEC nomination and project application consistent with 43 CFR 1610.7-2(i) and BLM’s ACEC Manual 1613. Where a development application overlaps an ACEC nomination, the BLM has discretion to process the application and concurrently evaluate impacts on potential relevant and important values. The BLM will determine whether it may be prudent to protect against the loss of potential relevant and important values until such time as the BLM completes its evaluation of those values. The GRSG PRMPA/FEIS planning

process, the associated ACEC evaluations which were conducted, and the manner in which the potential ACECs were considered and analyzed in the Draft and FEIS are consistent with the updated BLM ACEC regulations at 43 CFR 1610.7-2.

As described in Appendix 17 (GRSG Draft RMPA/EIS pp. 17-1 – 17-85), the 2015 Oregon GRSG RMPA allocated all or portions of 13 Key RNAs in Oregon as unavailable to livestock grazing. The 2019 Approved RMPA reversed that decision and made all, or portions of, those 13 Key RNAs available to livestock grazing. These decisions affected approximately 22,000 acres within 13 existing, district designated, RNAs. The 2019 Approved RMPA was and remains enjoined by the United States District Court for the District of Idaho and the 2015 Approved RMPA decision for these 13 Key RNAs remains in effect. As a part of the 2015 planning process, two existing RNAs were designated as Key RNAs: the Foster Flat Key RNA in the Burns District and the Guano Creek-Sink Lakes Key RNA in the Lakeview District. However, these two additional Key RNAs were previously excluded from livestock grazing. Neither the 2015 nor the 2019 RMPA processes proposed changing these underlying district-level land use plan decisions. Both the Foster Flat Key RNA in the Burns District and Guano Creek-Sink Lakes Key RNA in the Lakeview District were, and will remain, allocated as unavailable for livestock grazing.

Under the Proposed Plan Amendment, all fifteen Key RNAs designated in the 2015 Approved RMP Amendment are retained as they all provide baseline reference areas for relatively unaltered sagebrush plant communities that are important for GRSG. In support of providing a variety of research opportunities, two of the Key RNAs are allocated as unavailable to livestock grazing as noted above: Foster Flat (Burns District) and Guano Creek-Sink Lakes (Lakeview District); eight are partially unavailable to livestock grazing East Fork Trout Creek (Burns District), Fish Creek Rim (Lakeview District), Foley Lake (Lakeview District), Lake Ridge (Vale District), Mahogany Ridge (Vale District), Rahilly-Gravelly (Lakeview District), South Bull Canyon (Vale District), and Toppin Creek Butte (Vale District); three would be available to livestock grazing with a 5 acre or less exclosure allocated as unavailable to livestock grazing: North Ridge Bully Creek (Vale District), South Ridge Bully Creek (Vale District), and Spring Mountain (Vale District)); and two are allocated, in their entirety, as available to livestock grazing Black Canyon (Vale District) and Dry Creek Bench (Vale District).

On BLM grazing allotments, grazing activities are managed through several mechanisms (permit terms and conditions, allotment management plans, annual pre-turnout authorization meetings, and ongoing monitoring) to ensure that grazing meets or moves towards meeting Land Health Standards. Management for meeting land health standards avoids long-term and wide-spread improper grazing. In addition, the Proposed Plan Amendment includes three new 5-acre or less grazing exclosures that would remove livestock use and other permitted activities to allow for nonmanipulative research and baseline data gathering within or in proximity to the North Ridge Bully Creek, South Ridge Bully Creek, and Spring Mountain Key RNAs to act as ungrazed comparison areas for evaluating effects of livestock on those vegetative communities identified as important for GRSG. The GRSG PRMPA/FEIS does not remove nor discourage BLM districts from constructing exclosures, rest pastures, or other range improvements for the purposes of allowing and managing for reference sites. There is no law, policy, or regulation that prohibits grazing within ACECs or RNAs. Through the BLM planning process, the BLM can make livestock grazing allocations changes (43 CFR 1610.5-5). The BLM has made all of the livestock grazing allocation changes in the Key RNAs in accordance with law and policy including all applicable laws and policies related to Wilderness Study Areas. The BLM will provide additional clarification in the BLM's Record of Decision.

The BLM properly considered the designation of nominated ACECs and adequately considered the protection of relevant and important values in the GRSG PRMPA/FEIS. The BLM also appropriately considered management of livestock grazing in RNAs. Therefore, this protest issue is denied.

Travel and Transportation

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: Travel and transportation restrictions carry over from the 2015 Amendments. The restrictions on motorized travel have and will continue to have an adverse effect on the hardrock mining industry and interferes with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes will make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a shallow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located. These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the Mining Law and 30 U.S.C. 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. BLM must ensure access to mineral exploration and development as discussed. By closing routes, including primitive roads and trails not designated in a travel management plan, BLM interferes with potential access to minerals which is contrary to § 22 of the Mining Law and 30 U.S.C. 612(b) (Surface Use Act).

American Exploration & Mining Association

Mark Compton

Issue Excerpt Text: Similarly, BLM's proposal to authorize new roads only for administrative access, public safety or access to valid existing rights does not go far enough to maintain access, use and occupancy associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, BLM has not balanced access needs associated with minerals, or any other use, and instead places a preference on aesthetic values and protection of GRSG.

Western Exploration

Darcy Murad

Issue Excerpt Text: The travel and road restrictions BLM proposes violate FLMP A, may amount to compensable takings, and must be revised to protect property rights in locatable minerals or reevaluated to determine compensation for takings. We protest the Proposed Plan's restrictions on ROWs in HMAs. We review at pp. 10-11 of our DEIS/RMP A comments the extensive protections in federal and Nevada law for WEX's property in its mining claims, and how BLM's travel restrictions infringe on WEX's property rights. This extends to protection for access to those claims. The General Mining Law guarantees a right of access, use and occupancy to all unpatented mining claims both before and after discovery of a valuable mineral deposit pursuant. The Surface Use Act guarantees the right to use and occupy federal lands with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights and rights of and associated with ingress and egress. And where Nevada courts have considered impairment of access, they have consistently held that if a property owner has a right of access and the government substantially impairs that right, a compensable taking exists. BLM's regulatory authority is subject to these laws, and, regarding mining projects under the General Mining Law, it is limited to ensuring that unnecessary or undue degradation does not occur. But the road use and travel restrictions in the Proposed Plan do not comply with these mandates. Restrictions on

ROWs associated with designating PHMA as avoidance for major ROWs could substantially impair access, in violation of FLPMA, to many locations in which WEX (or others similarly situated) holds a real property interest. In particular, the road and travel restrictions that the DEIS/RMP A contemplates are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. These restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections or mining claims inaccessible and therefore without economic value.

BlueRibbon Coalition

Simone Griffin and Ben Burr

Issue Excerpt Text: The BLM failed to respond to concerns we raised regarding persons with disabilities. The BLM did not respond to the Equity Action Plan. In April 2022 the Department of Interior released its Equity Action Plan which states, “Public land visitation data collected from the Department’s bureaus suggests that certain underserved communities are underrepresented as public land visitors, relative to their presence in the U.S. population at large.” This includes persons with disabilities and limited physical access. This project proposal will help decrease access within this area for underserved communities. On his first day in office, President Joe Biden issued an “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” This executive order established “an ambitious whole-of-government equity agenda” which focuses on addressing “entrenched disparities in our laws and public policies,” and mandates a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” Under this executive order, “The term ‘equity’ means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities....” Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network. Because the elimination of motorized access in many of these areas from OHV closed or limited areas would prevent disabled tribal members from accessing sacred sites, the motorized restrictions would likely be contrary to EO 13007, EO 13985, and AIRFA. Management policies focused on “minimizing” the environmental or cultural resource impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist biases have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other “human powered” and “quiet use” forms of recreation in which many people with disabilities are unable to participate."

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Issue Excerpt Text: Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the BLM consider the access needs of disabled users, and it has failed to address them in the alternatives for this FEIS. This FEIS fails to comply with the Department

of Interior Equity Action Plan. The BLM should consider new route density standards defined in the proposed Outdoor Americans with Disabilities Act. This new proposed legislation will require 2.5 miles of accessible routes on every square acre of public land. The wilderness designations will greatly prohibit meeting these route density targets if this legislation were to become law in the near future. The BLM should ensure the Greater Sage-grouse Land Use Plan complies with this legislation now so that it does not have to undergo new planning if the legislation should pass.

Summary:

Protestors stated that the BLM violated FLPMA, the Mining Law of 1872, and the Surface Resources Act of 1955 by maintaining the travel and transportation restrictions from the 2015 GRSG RMPA and restrictions of ROWs in HMAs. Protesters stated that these restrictions interfere with exploration and development of mineral resources under the Mining Law. Protesters further stated that these restrictions violate BLM Manual Section MS-1626, which requires that access needs are balanced with resource management goals and objectives in resource management plans.

Additionally, protestors stated that the BLM violated the Department of the Interior Equity Action Plan, EO 13007, EO 13985, and American Indian Religious Freedom Act by limiting motorized access and prioritizing non-motorized uses, which has disproportionate impacts on persons with disabilities.

Response:

Area-specific travel and transportation management decisions are outside the scope of the GRSG PRMPA/FEIS and the BLM does not propose to amend the pertinent 2015 and 2019 RMPA management direction for travel and transportation. The travel and transportation allocations of open, limited, and closed are not being addressed by the GRSG PRMPA/FEIS and the existing management direction that limits OHV use to existing roads in GHMA and PHMA remains in place under the GRSG PRMPA/FEIS (GRSG PRMPA/FEIS, p 2-8). The BLM's existing 2015 GRSG RMP Amendment management direction does not propose OHV closures and none are being proposed in the GRSG PRMPA/FEIS. Moreover, the RMPA does not make any implementation level travel and transportation decisions and, accordingly, is not addressing any existing travel and transportation plans. However, changes in HMA boundaries in the alternatives and the Proposed Plan Amendment result in changes areas where the 2015 and 2019 RMP Amendment allocations are applied (GRSG PRMPA/FEIS, p 2-8). The effects of the HMA boundaries on travel and transportation allocation are described in the Transportation and Travel Management sections in Chapter 4 (pp. 4-142 – 4-144) and Appendix 10 (pp. 10-195 – 10-196), as well as Appendix 9 (Tables 4-4 – 4-7).

Where changes to OHV designations reduce recreation opportunities associated with OHV uses, these decreases would also reduce resource impacts to GRSG, consistent with Section 302(b) of FLPMA, which directs the BLM to take any action necessary to prevent UUD of public lands. (GRSG PRMPA/FEIS, p. 4-142). As explained in the PRMPA/FEIS, the use of existing roads and development of new roads in GRSG habitat contributes to GRSG habitat loss, alteration, and fragmentation, and changes in the Proposed RMPA are intended to address these impacts. In addition, the PRMPA/FEIS recognizes that management prohibiting or restricting the construction of new roads and limiting reroutes and upgrades could make accessing mineral material deposits more costly or infeasible.

The Mining Law of 1872 authorizes exploration and development of certain minerals on federal lands. Under this law, as amended by FLPMA, the BLM has the obligation to ensure that exploration, development, and related uses and occupancy under the Mining Law do not cause prevent UUD. Accordingly, the BLM applied management actions in the GRSG PRMPA/FEIS only to the extent

that they are consistent with “all relevant federal laws and regulations, Executive Orders, and management policies of the BLM” including the Mining Law and the Surface Resources Act (GRSG PRMPA/FEIS, p. I-3.).

Accessibility laws and regulations, including the Americans with Disabilities Act and American Indian Religious Freedom Act, as well as Executive Orders 13985 and 13007 and the U.S. Department of the Interior’s Equity Action Plan, require equal treatment and access to recreational facilities, sites, and information. However, these authorities do not prevent the BLM from limiting OHV use in certain areas in order to facilitate resource protection and other policy goals. Additionally, the BLM’s existing 2015 GRSG RMP Amendment management direction does not propose OHV closures, and none are being proposed in this RMP Amendment. Accordingly, the BLM has not unlawfully restricted access under the GRSG PRMPA/FEIS.

The BLM does not propose any amendments to management direction for travel and transportation, including open, limited designations, under the GRSG PRMPA/FEIS. Additionally, the GRSG PRMPA/FEIS acknowledges that the BLM will apply management actions in the Proposed RMP Amendment only to the extent that they are consistent with all relevant federal laws and regulations, Executive Orders, and management policies of the BLM, including FLPMA, the Mining Law of 1872, the Surface Resources Act, and BLM Manual Section MS-1626. Accordingly, this protest issue is denied.

References

- National Technical Team (NTT). 2011. *A Report on National Greater Sage-Grouse Conservation Measures*. Available online: <https://tethys.pnnl.gov/sites/default/files/publications/Sage-Grouse-Conservation-2011.pdf>.
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- U.S. Fish and Wildlife Service (USFWS). 2023. Management of Conflicts Associated with Common Ravens in the United States. A Technical Review of the Issues, 2023. December. Available online: <https://www.fws.gov/media/management-conflicts-associated-common-ravens-united-states>.

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