

*BLM Director's Protest Resolution
Report*

**Miles City (Montana)
Greater Sage-Grouse
Resource Management Plan /
Final Environmental Impact
Statement**

September 15, 2015



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-MT-MILESCITY-GRSG-15-XX
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

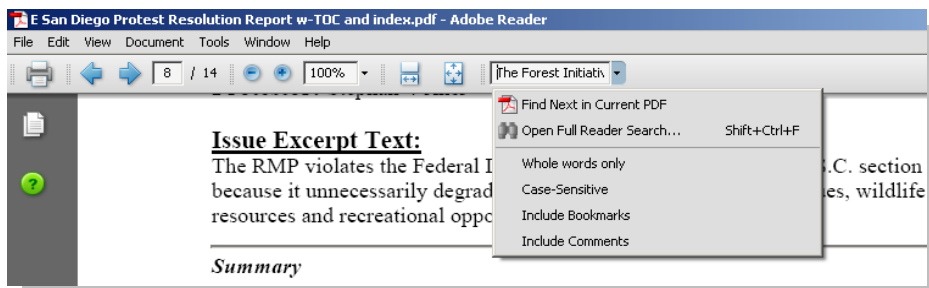
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

Summary
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission(s) Number	Determination
Hertha Lund	Lund Law PLLC obo Prairie County Cooperation State Grazing District	PP-MT-MILESCITY- GRSG-15-01	Denied-Issues Comments
Michael James	Denbury Onshore, LLC	PP-MT-MILESCITY- GRSG-15-02	Denied-Issues Comments
Steve Charter	Northern Plains Resource Council	PP-MT-MILESCITY- GRSG-15-03	Denied-Issues Comments
Alan Joscelyn	Attorney General, State of Montana	PP-MT-MILESCITY- GRSG-15-04	Denied-Issues Comments
Bret Sumner	Beatty & Wozniak obo Exxon/XTO	PP-MT-MILESCITY- GRSG-15-05	Denied-Issues Comments
Charles Kerr	Great Northern Properties Limited Partnership	PP-MT-MILESCITY- GRSG-15-06	Denied-Issues Comments
Dave Galt	Montana Petroleum Association	PP-MT-MILESCITY- GRSG-15-07	Denied-Issues Comments
Travis Bruner	Western Watersheds Project	PP-MT-MILESCITY- GRSG-15-08	Denied-Issues Comments
Bruce Jones	Cloud Peak Energy Resources, LLC	PP-MT-MILESCITY- GRSG-15-09	Denied-Issues Comments
Kyle Tisdell	WELC	PP-MT-MILESCITY- GRSG-15-10	Denied-Issues Comments
Mark Salvo	Defenders of Wildlife	PP-MT-MILESCITY- GRSG-15-11	Denied-Issues Comments
Craig Kauffman	Safari Club International	PP-MT-MILESCITY- GRSG-15-12	Dismissed-Only Comments
Brian Sybert	Montana Wilderness Association	PP-MT-MILESCITY- GRSG-15-13	Denied-Issues Comments

Issue Topics and Responses

FLPMA-General

Issue Number: PP-MT-MILESCITY-GRSG-15-05-6

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the RMPA's imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the Endangered Species Act (ESA).

Issue Number: PP-MT-MILESCITY-GRSG-15-05-7

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: FWS has not developed a recovery plan pursuant to the ESA, and BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery plan in violation of FLPMA.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-32

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The provision of the Proposed RMP requiring FWS to find that criteria related to the GRSG are met before BLM may grant an exception to an NSO stipulation is inconsistent with congressional policy regarding management of unlisted wildlife on the public and National Forest System lands.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-38

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades maintain the Proposed RMP's proposal to prioritize leasing outside of PHMA and to make PHMA open for leasing with NSO stipulations that cannot be waived or modified constitutes a de facto withdrawal under FLPMA.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-5

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP confirms that a "net conservation gain" is beyond BLM's authority under FLPMA. BLM does not assert that a "net conservation gain" is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the "net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore [GRSG] and its habitat." Proposed RMP/Final EIS at 1-5. BLM's stated goal of "enhance, conserve, and restore" is beyond BLM's authority under FLPMA.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-15

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: BLM does not propose to seek withdrawal of important GRSG

habitats from locatable mineral entry in PHMAs. Given that the Wyoming BLM's position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of

the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

Summary:

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that: uses a non-legislated standard of "net conservation gain", creating a de facto recovery plan that exceeds the "unnecessary and undue degradation" standard; and abrogates the BLM's authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species. The BLM failed to give notice to Congress and satisfy other procedural requirements when it implemented restrictions in PHMAs, including for oil and gas development, creating a de facto withdrawal and an exclusion of a major uses of public lands over 100,000 acres.

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

Response:

The FLPMA details the BLM's broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Miles City PRMP/FEIS specifically addresses goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Vol. I, Chapter 1, p.1-2 and 1-3, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM developed the Miles City PRMP/FEIS with involvement from cooperating agencies, including Federal agencies, state agencies, local governments, and tribal governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

Wildlife Management

The range of alternatives for GRSG management, detailed in Volume I, Chapter 2, p. 2-15, states the common goal to “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners.”

The proposed plan provides that in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. The Proposed RMP is consistent with BLM’s authority as described in FLPMA , which is not limited to preventing unnecessary or undue degradation. It is also consistent with BLM Manual 6840 mentioned above by reducing or eliminating threats to GRSG and its habitat.

The Proposed RMP/FEIS is not in violation of FLPMA’s reporting requirements. The FLPMA requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning. Specifically, Section 202(e)(2) states “[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate.”

The Miles City PRMP/FEIS does not make the decision to exclude any major use of public lands (defined in FLPMA as domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production) with respect to an area of 100,000 acres or more and therefore this provision is not triggered. Moreover, under 43 CFR 1610.6, which addresses the implementation of this requirement, the BLM is not required to provide such a report until the Proposed RMP is finalized and the BLM begins implementation.

In addition, the management actions governing oil and gas leasing are not “withdrawal” decisions triggering compliance with the withdrawal provisions of section 204 of FLPMA. First, the management actions referenced with respect to oil and gas leasing are not “closures”. Moreover, while a withdrawal may be one tool to close areas to oil and gas leasing, it is not the only one. The proposed plan’s actions with respect to oil and gas leasing invoke BLM’s planning authority under section 202 of FLPMA, not the withdrawal authority of section 204. To the extent withdrawals are contemplated by the proposed plan, they are “recommended” for withdrawal and are not made as part of this planning effort. There is no “de facto” withdrawal.

The proposed plan does not allow unnecessary or undue degradation of the public lands. Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Miles City PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the Miles City PRMP/FEIS, the BLM fully

complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Miles City PRMP/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

In Volume I, Chapter 2, p. 2-15 and p. 2-17, the Miles City PRMP/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would withdraw as much as 1.04 million acres from mineral entry. The proposed decision regarding lands available to mineral entry is detailed on p. 2-79, Alternative E, Action 17: “Approximately 2.18 million acres would be open to mineral location.”

For the development of fluid minerals under existing leases, the Miles City PRMP/FEIS details BLM’s objective on p. 2-45 to 2-46 to “work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts to the extent compatible with lessees’ rights to drill and produce fluid mineral resources.” Any conditions of approval for permits to drill on existing leases, including measures necessary to prevent unnecessary or undue degradation, will be evaluated at the project level when the plan is implemented.

The Miles City PRMP/FEIS will not result in unnecessary or undue degradation of public lands.

Valid Existing Rights

Issue Number: PP-MT-MILESCITY-GRSG-15-05-2

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Miles City RMPA proposes to impose new lease stipulations through permit COAs on valid existing leases, an action that vastly exceeds XTO’s original lease contract terms. For example, the RMPA proposes requiring NSO requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a net conservation gain standard; and imposing disturbance and density caps on development. These management prescriptions would unduly and unreasonably restrict XTO’s right and ability to develop its leases.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-39

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM has not adequately explained or justified the proposal to designate all PHMA as right-of-way avoidance areas. Lessees’ ability to develop their leases could be significantly impacted if BLM inappropriately limits access to these leases. BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of an oil and gas lease does not guarantee access to the leasehold, a federal

lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 CFR § 3101.1-2 (2006).

Issue Number: PP-MT-MILESCITY-GRSG-15-05-3

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: In addition, specific and seemingly arbitrary restrictions based on disturbance thresholds are inconsistent with BLM's own regulations that authorize lessees to use as much of the surface as is reasonable necessary to develop its minerals. 43 CFR § 3101.1-2.

Issue Number: PP-MT-MILESCITY-GRSG-15-05-4

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Miles City RMPA's mandate for compensatory mitigation for any disturbance within GrSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO's ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM's authority under FLPMA.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-21

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM's decision to impose new restrictions on existing federal oil and gas leases. The Proposed RMP attempts to impose numerous restrictions on existing oil and gas

leases.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-22

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM's imposition of new restrictions that are inconsistent with existing leases.²² First, BLM does not have the authority to impose new restrictions on valid existing leases under FLPMA. Second, BLM cannot unilaterally modify federal leases, which are valid existing contracts. Third, BLM cannot impose new restrictions on existing leases that render development uneconomic or impossible.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-23

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The proposed addition of new restrictions to existing leases exceeds BLM's legal authority under FLPMA. BLM may not modify existing lease rights through its land use planning process because FLPMA expressly states that all BLM actions, including authorization of resource management plans (RMPs), are "subject to valid existing rights." 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, BLM cannot terminate, modify, or alter any valid or existing rights.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-24

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM’s Land Use Planning Manual reinforces that RMPs must respect existing lease rights. “All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases...” See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). BLM must comply with the provisions of its planning manual and recognize existing rights. Any attempts to modify a federal lessee’s existing rights would violate the terms of its leases with BLM and the BLM’s own policies.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-25

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: With respect to the Proposed RMP, BLM’s attempt to impose new conditions and measures on existing leases is inconsistent with valid existing rights. In particular, the Proposed RMP’s provisions requiring application of lek buffer distances and evaluation of impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances “only if” a lek buffer distance other than the distance identified in the Proposed RMP offers the same or greater level of conservation. Proposed RMP/Final EIS at GRSG BUF-2. In GHMA, BLM may approve actions within the lek buffer distances under a broader set of circumstances²³—but “only if” those circumstances apply. See Proposed RMP/Final EIS at GRSG BUF-1 – BUF-2. The Proposed RMP does not leave BLM room to consider valid existing rights

granted under a lease if development cannot occur under the circumstances identified in the Proposed RMP. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection to greater sage- GRSG and its habitat than the distance identified in the Proposed RMP, the Proposed RMP does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-26

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” Thus, judicial and administrative authorities recognize that a federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-27

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Section 3101.1-2, 43 CFR, states that BLM may impose “reasonable mitigation measures to

minimize adverse impacts the extent consistent with lease rights granted.” BLM, however, has expressly recognized that this regulation does not allow it to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 CFR § 3101.1- 2, BLM unequivocally stated that this regulation “will not be used to increase the level of protection of resource values that are addressed in lease stipulations.” 53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988). BLM further explained that “the intent of the proposed rulemaking” was not to impose measures that, for example, “might result in an unstipulated additional buffer around an area already stipulated to have a buffer.” Id. (emphasis added). Any attempts by BLM to impose measures that expand express stipulations attached to leases are inconsistent with the leases’ contractual terms.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-29

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Moreover, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a “net conservation gain” is not contemplated anywhere within a federal oil and gas lease. Because compensatory mitigation that yields a net conservation gain is inconsistent with the terms of existing oil and gas leases, BLM cannot require such mitigation without breaching or repudiating its oil and gas leases.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-31

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM lacks authority to impose the new lek buffer distance requirement on leases with stipulations that prescribe buffer distances under 43 CFR § 3101.1-2. Furthermore, the lek buffer distance is inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO and CSU stipulations.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-15

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: BLM does not propose to seek withdrawal of important GRSG habitats from locatable mineral entry in PHMAs. Given that the Wyoming BLM’s position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

Summary:

The PRMP/FEIS violates valid, existing rights.

The PRMP/FEIS violates BLM Special Status Species policy by failing to provide adequate regulatory mechanisms to address the threat to GRSG habitats and populations from locatable mineral entry in PHMAs.

Response:

The Miles City PRMP/FEIS is subject to valid existing rights (FLPMA, Section 701(h)), (PRMP/FEIS, Volume I, Chapter 1, p. 1-3). For example, in Volume I, Chapter 2, p. 2-4, Objective 3 states that “Priority will be given to leasing and development of fluid minerals outside of PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources in PHMA and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights...”

Additionally, the following direction would be applied regarding the application of the disturbance cap (p. 2-8): “If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) within GRSG Priority Habitat Management Areas (PHMA) in any given Biologically Significant Unit (BSU), then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 hard rock mining law, valid existing rights, etc.) would be permitted by BLM within GRSG PHMAs in any given BSU until the disturbance has been reduced to less than the cap.”

With the respect to oil and gas leasing specifically, the BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, BLM has the authority to impose reasonable measures [e.g. COA] to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Miles City PRMP/FEIS provides management direction for conditions of approval on valid existing leases, it does so only consistent with valid existing rights.

Special Status Species Policy

Additional discussion regarding protest points related to BLM sensitive species is addressed in the Special Status Species section of this document.

Multiple Use Mandate

Issue Number: PP-MT-MILESCITY-GRSG-15-05-10

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Miles City RMPA could be interpreted as imposing a “no significant impact” standard for oil and gas operations. This de facto insignificance

standard violates BLM’s statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a “major use” of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

Issue Number: PP-MT-MILESCITY-GRSG-15-13-6

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: The Miles City Proposed RMP fails to balance conservation with development across the planning area. While we appreciate that BLM proposes to manage some lands to protect wilderness characteristics, and that BLM would ascribe a variety of administrative designations and other conservation management to some lands and resources in the Miles City Field Office, the proposed plan would still protect only 5,236 acres of lands with wilderness characteristics in a planning area with 2.75 million acres of public lands. This does not represent balanced management for the multiple uses of our public lands, which include wilderness and wildlife values in addition to primitive recreation experiences.

Summary:

The PRMP/FEIS violates the multiple use provisions of FLPMA by:

- imposing a “no significant impact” standard for oil and gas operations; and
- failing to balance conservation with development across the planning area.

Response:

Section 302 of FLPMA provides that the Secretary shall manage the public lands under principles of multiple use and sustained yield. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people and a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

The Federal Land Policy and Management Act (“FLPMA”), 43 USC § 1701 et seq., imposes a duty on BLM to identify and protect the many natural resources found in the public lands governed by the Miles City RMP. FLPMA requires BLM to inventory its lands and their resource and values, “including outdoor recreation and scenic values.” 43 USC § 1711(a). FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. 43 USC § 1712(c)(4); 43 USC § 1712(c)(1). Through management plans, BLM can and should protect wildlife, scenic values, recreation opportunities and wilderness character in the public lands through various management decisions, including by excluding or limiting certain uses of the public lands. See 43 USC § 1712(e). This is necessary and consistent with the definition of multiple use, which identifies the importance of various natural resources (such as recreation, wildlife, natural scenic values) and requires BLM’s consideration of the relative values of these resources but “not necessarily to the combination of uses that will give the greatest economic return” (USC § 1702(c)).

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

All alternatives considered in the Miles City PRMP/FEIS, as described in Chapter 2 (Vol.1, p. 2-1 through 2-157), provide an appropriate balance 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 Miles City PRMP/FEIS complies with FLPMA's multiple use mandate.

Consistency with State and Local Plans

Issue Number: PP-MT-MILESCITY-GRSG-15-04-1

Organization: Attorney General State of Montana

Protestor: Alan Jocelyn

Issue Excerpt Text: The State Director's Decision on the three protested plans is believed to be wrong because the plans fail to take proper and legally required cognizance of Montana's interests, including the right to federal deference to the Management Plan and Conservation Strategies For GRSG in Montana, and therefore impose unnecessarily onerous restrictions upon uses of public lands in the planning areas, including mineral development, agricultural and grazing operations, recreation and other uses.

Issue Number: PP-MT-MILESCITY-GRSG-15-05-1

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text:

Importantly, the Miles City RMPA is inconsistent with the Montana GRSG

Habitat Conservation Strategy despite its similarities to and consistency with the Wyoming Plan, which the BLM mirrored in three Wyoming land use plans. See Montana Executive Order 10-2014.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-1

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The PRMP/EIS GRSG habitat conservation program is inconsistent with the corresponding program developed by the State of Montana in violation of FLPMA and BLM's planning regulations.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-2

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: The PRMP/EIS does not adhere to these requirements because its GRSG habitat conservation program is egregiously inconsistent with the Montana

Program and it neither acknowledges nor justifies those inconsistencies. Asserting that the PRMP/EIS complements the Montana Program simply because they share a focus on GRSG conservation measures (PRMP/EIS at 1-17) is a far cry from ensuring that the PRMP/EIS is consistent with the state program to the maximum extent possible. In fact, BLM admits that the PRMP/EIS is inconsistent with the Montana Program where it concedes that amendment of the PRMP/EIS would be necessary to achieve the consistency required by the FLPMA and its implementing regulations:

Issue Number: PP-MT-MILESCITY-GRSG-15-06-3

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: BLM's approach to the calculation of the amount of actual disturbance is inconsistent with the Montana Program. BLM has not explained why the PRMP/EIS is required under FLPMA or other federal law to use a different approach than the Montana Program.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-4

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: As with the disturbance cap, BLM has failed to demonstrate that adopting the Montana Program's approach to lek buffers and exceptions would be contrary to FLPMA or other federal law.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-1

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the significant inconsistencies between the Proposed RMP and the Montana GRSG Habitat Conservation Strategy. See Montana Executive Order 10- 2014 ("Montana Plan"). These inconsistencies are the result of BLM's choice to impose a national, one-size-fits-all approach to GRSG conservation in violation of FLPMA requirement for BLM to coordinate land use planning with state and local governments. The Proposed RMP diverges from the Montana Plan in many important respects. For example, the Montana Plan imposes a five percent disturbance cap within core areas. Montana Plan at 14, 17. The Proposed RMP, on the other hand, requires a three percent disturbance cap. Proposed RMP/Final EIS at 2-8, 2-52. The Montana Plan imposes a 0.25 mile buffer around active leks in general habitat and 0.6 miles around leks in core habitat, Montana Plan at 14, 19, while the Proposed RMP imposes No Surface Occupancy (NSO) stipulations throughout PHMA and NSO restrictions within 0.6 miles around leks in general habitat, Proposed RMP/Final EIS at 2-47 – 2- 48.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-2

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM's refusal to adopt the Montana Plan is arbitrary and capricious under the Administrative Procedure Act (APA). 5 USC § 706. The Montana Plan is nearly identical in its GRSG restrictions to a similar plan adopted by the State of Wyoming, which the BLM in Wyoming adopted in its GRSG management plan revisions. Compare Wyoming Executive Order 2011-5, Attachment B at 8

– 12 (describing five percent disturbance cap, 0.6 mile core lek buffers, 0.25 mile general lek buffers, and two mile seasonal buffers), with Montana Plan, Attachment D at 14 – 17 (describing the same stipulations). The Wyoming GRSG Land Use Planning Amendments (May 2015) (“Wyoming 9-Plan LUPA”), the Buffalo Resource Management Plan revision (May 2015) (“Buffalo RMP”), and the Bighorn Basin Resource Management Plan revision (May 2015) (“Bighorn Basin RMP”), for example, incorporate the Wyoming Plan’s NSO lek buffers, Wyoming 9-Plan LUPA at 2-60, Management Nos. 129, 130; Buffalo RMP at 186, 192, 196, SS WL-4024; Bighorn Basin RMP at 2-23, Record No. 4117; the Wyoming Plan’s seasonal restrictions, Wyoming 9-Plan LUPA at 2-60 – 2-61, Management Nos. 131 – 33; Buffalo RMP at 191, 195, 199, SS WL-4024; Bighorn Basin RMP at 2-23, Record Nos. 4118, 4119; and the Wyoming Plan’s five percent disturbance cap, Wyoming 9- Plan LUPA at

2-58, Management No. 127; Buffalo RMP at 186, SS WL-4024; Bighorn Basin RMP at 2-23, Record No. 4117. The BLM provided no explanation in the Proposed RMP for its choice to adopt these important provisions in the Wyoming Plan but failure to consider or adopt the same provisions in the Montana Plan.

Issue Number: PP-MT-MILESCITY-GRSG-15-09-1

Organization: Cloud Peak Energy Resources, LLC

Protestor: Bruce Jones

Issue Excerpt Text: The State Director's decision is believed to be in error since it finalizes a land use plan that fails to consider consistency with local land use plans (such as the TBGPEA CCAA-CCA-CA) for GRSG conservation, contrary to the requirements of Section 202(c)(9) of the Federal Land Policy and Management Act.

Summary:

The PRMP/FEIS is inconsistent with the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014). Additionally, the BLM has inadequately considered the counties’ land use plans or acknowledged the inconsistencies in the PRMP/FEIS, in violation of Section 202c(9) of FLPMA and BLM’s planning regulations. BLM also acted arbitrarily and capriciously under the Administrative Procedure Act (APA) by not adopting the Montana Plan, since it is nearly identical in its GRSG restrictions to a similar plan adopted by the State of Wyoming and used by BLM in the Wyoming land use plan revisions.

Response:

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of Miles City PRMP/FEIS, including the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014), and other related state and local plans. The BLM has worked closely with state, local, and Tribal

governments during preparation of the Miles City PRMP/FEIS. Volume II, Chapter 5 describes coordination that has occurred throughout the development of the Miles City PRMP/FEIS. A list of the local, state, and Tribal plans that the BLM considered can be found in Volume I, Chapter 1, p. 1-16 (Consistency with Other Programs, Plans, and Policies). The BLM conducted an internal review process of its plan to identify potential inconsistencies with local, state, and Tribal plans (PRMP/FEIS, Volume II, Chapter 5, p. 5-9).

BLM acknowledges some similarities between the Montana GRSG Habitat Conservation Strategy and the Wyoming Plan, but there are several reasons why BLM was not able to achieve complete consistency with the Montana Strategy are found in Volume I, Chapter 2, p. 2-8. If the BLM determines that the State of Montana has adopted a GRSG Habitat Conservation Program that contains comparable components to those found in the State of Wyoming's Core Area Strategy including an all lands approach for calculating anthropogenic disturbances, a clear methodology for measuring the density of operations, and a fully operational Density Disturbance Calculation Tool, then the potential for further consistency would increase.

The agency will discuss why any remaining inconsistencies between the Miles City PRMP/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD) for the Miles City PRMP/FEIS. Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Range of Alternatives

Issue Number: PP-MT-MILESCITY-GRSG-15-07-11

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed RMP. First, the Final EIS does not analyze an alternative to the Proposed RMP's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed RMP's monitoring framework, including alternatives that BLM has the resources to implement. Third, the Final EIS does not analyze alternatives to the adaptive management triggers and responses. Fourth, the Final EIS does not analyze alternatives to the lek buffer distances. Finally, the Final

EIS did not analyze the alternative of the Montana Plan.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-20

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, BLM cannot implement the "responses" to the soft triggers because it did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS accompanying the Proposed RMP. See Proposed RMP/Final EIS at 4-41. FLPMA and NEPA require BLM to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 40 CFR § 1502.14, 1502.16; 43 CFR §§ 1610.4-5, 1610.4-6.

Therefore, BLM must consider alternatives to the soft trigger responses and analyze their potential environmental impacts before it may implement them. Because BLM has neither analyzed alternatives to the soft trigger responses nor analyzed their potential impacts, BLM may not implement the soft trigger responses without amending the Proposed RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The Plan dismisses without any analysis any alternative to eliminate grazing from BLM public lands. PRMP/FEIS at 2-23. But the plan fails to analyze any alternatives that would have eliminated livestock grazing from GRSG habitats, or truly restricting livestock grazing use by season, or that would mandate strict grazing management on GRSG allotments. Thus, the plan lacks a true analysis of the beneficial impacts of removing livestock grazing from GRSG habitat entirely, or seasonally in accordance with the best available science.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-5

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The need for seasonal restrictions has been affirmed by leading GRSG scientists and the courts. Dr. Clair Braun identified the need for the seasonal restrictions in 2006: “Grazing should not be allowed until after 20 June and all livestock should be removed by 1 August with a goal of leaving at least 70 percent of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also

established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1).” WWP v. Salazar, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012). The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve GRSG habitats.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-4

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: BLM failed to consider a reasonable Range of Alternatives. As explained above, perhaps the biggest flaw in BLM’s Miles City RMP revision process has been the agency’s unbending refusal to consider any alternative that would reduce climate impacts and greenhouse gas emissions by limiting fossil fuel development within the planning area.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-5

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: However, BLM’s refusal to even consider the reasonable alternatives put forward by the Conservation Groups prevents BLM from engaging in the reasoned consideration of alternatives that is the very core of NEPA’s procedural mandate and renders BLM’s FEIS invalid.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-6

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: In its FEIS, BLM violated NEPA by failing to consider any alternative that would reduce coal development, including alternatives raised by the Conservation Groups nearly two years ago. Every alternative considered in the FEIS proposes to authorize extensive energy development, and all of them make more than 71 billion tons of coal available for leasing and development over approximately 1.5 million acres of BLM land. Although BLM states that its proposal opens up the planning area to an astounding 71 billion tons of coal mining, in the Minerals Appendix to the RMP BLM hedges this figure by noting that it expects “only” 1.166 billion short tons of coal would actually be developed by mines within the planning area. Minerals App. at 130. Whether one evaluates the total amount of coal that BLM makes available for leasing or the total amount of coal that BLM expects to lease from within the planning area, it is clear that the numbers remain the same

Summary:

The Miles City PRMP/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail alternatives:

- to the BLM’s goal of achieving a net conservation gain” or the monitoring framework;
- for adaptive management triggers and responses;
- such as the Montana Plan;
- that would exclude grazing from BLM public lands or GRSG habitats;
- that would reduce climate impacts and greenhouse gas restrictions or restrict coal leasing/development; and
- submitted by conservation groups.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate reasonable alternatives, and, for alternatives which were eliminated from detailed study, to

across all considered alternatives. There is zero difference between the considered alternatives with respect to coal production and combustion.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-7

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: Despite Conservation Groups’ reasonable proposal that BLM consider at least one alternative that entailed less coal mining and combustion, in the FEIS BLM again analyzed only full-production scenarios. In the FEIS, BLM considered five alternatives, labelled A-E, that are identical with respect to coal. FEIS 2-76. There is absolutely zero variation between alternatives with respect to coal: each alternative calls for leaving approximately 1.5 million acres, containing approximately 70 billion tons of coal open for coal leasing. FEIS 2-76. Consistent with this utter lack of distinction between alternatives, the FEIS presents only one reasonably foreseeable development scenario for all alternatives, with identical production estimates for all existing coal operations in the area. Minerals App. at 130.

briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Miles City PRMP/FEIS, Vol. I, Chapter 2, Alternatives Considered but Eliminated from Detailed Analysis, p. 2-22.) When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a range of reasonable alternatives that meet the purpose and need (Miles City PRMP/FEIS, Volume I, Chapter 1, p. 1-2) and address issues identified during the scoping period. The Miles City PRMP/FEIS analyzed five distinct alternatives in detail, which are described in Table 2.5 Comparison of Alternatives (Miles City PRMP/FEIS, Volume 1, Chapter 2, p. 2-27). The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Net Conservation Gain - Monitoring Framework

Net Conservation Gain is described in the Miles City PRMP/FEIS Glossary (p. GLO-23) as “The actual benefit or gain above baseline conditions,” and is addressed again in the section Changes Between the Draft RMP/EIS and the Proposed RMP/Final EIS (p. 1-5). The net conservation gain strategy responds to the landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The action alternatives provide management direction to meet this landscape-scale goal (Table 2.5 Comparison of Alternatives (p. 2-27)). The Monitoring Framework is described in the section Adaptive Management Strategy for GRSG Habitat Management (p. 2-11) of the Miles City PRMP/FEIS and describes both the process and standard to be achieved during implementation of management actions. Management objectives do not require variation amongst the action alternatives.

Adaptive Management and Triggers

Hard and soft triggers are a strategy to address localized GRSG population and habitat changes by providing the framework in which management would change if monitoring identifies negative population and habitat anomalies. These triggers are essential for identifying when potential management changes are needed in order to continue meeting GRSG conservation objectives (Miles City PRMP/FEIS, Adaptive Management Strategy for GRSG Habitat Management p. 2-11).

Soft triggers require immediate monitoring and surveillance to determine causal factors and may require curtailment of activities in the short- or long-term, as allowed by law. The project level adaptive management strategies will identify appropriate responses where the project's activities are identified as the causal factor. The BLM and the adaptive management group will implement an appropriate response strategy to address causal factors not addressed by specific project adaptive management strategies, not attributable to a specific project, or to make adjustments at a larger regional or state-wide level (Miles City RMP/FEIS, p. 2-13).

Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation objectives set forth in the BLM plans. As such, the Proposed

Plan/Final EIS includes a “hard-wired” plan-level response; that is, it provides that, upon reaching the trigger, a more restrictive alternative, or an appropriate component of a more restrictive alternative analyzed in the EIS will be implemented without further action by the BLM. Specific “hard-wired” changes in management are identified in Table 2-3, Specific Management Responses (Miles City RMP/FEIS, p. 2-13).

In addition to the specific changes identified in Table 2-3, the BLM will review available and pertinent data, in coordination with biologists and managers from multiple agencies including the USFWS, NRCS, and the State of Montana, to determine the causal factor(s) and implement a corrective strategy. The corrective strategy would include the changes identified in Table 2-3 and could also include the need to amend or revise the RMP to address the situation and modify management accordingly (Miles City PRMP/FEIS, p. 2-13).

When a hard trigger is reached in a BSU including those that cross state lines, the WAFWA Management Zone GRSG Conservation Team will convene to determine the causal factor, put project-level responses in place, as appropriate and discuss further appropriate actions to be applied. The BSU for the PRMP/FEIS is the total of all the PHMA within a GRSG population as delineated in the COT report. Adoption of any further actions at the plan level may require initiating a plan amendment process (Miles City RMP/FEIS, p. 2-13).

Montana Plan (State Executive Order No.10-2014)

The Miles City PRMP/FEIS addresses how Montana State Executive Order No.10-2014 would be incorporated with the Miles City plan revision (p. 1-17) and the Adaptive Management Strategy for GRSG Habitat Management (p. 2-11 through 2-14). The PRMP/FEIS states, “The State conservation efforts are complementary to the conservation measures proposed in the BLM land use plans and when combined would provide conservation efforts across land ownership boundaries.” Consideration of and inclusion of the executive order did not warrant development of a stand-alone alternative.

Eliminate Grazing from BLM Public Lands or GRSG Habitats

The Alternatives Considered but Eliminated from Detailed Analysis section (p. 2-22) provides a succinct discussion as to why an alternative to make the entire planning area unavailable to livestock grazing was not analyzed in detail. No issues or conflicts were identified during this land use planning effort that required the complete removal/elimination of livestock grazing within the planning area. NEPA requires agencies to study, develop and describe appropriate alternatives that involve unresolved conflicts concerning resource uses. The CEQ guidelines for compliance with NEPA require that agencies analyze the “No Action Alternative” in all EISs (40 CFR 1502.14(d)). For the purposes of this NEPA analysis in the Miles City PRMP/FEIS, the “no action alternative” is to continue the status quo, which includes livestock grazing (Alternative A). For this reason and those stated above, a no grazing alternative for the entire planning area was dismissed from further consideration in this PRMP/FEIS (p. 2-23).

Coal Leasing/Development

Table 2-5. Comparison of Alternatives (p. 2-76) identifies areas in the Big Dry and Powder River RMPs (BLM 1996 and 1985c) acceptable for further consideration for coal leasing and being carried forwarded in the Miles City PRMP/FEIS. In response to several similar comments

regarding that that direction was common to all alternatives, it was explained in the Public Comments Appendix to the Miles City PRMP/FEIS as follows. In accordance with 43 CFR 3420.1-5, BLM must hold a public hearing on the proposed land use plan or land use analysis if it involves the potential for coal leasing if such a hearing is requested by any person who is or may be adversely affected by adoption of the plan. Additional environmental analysis in accordance with NEPA and the coal leasing regulations would be conducted in response to leasing requests. The coal screening process would be re-evaluated and re-applied as necessary during the site-specific NEPA analysis in response to new data or changes in resources or conditions that have occurred since the original coal planning was conducted. Also, 43 CFR 3425.4 requires BLM to hold a public hearing on the environmental assessment or environmental impact statement prepared for a lease sale application prior to conducting the lease sale. While it is the case that Coal, Action 3 for all Alternatives (p. 2-76) states “At the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the lease application area is “unsuitable” for all or certain coal mining methods pursuant to 43 CFR 3461.5. PHMA is essential habitat for maintaining GRSG for purposes of the suitability criteria set forth at 43 CFR 3461.5(o)(1)”, it is also the case that (1) for BLM to propose a change, it would have had to “hold a hearing” and (2) there will be additional project-level NEPA environmental review.

Conservation Groups Alternative

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, the Miles City PRMP/FEIS succinctly addresses the management actions and alternatives that were submitted during the scoping period in the section, Alternatives Considered but Eliminated from Detailed Analysis, “Conservation Groups Alternatives” (p. 2-25). Submissions by group(s) were determined to be substantially similar to those actions and habitat areas considered within the range of alternatives for the Miles City planning effort and analyzed in the PRMP/FEIS. Specific to the proposed alternative to designate GRSG ACECs and Restoration Areas, the Miles City PRMP/FEIS does include, within the range of alternatives for detailed study, a GRSG ACEC (Alternative B) and Restoration Areas for GRSG (Table 2-5 Comparison of Alternatives p. 2-50 and p. 2-55). The submissions and subsequent actions proposed through the Conservation Groups Alternative were determined to have substantially similar effects to the actions and habitat areas considered within the range of alternatives identified in the Miles City PRMP/FEIS.

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

Cumulative Effects

Issue Number: PP-MT-MILESCITY-GRSG-15-03-2
Organization: Northern Plains Resource Council
Protestor: Steve Charter

Issue Excerpt Text: To illustrate the inadequacy of the proposed MCFO RMP, as noted in our comments submitted on the Draft RMP and EIS, the wide-spread extraction of coal bed methane (CBM) in the 1990-2008 period and its cumulative

impacts on the quantity and quality of water should be updated.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-16

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the Proposed RMP/FEIS does not adequately analyze the cumulative impacts of the Proposed RMP because it does not consider the impacts of the Proposed RMP together with the impacts of the at least 13 other GRSG RMPs. See 80 Fed. Reg. 30,676 (May 29, 2015). The CEQ regulations require agencies to analyze the “incremental impact of the action” together with “other past, present, and reasonably foreseeable future actions.” 40 CFR § 1508.7. In this case, BLM should have analyzed the cumulative impacts of the Proposed RMP with the other 13 RMPs. Clearly, development of the EISs was a coordinated national effort by BLM and the Forest Service. BLM and the Forest Service announced the RMPs and made them available on the same day. See 80 Fed. Reg. 30,718 (May 29, 2015); 80 Fed. Reg. 30,716 (May 29, 2015); 80 Fed. Reg. 30,714 (May 29, 2015); 80 Fed. Reg. 30,711 (May 29, 2015); 80 Fed. Reg. 30,709 (May 29, 2015); 80 Fed. Reg. 30,707 (May 29, 2015); 80 Fed. Reg. 30,705 (May 29, 2015); 80 Fed. Reg. 30,703 (May 29, 2015); see also Dep’t of the Interior Press Release, BLM, USFS Plans for Western Public Lands Provide for GRSG Protection, Balanced Development (May 28, 2015). Moreover, many of the Proposed RMPs contain consistent—if not standardized—provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of the RMPs propose to impose NSO stipulations with limited waiver and modification on new leases in PHMA. All of

them require that compensatory mitigation yield a “net conservation gain.”

Issue Number: PP-MT-MILESCITY-GRSG-15-07-17

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM must analyze the cumulative impacts of these nation-wide management actions on the GRSG and, in particular, the cumulative impacts on mineral leasing and development. In the planning area for the Proposed RMP alone, 1,329,000 acres are designated for leasing subject to NSO. See Proposed RMP, Table 2-2 at 2-5. Nationwide, BLM and the Forest Service propose to designate an additional 31 million mineral acres as subject to NSO stipulations.¹⁵ Throughout GRSG range, the cumulative amount of land leased with NSO (and therefore effectively rendered inaccessible) could have significant impacts on the development of federal oil and natural gas resources.¹⁶ BLM has not, however, examined the cumulative impacts of its management actions on federal oil and natural gas leasing and development. See Proposed RMP/Final EIS, Chapter 4. BLM must analyze these cumulative impacts in an EIS before it issues a ROD and Final RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-9

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Similarly, the release of the Montana Plan constitutes significant new information that BLM must consider in a Draft RMP because it affects the analysis of the cumulative impacts of BLM’s management strategy on GRSG habitat and

populations. See 40 CFR § 1508.7 (defining “cumulative impact” as the impact of the proposed action combined with past, present, and reasonably foreseeable future federal and non-federal actions). BLM does not appear to have analyzed the cumulative impacts of the Montana Plan at all. Instead, BLM described the plan’s basic provisions in less than a page and noted elsewhere that it would contribute to a “net conservation gain.” Proposed RMP/Final EIS at 4-145, 4-154.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-10

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: By dismissing the additional contributions of air pollutants as “negligible” or a small contribution to a percentage of the NAAQS, the MCFO also fails to consider the cumulative impacts of air pollution caused by the oil and gas development authorized by the Miles City RMP. However, oil and gas development of federal minerals, combined with development of private resources, along with other activity in the area, may present impacts that exceed NAAQS or contribute to violations of Class I visibility requirements. The MCFO must consider the cumulative impacts of development authorized by the RMP “added to other past, present, and

reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 CFR § 1508.7).

Issue Number: PP-MT-MILESCITY-GRSG-15-10-13

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: With regards to ozone, the agency discloses that an ozone air quality analysis will not be completed prior to the issuance of the RMP and ROD. Air Resource Management Plan Appendix at 15. The BLM cannot forego an analysis of reasonably foreseeable air quality impacts in this way.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-18

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: BLM has failed to take a hard look at the climate impacts of its proposed plan...BLM failed to analyze cumulative and incremental effects of coal, oil, and gas development on climate change, and failed to consider the Conservation Groups’ detailed comments addressing climate change and GHG emissions.

Summary:

BLM did not adequately address cumulative impacts for the following reasons:

- It did not include new information from the Montana Plan;
- It did not address cumulative effects of the proposed RMP amendments and revisions nationwide;
- It did not analyze cumulative effects of coal, oil, and gas development on climate change (and GHG); It did not address cumulative effects to oil and gas leasing development;
- It did not adequately analyze cumulative impacts to air quality; and
- It did not analyze the wide-spread extraction of coal bed methane (CBM) in the 1990-2008 period and its cumulative impacts on the quantity and quality of water.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as "...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions" (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (Miles City PRMP/FEIS, Volume I, Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts.

In accordance with CEQ guidance, cumulative effects need to be analyzed in terms of the specific resource and ecosystem being affected. As discussed in Chapter 1, part of the purpose for the proposed federal action is to identify and incorporate appropriate conservation measures to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat. The WAFWA delineated seven GRSG management zones based on populations within floristic provinces. Therefore, the cumulative effects analysis study area for the GRSG extends beyond the Miles City planning area boundary and incorporates WAFWA Management Zone (MZ) I. This delineation of the impact area is the reason why the other GRSG plan amendments were not included in the cumulative effects analyses.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The Miles City PRMP/FEIS, Volume II, Chapter 4, provides analysis of impacts to GRSG from climate change, oil and gas, coal, and air quality, as well as how the other resource will be impacted from implementing GRSG conservation measures. These discussions occur throughout the chapter within each resource section, such as in Volume II, Chapter 4, p. 4-27 and 4-266, among others. The cumulative impacts section identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

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

Public Comments

Issue Number: PP-MT-MILESCITY-GRSG-15-06-9

Organization: Great Northern Properties

Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: GNP requested that the resource areas that have been the subject of both private and public evaluations be included for consideration as either “Coal Areas Acceptable for Further Consideration” or “Coal Areas Acceptable for Further Consideration and Pending Further Study.” BLM ignored this request and has failed to appropriately revise areas identified as acceptable for further consideration for coal leasing in the PRMP/EIS.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-12

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the RDFs listed in the GRSG Required Design Features Appendix of the Proposed RMP. Although the Trades extensively commented on the RDFs in the Draft RMP, BLM did not adjust any of the RDFs in response to the Trades’ comments. Furthermore, as explained in section V.C above, BLM did not respond to the Trades’ comments as required by 40 CFR § 1503.4(a).

Issue Number: PP-MT-MILESCITY-GRSG-15-13-1

Organization: Montana Wilderness Association

Summary:

The BLM did not adequately address comments that were received on the Miles City PRMP/FEIS. The BLM received comments on issues such as Required Design Features, sagebrush focal areas, and inventories for lands with wilderness characteristics, but these comments did not result in substantive changes in the Proposed RMP/FEIS.

Response:

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

40 CFR 1503.4: Response to Comments

(a) An agency preparing a final environmental impact statement shall assess and consider

Protestor: Brian Sybert

Issue Excerpt Text: We submitted detailed comments to BLM on multiple occasions, including comments on the Draft RMP, addressing BLM's lands with wilderness characteristics inventory. These comments are not reflected in the Proposed RMP, either in the response to comments section or in updates to BLM's inventory information. Detailed letters were transmitted to the field and state office on June 5, 2014, April 9, 2014, September 19, 2014, and February 10, 2015 providing substantive concerns with the extent and accuracy of the agency's inventory of lands with wilderness characteristics. The agency has never responded these concerns in a substantive way.

Issue Number: PP-MT-MILESCITY-GRSG-15-13-2

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: BLM failed to respond to our comments or to MWA's inventory information in a substantive way, either in the Proposed RMP or through a separate response, as required by NEPA and BLM Manual 6310.

comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

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

The BLM received comment letters (submissions) by mail, e-mail, fax, and submitted/hand-delivered. The comments covered a wide spectrum of thoughts, ideas, opinions and concerns. According to the National Environmental Policy Act (NEPA), BLM is required to identify and formally respond to all substantive public comments. Substantive comments from each comment submission were coded to appropriate categories based on content of the comment. The categories generally follow the sections presented in the Draft RMP/EIS, although some relate to the planning process.

Although all comments were considered, the comment analysis process involves determining whether a comment was substantive or nonsubstantive in nature. In performing the analysis, BLM relied on the Council on Environmental Quality's regulations to determine what constitutes a substantive comment. A substantive comment does one or more of the following:

- Questions, with a reasonable basis, the accuracy of the information and/or analysis in the Draft RMP/EIS;
- Questions, with a reasonable basis, the adequacy of the information and/or analysis in the Draft RMP/EIS;
- Presents reasonable alternatives other than those presented in the Draft RMP/EIS that meet the purpose and need of the proposed action and addresses significant issues;
- Questions, with a reasonable basis, the merits of an alternative or alternatives;
- Causes changes in or revisions to the proposed action; and
- Questions, with a reasonable basis, the adequacy of the planning process itself.

Comments that failed to meet the above description were considered nonsubstantive. Although not responded to, opinions, feelings, and preferences for one element or one alternative over another, and comments of a personal or philosophical nature were read and considered. Volume II, Chapter 5, p. 5-3.

On October 27, 2014, the USFWS provided the BLM and Forest Service a memorandum titled “GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes.” The memorandum and associated maps provided by the USFWS identify areas that represent recognized “strongholds” for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. Within these areas, the BLM identified Sagebrush Focal Areas (SFAs), which are PHMAs with additional management. While there is an area in the Miles City Planning Area recognized by USFWS as a stronghold, that area is already managed as a WSA and is not identified as an SFA.

See the Miles City PRMP/FEIS, Volume I, Chapter 2, Table 2-5, p. 2-66 and p. 2-67 for how the agencies addressed lands with wilderness characteristics. Alternative E (Proposed Plan, Preferred Alternative, as modified) states 9 different management actions for lands with wilderness characteristics found within the planning area, such as Action 2: Manage LWC in the following areas (5,236 acres): Devils Creek 5,236 acres, Ridge 8,184 acres, Whitetail, Wrangler 5,309 acres, Rough 5,302 acres. Do not manage LWC in the following areas due to conflicts with resource values and uses (23,605 acres).

See the GRSG Required Design Features (RDF) Appendix. RDFs establish the minimum specifications for certain activities to help mitigate adverse impacts. However, the applicability and overall effectiveness of each RDF cannot be fully assessed until the project level when the project location and design are known. Because of site-specific circumstances, some RDFs may not apply to some projects (e.g., a resource is not present on a given site) and/or may require slight variations (e.g., a larger or smaller protective area).

See Chapter 2, Table 2-5, p. 2-76 common to all alternatives and Alternative E (Proposed Plan, Preferred Alternative, as modified) Action 1 – Areas identified in the Big Dry and Powder River RMPs (BLM 1996 and 1985c) as acceptable for further consideration for coal leasing would be carried forward:

Powder River RMP: “Future development will come from current leases covering 39,391 acres (3.43 billion tons) those unleased areas determined acceptable for further consideration in the 1979 MFP Update and 1982 Amendment covering 91,700 acres (7.83 billion tons) and unleased areas determined acceptable for further consideration from new planning covering 869,600 acres (54.37 billion tons). The combined total is 1,000,691 acres (65.63 billion tons). Emergency leases will be issued to maintain production or avoid a bypass situation on a case-by-case basis. Exchanges will be considered for existing leases, by direction of legislation, and for leases located in alluvial valley floors. Other exchanges will be considered on a case-by-case basis” (BLM 1985c, p. 2); and Big Dry RMP: “Pending application of the surface-owner consultation screen, coal will be acceptable for further consideration for leasing or exchange on 580,547 public mineral acres containing 6.18 billion tons of coal” (BLM 1996, p. 12).

It is important to note that public comments submitted during BLM’s comment process are not treated as votes for a particular action. The comment response process ensures that every comment is considered prior to approval of the Miles City PRMP/FEIS. See the PRMP/FEIS Public Comments Appendix for substantive comments and BLM's response.

The BLM has provided adequate opportunity for comments, has considered all comments and responded adequately to comments received for the Miles City PRMP/FEIS.

Joint and Lead Agencies

Issue Number: PP-MT-MILESCITY-GRSG-15-01-5

Organization: Lund Law obo Prairie County Cooperative State Grazing

Protestor: Hertha Lund

Understanding (“MOU”), giving the counties cooperating agency status in the planning process. MOU at § 1, '112. Despite this “special status,” the counties have had little ability to impact the outcome of the RMP/EIS. In some cases, the BLM blatantly ignored the counties' positions.

Issue Excerpt Text: In 2005, the BLM and 17 Counties entered into a Memorandum of

Summary:

The BLM entered into a Memorandum of Understanding (MOU) with the 17 counties in 2005, yet BLM ignored the counties' positions and the counties have had little ability to impact the outcome of the RMP/EIS.

Response:

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

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 of Miles City RMP/EIS, and identification of issues and data during scoping and during the draft of Miles City RMP/EIS public comment period. The Miles City PRMP/FEIS further describes the participation of cooperating agencies in Volume II, Chapter 5.

It is important to note that public comments submitted during BLM's comment process are not treated as votes for a particular action. The comment response process ensures that every comment is considered prior to approval of the Miles City PRMP/FEIS, including comments from the counties.

The BLM properly involved all cooperating agencies in the development of the Miles City RMP/EIS. BLM appreciates the counties' involvement in the planning effort and will continue to coordinate as appropriate.

Supplemental EIS

Issue Number: PP-MT-MILESCITY-GRSG-15-07-10

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Additionally, the management proposed under the Montana Plan presents another management alternative that BLM should consider adopting. Because the Montana Plan constitutes “significant new circumstances,” BLM must prepare a Supplemental Draft EIS.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-18

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM’s own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information/circumstances collected during the comment period” are presented. BLM Land Use Planning Handbook H- 1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses unquestionably are a “substantial change” when compared to the alternatives included in the Draft RMP, BLM should have prepared and released for comment a supplement to the Draft RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-7

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: None of the alternatives presented in the Draft RMP included the requirements that mitigation

produce a net conservation gain, the revised mitigation plan, the revised monitoring plan, the lek buffer distances, and the adaptive management triggers and responses. BLM first presented the public with these components when it released the Proposed RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-8

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, revised mitigation plan, revised monitoring plan, lek buffer distances, and adaptive management triggers and responses were not incorporated into the Proposed RMP and Final EIS in response to public comment on the Draft RMP/Draft EIS or in response to environmental impacts disclosed in the Draft EIS. See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, BLM appears to have incorporated the net conservation gain requirement, revised mitigation plan, and revised monitoring plan to respond to national policies by BLM and FWS that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Serv., GRSG Mitigation Framework (2014); BLM, The GRSG Monitoring Framework (2014). Similarly, the lek buffer distances and adaptive management triggers and responses appear to have been added to make the Proposed RMP consistent with the GRSG provisions in other land use plans. See Fact Sheet: BLM/USFS GRSG Conservation Effort (noting that land use plans to conserve the GRSG are based on three objectives for conserving and protecting

habitat). The public never had the opportunity to review and comment on these new components.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-11

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: NEPA imposes on federal agencies a continuing duty to supplement draft or final environmental impact statements in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action. *Idaho Sporting Cong., Inc. v. Alexander*, 222 F.3d 562, 566 n.2 (9th Cir. 2000); 40 CFR § 1502.9(c)(1)(i). Here, EPA’s proposal to revise ozone standards, as well as the science supporting

the revision, constitute new circumstances and information, which BLM must take account of in its final EIS. The FEIS’s conclusions regarding ozone are based on comparison to the existing NAAQS for ozone. EPA’s proposed revision of the ozone NAAQS and the abundant science supporting the proposal plainly demonstrate that the current NAAQS are not sufficient to protect public health. Accordingly, the ozone analysis must be revised. The need for BLM to revise its ozone analysis in light of EPA’s proposed new standard is especially acute given BLM’s acknowledgement that its preferred alternative may contribute to violations of the existing standard. See FEIS at 676. Further, the FEIS’s analysis of ozone neglects to address and consider that the impacts of climate change will worsen ozone pollution.

Summary:

None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the lek buffer distances, the revised mitigation and monitoring plans, and the adaptive management triggers and responses.

The FEIS does not consider EPA’s new ozone standards and neglects to consider impacts from climate change.

Response:

Considering the comment regarding new components of the Proposed Action not specifically described in the Draft RMP/EIS, the agencies must provide a supplemental analysis to the public, and the analysis of climate change is not considered; the NEPA Handbook 1790-1, 5.3, p. 29 “Supplementation” has a particular meaning in the NEPA context. The Supreme Court has explained that supplementation of an EIS is necessary only if there remains major Federal action to occur. (See *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004)). In the case of a land use plan, implementation of the Federal action is the signing of a Record of Decision.

You must prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- you make substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- you add a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, March 23, 1981); or

- there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

From the BLM NEPA Handbook, Section 5.3.1 When Supplementation is Appropriate, p. 30
 “New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate.

From the BLM NEPA Handbook , 5.3.2 When Supplementation is Not Appropriate, p. 30
 Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the draft or final EIS). If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS. When new circumstances or information arise prior to the implementation of the Federal action, but your evaluation concludes that they would not result in significant effects outside the range of effects already analyzed, document your conclusion and the basis for it. If the new circumstances or information arise after publication of a draft EIS, document your conclusion in the final EIS. If the new circumstances or information arise after publication of the final EIS, document your conclusion in the ROD.

40 CFR 1502.9: Draft, Final, and Supplemental Statements

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Land Use Planning Handbook, H1601-1, p. 24.

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

The Proposed RMP/Final EIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for GRS—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA

analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternative B) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, closed to mineral material, closed to ROWs, Alternatives A, C and D identified and analyzed fewer restrictions on development in GRSG habitat. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed (Chapter 1, page 1-5).

The Proposed RMP/Final EIS identified hard and soft adaptive management triggers for population and habitat and identified appropriate management responses. Chapter 2 of the Draft RMP/EIS identified that the BLM would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed Plan, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternative B in the Draft RMP/EIS.

The monitoring framework was further refined in the FEIS, and further clarification as to how disturbance cap calculations would be measured were developed for the FEIS. During the public comment period, BLM received comments on how monitoring and disturbance cap calculations would occur at implementation. The DEIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced the two Appendices (GRSG Disturbance Cap Appendix and GRSG Monitoring Framework Appendix) in the FEIS.

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal.

The Proposed RMP includes components of the alternatives analyzed in the Draft RMP/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed RMP is a minor variation and that the impacts of the Proposed RMP would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed RMP/Final EIS are similar or identical to those described Draft RMP/ EIS (Chapter 1, page 1-5).

The Governor of the State of Montana issued Executive Order 10-2014 which created the Montana GRSG Oversight Team (MSGOT) and the Montana GRSG Habitat Conservation Program. The executive order outlines a number of conservation strategies for Montana state agencies to follow for land uses and activities in GRSG habitat. The State conservation efforts are complementary to the conservation measures proposed in the PRMP/FEIS and when combined will provide conservation efforts across land ownership boundaries (FEIS at 1-16).

The BLM is not required to prepare a supplemental EIS. Changes in the proposed action are not substantial.

Best Available Science

Issue Number: PP-MT-MILESCITY-GRSG-15-01-14

Organization: Lund Law PLLC obo Prairie County Cooperation State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM based the RMP on its 2011 National Technical Team Report (“NTT Report”), which is not based on best available science in violation of the ESA.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-15

Organization: Lund Law PLLC obo Prairie County Cooperation State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM's dependence on the NTT also violated the DQA and is arbitrary, capricious and unlawful. Further, it seems that the BLM is using the RMP to justify the BLM's determination related to GRSG that were made prior to the RMP/EIS analysis, which is a violation of NEPA.

Issue Number: PP-MT-MILESCITY-GRSG-15-05-9

Organization: Beatty & Wozniak obo Exxon/XTO

Protestor: Bret Sumner

Issue Excerpt Text: XTO also protests the BLM's failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Miles City RMPA. The Miles City RMPA does not meet BLM's science and data requirements under its own Land Use

Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA. BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 CFR § 1500.1(b); 40 CFR § 1502.8. In developing a land use plan amendment, BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-40

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed RMP are largely based on the U.S. Fish and Wildlife Service's (FWS) GRSG (Centrocercus urophasianus) Conservation Objections: Final Report (Feb. 2013) (“COT Report”) and the BLM's Report on National GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (Dec. 2011) (“NTT Report”). Reliance on these reports is arbitrary and capricious under the Administrative Procedure Act (APA). 5 USC § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act (“DQA”), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515,

114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-41

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the “Literature Cited” section. Megan Maxwell, BLM’s NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?, p. 13-14 (May 20, 2013) (“NWMA Review”), Attachment 6. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34 percent of the citations had no corresponding source available to review. *Id.* at 14. Additionally, there are articles listed in the “Literature Cited” section that are not directly referenced and do not appear to have been used within the NTT Report itself.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-42

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases. NWMA Review at 14. For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15 percent. NTT Report at 26. However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does

not support the NTT Report’s conclusion. NWMA Review at 14. Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. NWMA Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15 percent canopy cover standard.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-43

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the three percent disturbance cap, which has been proposed in the Proposed RMP. Rather, the disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion, not fact. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”). Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to

identify a “viable” population of any species, much less GRSG. Curtis H. Flather, et. al, Minimum Viable Populations: Is There a “Magic Number” for Conservation Practitioners?, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 8. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and BLM should not have relied upon these studies or the NTT Report in the Proposed RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-44

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created. See NTT DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Ramey, Brown, & Blackgoat. As explained by Ramey, Brown, and Blackgoat, studies prior to the NTT Report’s publication were based upon older, more invasive forms of development: Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of

drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to GRSG. Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions). The NTT authors’ refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report’s recommendations for oil and gas development inapplicable to current practices.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-45

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. Applegate & Owens at 287 – 89. In 2012, the disturbance reduction resulting from this

dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone. Id. at 289. All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. BLM should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed RMP, because the NTT Report does not represent the best available science.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-46

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The COT Report also fails to utilize the best available science, and BLM inappropriately relied upon it in the Proposed RMP. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 9. The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions. COT DQA Challenge, Exhibit A at 1. For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and

therefore underestimates the significance of predation as a threat. COT DQA Challenge at 56 – 63. The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence. COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., Greater Sage-GRSG Population Dynamics & Probability of Persistence, in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 293 (Steven T. Knick & John W. Connelly eds., 2011) (“Garton et al. 2011”)). This paper contains serious methodological biases and mathematical errors. COT DQA Challenge, Exhibit A at 2. Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible. Id. Finally, the COT Report provides a table assigning various rankings to GRSG threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks. See COT Report at 16 – 29, tbl. 2. Absent a quantifiable methodology, these rankings are subjective and BLM should not rely upon any conservation measures derived from them.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-47

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for GRSG: A Changing Paradigm for Game Bird Mgmt., in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing

estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on the GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20 percent of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases since that time. BLM and the Department of the Interior have failed to discuss or reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30 percent in 1981 to 20 to 25 percent in 1987 to five to 10 percent in 2000. Reese & Connelly at 110 – 11. High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone:

Issue Number: PP-MT-MILESCITY-GRSG-15-07-48

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA Review at 14; NTT DQA Challenge at 25 –

26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2; BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not provided, an exceptionally rigorous robustness check was performed as required. OMB Guidelines, V(3)(b)(ii)(B)(ii), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The studies upon which the NTT Report relies are therefore unverifiable and not reproducible, which is inconsistent with the DQA guidelines. OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The COT Report similarly cited frequently to a study whose data and programs are not public and, therefore, not reproducible. COT DQA Challenge, Exhibit A at 7.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-49

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Both the NTT and COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate. OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459. Because the NTT and COT Reports suffered from inadequate peer

review, their results and conclusions cannot be considered objective.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-16

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The National Technical Team (2011: 20) observed, “it should be noted that protecting even 75 to >80% of nesting hens would require a 4-mile radius buffer (Table 1). Even a 4-mile NSO buffer would not be large enough to offset all the impacts reviewed above.” Importantly, a 0.6-mile lek buffer covers by area only 2% of the nesting habitat encompassed by a 4-mile lek buffer, which takes in approximately 80% of nesting GRSG according to the best available science.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-19

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The record establishes that met towers can result in GRSG population declines (see Cotterel Mountain data reviewed in ‘Wind Power in Wyoming,’ attached to Guardians’ DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied. In addition, this restriction should not be limited to PHMAs but should also extend to General Habitats, Winter Concentration Areas, and Connectivity Areas as well.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-50

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding GRSG leks. A recent review of this data showed that regional climatic variations, rather than anthropogenic threats such as oil and gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014), Attachment 12. Because current data demonstrates that the impacts of anthropogenic disturbances on GRSG populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-51

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by GRSG to industrial development contains serious flaws. D.E. Naugle, et al., Energy Development & GRSG, in GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38 (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”).

As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, A Comprehensive Review of GRSG: Ecology & Conservation of a Landscape Species & its Habitat at 115 (Feb. 2012), Attachment 13. Naugle et al. 2011 also misrepresented the results of another study to support their claim that GRSG abandon leks due to noise and human activity. Id. at 116. Further, of the seven studies reviewed, four focused on impacts to GRSG in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin. Id. Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies' results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-52

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, Spatial Heterogeneity in Response of Male GRSG Lek Attendance to Energy Development,

PLoS One, June 2014). This study, like many similar studies, was based on peak male lek count data. Id. at 2; see also D.H. Johnson, et al., Influences of Environmental & Anthropogenic Features on GRSG Populations, 1997 – 2007, in Greater Sage-GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011). Peak male lek count data tends to bias lek attendance estimates and therefore leads to inaccurate population trend estimates. Rob R. Ramey, et al., Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997 – 2012, at 2 – 3 (Dec. 2014). Mean average lek counts provide a more accurate picture of population trends. See, e.g., id.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-53

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study's conclusions are based on well density data and lek counts from 1991 through 2011. Gregory & Beck at 4. The period in which GRSG reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011. Id. However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004. Id. at 7. Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in the coming years. Id. This prediction

assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country. See, e.g., Applegate & Owens at 287. As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time period. Applegate & Owens at 287. As Applegate and Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity. *Id.* at 288. Gregory and Beck’s study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across GRSG range.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-54

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Other papers important to the USGS Buffer Report’s energy buffers, see USGS Buffer Report at 7, also relied on well density data from the height of Wyoming’s CBNG boom. See, e.g., B.C. Fedy et al., *Habitat Prioritization Across Large Landscapes, Multiple Seasons, & Novel Areas: An Example Using GRSG in Wyoming*, 190 *Wildlife Monographs* 1, 12 (Mar. 2014) (relying on Wyoming well data from 1998 through 2008 to determine effects of various well densities on GRSG); D.H. Johnson, et al., *Influences of Environmental & Anthropogenic Features on GRSG Populations, 1997 – 2007*, in *Greater Sage-*

GRSG: Ecology of a Landscape Species & its Habitats, *Studies in Avian Biology* No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011) (relying on data from 1997 through 2007); Kevin E. Doherty, *GRSG Winter Habitat Selection & Energy Development*, 72 *J. of Wildlife Mgmt.* 187, 187 (relying on data from CBNG development in the Powder River Basin). Current development is less intensive than the CBNG development that took place from 1998 through 2008. In effect, the USGS Buffer Report reviewed data from some of the most intensive developments in the country and extrapolated from these results range wide buffers applicable to future development with significantly different impacts. This data is a weak basis from which to regulate current and future oil and gas development. See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70.

Issue Number: PP-MT-MILESCITY-GRSG-15-11-1

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Setting lek buffer-distances at the minimum (lower) end of the range recommended by the best available scientific information and other sources limits options for future management in GRSG habitat. Allowing land uses and development to within minimum distances of GRSG breeding areas would have a greater negative impact on GRSG than if the agency required larger lek buffers. Managing to the minimum not only increases the risk of harming GRSG, but also maximizes the potential for land uses and development activities to inadvertently breach buffer boundaries. Offering exceptions to minimum buffers would almost certainly affect GRSG populations that depend on those leks and associated nesting and brood-rearing habitat. Requiring

larger lek buffers would both conserve GRSG and preserve agency options for

managing for GRSG and other values in breeding, nesting and brood-rearing habitat.

Summary:

The Miles City PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Miles City PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances in the Proposed Alternative.

Response:

Before beginning the Miles City PRMP/FEIS, BLM gathered data from all sources, determined the adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

In March 2012, the FWS initiated a collaborative approach to develop range-wide conservation objectives for the GRSG to inform the 2015 decision about the need to list the species and to inform the collective conservation efforts of the many partners working to conserve the species. In March 2013, this team of State and FWS representatives, released the Conservation Objectives Team (COT) report based upon the best scientific and commercial data available at the time that identifies key areas for GRSG conservation, key threats in those areas, and the extent to which they need to be reduced for the species to be conserved. The report serves as guidance to Federal land management agencies, State GRSG teams, and others in focusing efforts to achieve effective conservation for this species. The COT Report qualitatively identifies threats/issues that are important for individual populations across the range of GRSG, regardless of land ownership.

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM in the planning process. The group produced a report in December 2011 that identified science-based management considerations to promote sustainable GRSG populations. The NTT is staying involved as the BLM work through the Strategy to make sure that relevant science is considered, reasonably interpreted, and accurately presented; and that uncertainties and risks are acknowledged and documented.

Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of GRSG (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) then provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM in summarizing the effect of their planning

efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service's "warranted but precluded" finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and Montana Fish, Wildlife, and Parks, and relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Vol. I, Chapter 3) and impact analysis (PRMP/FEIS, Vol. II, Chapter 4). A list of information and literature used is contained the Bibliography (Vol. I, p. BIB-1).

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapter 4). As a result, the BLM has taken a "hard look," as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/FEIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze all available data.

On November 21, 2014 the US Geological Survey (USGS) published "Conservation Buffer Distance Estimates for GRSG—A Review" (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. As stated in the GRSG Conservation Buffer Appendix, "Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized "that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the GRSG range". The USGS report also states that "various protection measures have been developed and implemented... [which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands". All variations in lek buffer-distances will require appropriate analysis and disclosure as part of activity authorization. As such, the BLM has considered the best available science when determining lek buffers and has incorporated a mechanism to consider additional science as it becomes available.

Public Participation

Issue Number: PP-MT-MILESCITY-GRSG-15-05-5

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The RMPA reflects a significant new alternative and proposed management structure that was not previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised RMPA developed with the benefit of supplemental NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration's policy on transparent and open government. Under NEPA, BLM is required to supplement existing NEPA documents when, as it has done for the RMPA, it makes substantial changes to the proposed action. 40 CFR § 1502.9(c)(1)(i); Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the RMPA reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the RMPA, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by BLM is a plain violation of NEPA. Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation, competitiveness and job creation." BLM has

not complied with this Executive Order with respect to the issuance of the significantly new and different RMPA which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-8

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: Under 43 CFR § 3420.1-4(e), while preparing a comprehensive land use plan, BLM must consult with all surface owners whose lands overlie coal deposits to determine preference for or against mining by other than underground mining techniques. Rather than engage in this required consultation prior to issuing the PRMP/EIS, BLM relied on landowner surveys conducted in 1983. PRMP/EIS at MIN-115.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-6

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest substantial changes made between the Draft RMP and Proposed RMP without notice and an opportunity for public comment. In particular, the Trades protest the unexpected adoption of the wholly new Proposed RMP rather than one of the alternatives analyzed in the Draft EIS. Although BLM maintains that components of the Proposed RMP were analyzed in other alternatives, the combination of these components in the Proposed RMP creates a dramatically different alternative

that requires notice and public comment. Furthermore, the Proposed RMP contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the lek buffer distances, and the adaptive management triggers and

responses, as well as extensive revisions to the mitigation and monitoring plans. These proposed changes violate NEPA because they were not included in the Draft RMP and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

Summary:

The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.

Lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for GRSG were not included in the DEIS and was not released to the public until after the comment period.

The BLM did not consult with surface owners regarding coal leases, rather, it relied on landowner surveys conducted in 1983.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected. Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

NEPA Handbook H-1790-1, page 101

If you make major changes to the draft EIS, the final EIS should be a complete full text document. The content of a full text document is substantially the same as the corresponding draft EIS except that it includes copies of substantive comments on the draft EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4). A full text final EIS may incorporate by reference some of the text or appendices of the draft EIS.

43 CFR 1610.2 Public participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

(1) General notice at the outset of the process inviting participation in the identification of issues (See 1610.2(c) and 1610.4-1);

(2) Review of the proposed planning criteria (See 1610.4-2);

(3) Publication of the draft resource management plan and draft environmental impact statement (See §1610.4-7);

(4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See 1610.4-8 and 1610.5-1(b)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See 1610.5-1(b)).

The Bureau of Land Management (BLM) complied with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations in developing alternatives, including seeking public input and analyzing a reasonable range of alternatives.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft RMP/EIS, the BLM has developed the Proposed RMP/FEIS for managing BLM-administered lands in the Miles City GRSG sub-region. The Proposed RMP/FEIS focuses on addressing public comments, while continuing to meet the BLM's legal and regulatory mandates.

A detailed list of the changes made between Draft RMP/EIS and PRMP/FEIS are found in Volume I, Chapter 1, p. 1-5 and Volume II, Chapter 5, p. 5-4. Issues such as mineral leasing, lek buffer distances, and the COT Report are addressed here and how these elements had their beginnings in the Draft RMP/EIS. Table 2-1, USFWS and COT Report Identified Threats to GRSG and Their Habitat and Applicable BLM Program Areas, provides a cross-walk between each of the USFWS listing decision and COT identified threats and the BLM program areas and shows how those threats were addressed in the BLM's land use plan. The Proposed RMP/FEIS is a variation of the preferred alternative (Alternative E) and is within the range of alternatives analyzed in the DEIS. The Proposed RMP appears as Alternative E the Final EIS.

The Proposed RMP includes components of the alternatives analyzed in the Draft RMP/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternatives analyzed.

As such, the BLM has determined that the Proposed RMP is a minor variation and that the impacts of the Proposed RMP would not affect the human environment in a substantial manner

or to a significant extent not already considered in the Draft RMP/EIS. The impacts disclosed in the Proposed RMP/Final EIS are similar or identical to those described Draft RMP/ EIS.

The public has been provided opportunities to participate in and comment on the preparation of plans, and has been given early notice of planning activities. The public involvement process the agencies used conforms to the requirements of the National Environmental Policy Act and associated implementing regulations.

The changes to the Draft RMP/EIS, prompted the agencies to complete full text Final document as required. This Final is substantially the same as the corresponding Draft RMP/EIS except that it includes copies of substantive comments on the Draft RMP/EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4).

The Proposed RMP/Final EIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternative B) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, closed to mineral material, closed to ROWs, Alternatives A, C and D identified and analyzed fewer restrictions on development in GRSG habitat. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. Chapter 1, p. 1-5.

The Proposed RMP/Final EIS identified hard and soft adaptive management triggers for population and habitat and identified appropriate management responses. Chapter 2 of the Draft RMP/EIS identified that the BLM would further develop the adaptive management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, the response would be to manage it as closed to saleable minerals. Such closure was analyzed under Alternative B in the Draft RMP/EIS.

The coal screening process would be re-evaluated and re-applied as necessary during the site-specific NEPA analysis in response to new data or changes in resources or conditions that have occurred since the original coal planning was conducted. Also, 43 CFR 3425.4 requires BLM to hold a public hearing on the environmental assessment or environmental impact statement prepared for a lease sale application prior to conducting the lease sale .At the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the lease application area is “unsuitable” for all or certain coal mining methods pursuant to 43 CFR 3461.5. PHMA is essential habitat for maintaining GRSG for purposes of the suitability criteria set forth at 43 CFR 3461.5(o)(1).

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

Impacts-GRSG

Issue Number: PP-MT-MILESCITY-GRSG-15-01-10

Organization: Lund Law obo Prairie County Cooperative State Grazing

Protestor: Hertha Lund

Issue Excerpt Text: The BLM provides that reduction in grass height caused by livestock grazing in GRSG nesting and brood-rearing areas has been shown to negatively impact nesting success, which is not an accurate statement based on science.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The Plan dismisses without any analysis any alternative to eliminate grazing from BLM public lands. PRMP/FEIS at 2-23. But the plan fails to analyze any alternatives that would have eliminated livestock grazing from GRSG habitats, or truly restricting livestock grazing use by season, or that would mandate strict grazing management on GRSG allotments. Thus, the plan lacks a true analysis of the beneficial impacts of removing livestock grazing from GRSG habitat entirely, or seasonally in accordance with the best available science.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-13

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For example, there is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or

whether the MCFO GRSG populations can actually withstand the 3 percent disturbance cap and exemptions proposed in the plan. PRMP/FEIS at 2-52.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-14

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et al. 2013, Taylor et al. 2012).

Issue Number: PP-MT-MILESCITY-GRSG-15-08-9

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS is generally inadequate in terms of the discussion of impacts from fences and actions to mitigate these impacts. In the Mitigation Measures And Conservation Actions Appendix, it is stated that, "(i)if portions of existing fences or other structures are found to pose a significant threat to wildlife as strike sites, raptor perches, connectivity barriers, etc. mitigate effects through removal, moving or modification; increase visibility of the

fences by marking, or through the use of “take-down” fences.” MMCAA-7. Again, the terms significant is left undefined and no

timeline is specified for when threats will be identified or remedied.

Summary:

The PRMP/FEIS fails to adequately analyze impacts to GRSG because:

- The analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations.
- The PRMP/FEIS inadequately discuss impacts from fences and actions to mitigate them.
- The plan fails to use the best available science to analyze any alternatives that would eliminate livestock grazing from GRSG habitat or restrict livestock grazing use by season, or mandate strict grazing management on GRSG allotments. The BLM’s statement that reduction in grass height caused by livestock grazing negatively impact nest success is not based on science.
- There is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions.

Response:

A land 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 and land use plan-level decisions. The effectiveness of these decisions on GRSG populations will be evaluation based on criteria in the GRSG Monitoring Frameworks Appendix of the Miles City PRMP/FEIS

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

The 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 principles of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM and the Forest Service in the planning process. A baseline environmental report, titled Summary of Science, Activities, Programs, and Policies That Influence the Rangewide

Conservation of GRSG (*Centrocercus urophasianus*) (referred to as the BER), was released on June 3, 2013, by the U.S. Geological Survey. The peer-reviewed report summarizes the current scientific understanding about the various impacts to GRSG populations and habitats and addresses the location, magnitude, and extent of each threat. The data for this report were gathered from BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making. Chapter 4 of the Miles City PRMP/FEIS provides information and analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations.

Conservation measures included in the NTT based alternative focus primarily on GRSG PPH and includes percent disturbance caps as a conservation measure to maintain or increase GRSG populations. The data for this report were gathered from BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making. For responses related to livestock grazing, please see the following two sections located in this report: Impacts - Livestock Grazing and GRSG - Livestock Grazing.

Impacts-Air Quality, Climate Change, and Noise

Issue Number: PP-MT-MILESCITY-GRSG-15-03-5

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: The BLM proposes to address the issue of GHG emissions in specific lease applications and fails in its responsibilities to analyze this resource programmatically and consider any ramifications. The MCFO RMP/FEIS fails to comply with NEPA when it deems this enormous amount of coal acceptable for further consideration for leasing without looking at the big picture holistically and addressing the global climate impacts of burning that coal if it is leased.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-18

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a GRSG lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations.” WBEA at 131. BLM proposes a limit of 10 dBA above ambient as measured at the lek perimeter, at sunrise only, with no ambient noise level defined in the plan. FEIS at D-5. The ambient level needs to be set at 15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, BLM fails to adequately protect nesting habitats, wintering habitats,

and brood-rearing habitats from significant noise impacts.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-1

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The Miles City RMP continues to ignore any alternative that would meaningfully reduce climate impacts and protect the environment, such as an alternative with less coal production, an alternative with stipulations to limit oil and gas development, or an alternative that permanently protects critical areas. The Miles City RMP fails to appropriately assess air impacts from development authorized under the plan, including by failing to consider indirect effects from coal combustion and failing to revise its ozone analysis in light of the best science.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-12

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM failed to adequately analyze and assess impacts to Ozone Ambient Air Quality Standards in accordance with NEPA. The FEIS entirely failed to adequately analyze and assess direct, indirect, and cumulative air quality impacts under NEPA. The FEIS asserts that compliance with National Ambient Air Quality Standards (“NAAQS”) for ozone, the key ingredient of smog, and other air pollutants, will be assured under the proposed RMPA. However, this assertion is not supported as no actual analysis of air quality impacts was completed.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-14

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: Despite the reported data and its reference in the FEIS, the analysis and assessment of air quality impacts does not even attempt to analyze actual impacts to air quality in the context of air quality standards. Instead, the FEIS only compares emissions data. It is unclear why this modeling data was not addressed in the actual analysis and assessment of impacts, or why the BLM did not attempt to analyze air quality impacts in light of the dire predictions of the Powder River Basin Coal Review. Nevertheless, it further underscores that the BLM failed to comply with NEPA by refusing to analyze and assess how current and projected emissions from reasonably foreseeable development will directly, indirectly, and cumulatively affect air quality.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-15

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM Failed Entirely to Consider Indirect Air Pollution. Impacts from Foreseeable Coal Combustion Conservation Groups protest BLM’s unlawful failure to consider the indirect effects of air pollution from coal combustion.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-16

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: All coal produced from leases will be burned for energy production. FEIS Mineral App. at 129. The FEIS also foresees that 1 billion short tons of coal will be produced from existing mining operations within the Miles City Field Office during the planning period. FEIS Mineral App. at 130. Nevertheless, BLM fails entirely to assess the air pollution impacts that will result from such combustion.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-17

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: These effects of coal combustion should have been acknowledged, addressed, and quantified. The FEIS, however, failed entirely to address these insidious and deleterious, but wholly foreseeable, impacts. There is no question that they are foreseeable and included in the FEIS's reasonably foreseeable development scenario. FEIS Minerals App. at 128-30. Because the combustion of the coal in the planning area is a reasonably foreseeable indirect effect of the PRMP's decision to make it available for continued leasing and strip-mining, the FEIS was required to assess the air pollution impacts that will result from combustion. 40 CFR § 1502.16(b).

Issue Number: PP-MT-MILESCITY-GRSG-15-10-20

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Given that BLM acknowledges that all of the coal made available by its plan will be burned, it is unlawful for BLM to then fail to account for

the quantifiable emissions that will result from that combustion.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-23

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Here, the Proposed RMP conducted no air quality modeling for emissions, and failed to provide a hard look detailed analysis of impacts. See FEIS at 680; see also *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998) (“To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency’s] decisions, can be assured that the [agency] provided the hard look that it is required to provide.”).

Issue Number: PP-MT-MILESCITY-GRSG-15-10-24

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: In order to sufficiently understand the scope of methane emission impacts expected from the proposed action, BLM should quantify estimated emission rates and analyze alternatives that would mitigate these impacts. However, even without specific data from the proposed action, we can assume leakage somewhere between these two extremes and, even at the low end, emissions reductions would not be trivial. The agency's refusal to consider any mitigation measures that would reduce these emissions fails to satisfy BLM's NEPA obligations.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-25

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Buffalo Proposed RMP fails to provide any detailed, hard look analysis of the proposed actions' contribution to GHG pollution. While the BFO provides charted emissions estimates under each alternative, this is all the agency offers. There is no discussion or analysis of how these emissions will impact specific resources in the Buffalo planning area, and BLM fails to identify any relationship between this data and its decisionmaking process for the Proposed RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-8

Organization: Western Environmental Law Center

Summary:

The PRMP/FEIS violated NEPA by failing to:

- evaluate the effects of the Required Design Feature of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB, thus failing to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts;
- violated NEPA, FLPMA, the Mineral Leasing Act, and Secretarial Order 3226 by failing to consider mitigation measures reducing methane emissions; environmentally sustainable methods and practices to reduce methane waste; and failed to provide analysis of how methane emissions will impact specific resources;
- consider stipulations to limit oil and gas development;
- consider impacts from air pollution due to Coal Combustion 40 CFR § 1502.16(b);
- consider new ozone analysis using best science;
- take a hard look at the global climate impacts of burning coal if it is leased; and
- take a hard look at alternatives to reduce climate impacts or permanently protect critical areas.

Response:

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

Protestor: Kyle Tisdel

Issue Excerpt Text: BLM failed to consider stipulations to limit oil and gas development. In the FEIS, the MCFO failed to consider the multiple effective and environmentally sustainable methods and practices to reduce methane waste. As noted in our Draft Comments, while BLM has in the past claimed that it will impose methane mitigation measures at the site-specific stage, it has failed to do so. Moreover, the RMP-stage is the appropriate place to address these measures to ensure consistency, put the oil and gas industry on notice of what leasing on BLM lands will look like, and meet its duties to address this issue as required by NEPA, the Federal Land Policy and Management Act ("FLPMA"), the Mineral Leasing Act, and Secretarial Order 3226.

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

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

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

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

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

Air quality for the planning area was discussed and analyzed in Chapter 4 of the Miles City PRMP/FEIS. Proposed mitigation measures for oil and gas development, coal emissions, etc. are also discussed in this chapter. Many of these emission sources are regulated by the Montana Department of Environmental Quality, which implements air quality permitting and facility registration programs for oil and gas facilities that have the potential to emit 25 tons per year or more of any regulated air pollutant. These programs include emission control requirements, which are summarized in Volume III, Air Resources and Climate Appendix, p. ARMP-8, Section 1.5.2 within the Air Resource Management Plan. The oil and gas adaptive management strategy was prepared in collaboration with the USEPA and three federal land management agencies under the Understanding Among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act {NEPA} Process (USDA, USDI and USEPA 2011). (Miles City PRMP/FEIS, Vol. II, Chapter 4,

p. 4-16) Emission inventories include BLM sources and non-BLM sources within the planning area. Criteria pollutants include carbon monoxide (CO), nitrogen oxides (NO_x), ozone (O₃), fine particulate matter (PM_{2.5}), particulate matter (PM₁₀), and sulfur dioxide (SO₂), as well as volatile organic compounds (VOCs), which are ozone precursors. Hazardous air pollutants (HAPs), such as benzene and toluene, are also included in the inventories. Lead emissions were not estimated because there are few lead-emitting sources in the planning area.

As described in Chapter 3, Affected Environment, ozone is not emitted directly into the atmosphere; instead, it is formed in atmospheric reactions involving nitrogen oxides and VOCs. Emissions of greenhouse gases (GHGs) (carbon dioxide [CO₂], methane [CH₄], and nitrous oxide [N₂O]) are described in the climate change impact analysis in the Miles City PRMP/FEIS. An emissions inventory was completed for the planning area and is included in the Miles City Field Office Resource Management Plan Air Resource Technical Support Document (BLM 2014). (Miles City PRMP/FEIS Chapter 4, p. 4-4 to 4-30). This information was then analyzed in Chapter 4 of the FEIS (FEIS Chapter 4, p. 4-4 to 4-30). The analysis for the Miles City PRMP/FEIS was based on current monitoring data and review of most current available information.

Noise is defined in Volume I, Chapter 3, p. 3-21, and under “Limiting Factors for Wildlife” on p. 3-67. In this section it states that noise and direct disturbances can impact GRSG beyond the area of direct disturbance and cites references used in determining buffer distances (Braun, Oedekoven, and Aldridge 2002, Holloran 2005, Doherty, Naugle, and Evans 2010, Lyon and Anderson 2003; Naugle, Doherty, Walker, Copeland, Holloran, and Tack 2011, Patricelli, 2010). This information was then used in the analysis in Chapter 4 under “GRSG Cumulative Effects Analysis” when discussing noise limits and buffers. (Chapter 4, p. 138). The planning effort also considered Wyoming Statewide Efforts, Montana Statewide Efforts, and North and South Dakota Statewide Efforts when setting limits. (Chapter 4, p. 4-143).

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

The Miles City PRMP/FEIS includes a bibliography and reference section in Volume I, p. BIB-1, which lists information considered by the BLM in preparation of the Miles City PRMP/FEIS planning effort.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts to noise limits relating to leks perimeters, air quality, and coal combustion in the Miles City PRMP/FEIS.

Impacts-Oil and Gas

Issue Number: PP-MT-MILESCITY-GRSG-15-07-13

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed RMP's leasing and development restrictions on oil and gas development. The Proposed RMP discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 2,212,000 acres of lands, and imposes new compensatory mitigation requirements, new lek buffers, new density and disturbance caps, and new RDFs on existing leases. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA and Controlled Surface Use (CSU) stipulations in GHMA, will cumulatively stymie oil and gas development on federal lands within the planning area.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-15

Organization: Montana Petroleum Association

Summary:

The PRMP/FEIS does not adequately analyze the impacts of the Proposed RMP on oil and gas development, particularly due to protection measures for GRSG.

Response:

The CEQ regulations require an environmental impact statement to “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues” (40 CFR 1502.15). The BLM complied with these regulations in writing its environmental consequences section. The requisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The analysis of impacts provided in Chapter 4 of the Miles City PRMP/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the PRMP/FEIS.

Protestor: Dave Galt

Issue Excerpt Text: Finally, BLM has not adequately analyzed the impacts right-of-way avoidance and exclusion areas will have upon existing oil and gas leases. The Proposed RMP would designate 2,122,000 acres as right-of-way avoidance areas and 46,000 acres as right-of-way exclusion areas. Proposed RMP, Table 2-2 at 2-5. At the same time, the Proposed RMP states that 675,602 acres of public lands in the planning area are currently under lease for oil and gas. Proposed RMP, Table 3-20 at 3-60. To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. BLM must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area. Accordingly, BLM must analyze the impacts of the right-of-way avoidance and exclusion areas in the Proposed RMP.

The potential impacts of the PRMP/FEIS on development of fluid minerals are adequately analyzed in Volume II, Chapter 4, p. 4-265 of the PRMP/FEIS. In addition, cumulative impacts associated with the Proposed Plan, including the projected number of federal oil and gas wells not drilled under the PRMP/FEIS, are included on p. 4-268. Generally, “[r]estrictions for surface-disturbing or disruptive activities would require additional activities, features, timing relocation, other mitigation, or buried infrastructure to minimize impacts to resources. These restrictions would decrease lease values, increase operating costs, cause the relocation of wells and production sites, and hinder orderly and efficient field development. Restrictions applied to protect certain surface resources would prevent drilling of some BLM-administered wells” (Miles City PRMP/FEIS, p. 4-260).

The PRMP/FEIS acknowledges that the terms and conditions of existing oil and gas leases would not be changed by the decisions of this document; “however, post-lease actions or authorizations (e.g. APDs or road or pipeline ROWs) would potentially be encumbered by mitigation measures, as necessary, on a case-by-case basis as required through project-specific NEPA analysis or other environmental review. The stipulations and COAs allow for management of federal oil and gas resources in concert with other resources and land uses. When a lease expires, it would be managed for oil and gas according to the decisions reached in this document,” (Miles City PRMP/FEIS, p. 4-260).

Additionally, the assumption is provided that each proposed protection measure can affect oil and gas development activities by not allowing leasing, restricting surface occupancy, controlling surface use, or adding restrictive mitigation to COAs for APDs (Miles City PRMP/FEIS, p. 4-260), and therefore, these constraints were included in the RFD scenarios created for each alternative in order to calculate the anticipated percent reduction in total well numbers and total surface disturbance.

As specific actions come under consideration, the BLM will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions, such as the issuance of ROWs. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Impacts-Socioeconomics

Issue Number: PP-MT-MILESCITY-GRSG-15-01-16

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The requirements imposed on state and county governments and private property owners by the RMP violate the Unfunded Mandates Reform Act

(“UMRA”). 2 USC § 1501 et seq. A federal mandate is defined as “any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments” or which “would impose an enforceable duty upon the private sector.” 2 USC § 6S8(S)(A), (6), (7)(A). The RMP is such a mandate. The RMP would require ranchers to take additional actions to manage livestock

grazing on lands covered by the RMP, would impose a number of enforceable restrictions on natural gas operators, and would require additional services, such as county emergency services, to be provided by local governments.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-17

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: For the reasons recited previously, the agency has failed to adequately outline the quantitative and qualitative economic impacts on the private sector. Similarly, the economic analysis is completely void of any quantitative or qualitative costs and benefits to the State and local governments from imposition of the RMP. The economic analysis section does note that the costs of managing the area may change under the RMP; however, there is no assessment of any impact to State or local governments. Clearly, this fails to meet the requirements of the UMRA.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-18

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The UMRA additionally requires that the agency estimate the future costs of complying with the federal mandate, as well as any disproportionate budgetary effects upon State or local governments or particular segments of the private sector. 2 USC § 1532(a)(3). Nowhere in the RMP does the BLM provide such an estimate.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-3

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The relevant information or impacts that the BLM failed to consider include but are not limited to the historical and current information detailing the cultural heritage of ranching in the impacted area.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-4

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The RMP limits all pipelines, phone lines, cell towers, electrical lines, and the like; but, there is no analysis of these limitations and their impact on local communities and economies. Furthermore, this exclusion forces all such linear projects on to private land without an adequate cumulative impacts analysis.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-7

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: Further, the BLM plans to restrict pipeline so no larger than 24 inches. This will impact the economics of the area. For example, the Bison Pipeline in Carter County provides \$4.8 million in tax revenue to a county that the BLM provides only \$203,710 in PILT payments. RMP/EIS Ch. 2 at 4, Objective 1, Action 1; Table 3-44 on 3-145.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-9

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: In summary, the BLM's economic analysis is deficient because it provides no data to indicate that the BLM actually did any analysis showing the impact that the alternatives would have on ranching, local communities, towns or the other individuals impacted by the RMP. While acknowledging that the various alternatives could increase costs or reduce income to ranchers, the BLM makes no

attempt to quantify these costs, or even to provide a comparison of the relative costs associated with implementing different alternatives. Also, much of the data added in the RMP is not on point, is speculative, is not timely and provides no detailed economic analysis of the specific impacted area. Clearly, the BLM has failed to follow NEPA's requirement to "assess and discuss the secondary [socio-economic] effects of the project in question." *Stop H-3 Ass'n v. Dole*, 740 F.2d 1442, 1461 (9th Cir. 1984).

Summary:

The PRMP/FEIS violated NEPA and CEQ regulations by failing to consider the quantitative and qualitative economic impacts on the private sector. The PRMP/FEIS violates the Unfunded Mandates Reform Act ("UMRA"). 2 USC § 1501 et seq. by imposing requirements on state and county governments and private property owners and the fails to estimate the future costs of complying with the federal mandate, as well as any disproportionate budgetary effects upon State or local governments or segments of the private sector. 2 USC §1532(a)(3).

The PRMP/FEIS violates NEPA by failing to analyze the impacts of limiting infrastructure on public lands and the impacts on local communities, economies, and private land. Fails to consider cultural heritage of ranching and loss of tax revenues from large scale pipelines.

Response:

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an

Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Miles City PRMP/FEIS discusses and analyzes the socio and economics of the planning area in Volume II, Chapter 4, p. 4-360 to p. 4-385. The Economic Appendix located in Volume III, describes the methodology and data used to model and assess the economic impacts of public land management decisions on communities surrounding federal lands. The Impact Analysis for Planning (IMPLAN) model was used in the planning effort to provide a quantitative representation of the production relationships between individual economic sectors. The economic modeling analysis uses information about physical production quantities and the prices and costs for goods and services. The resulting estimates from the IMPLAN model, by alternative, can be found in the Economic Conditions section in Chapter 4. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region's economy. The analysis of impacts on social conditions focuses on the effects of BLM-authorized actions. It is important to note that many other events outside of the BLM's control may alter economic and social trends. For instance, oil and gas prices may change as a result of an expansion or contraction of world or national economic activity, and this, in turn, may affect the pace of development or the quantity of development. Similarly, state and local laws regulating the subdivision of land may alter land ownership and development patterns, which may in turn affect open space and physical landscapes. Minimal or no changes to social conditions resulting from BLM actions does not imply that no change could occur, as other forces may drive changes in economic and social trends. (Miles City PRMP/FEIS Volume II, Chapter 4).

In Volume I, Chapter 3, p. 3-130, "Planning Area Demographics and Quality of Life" are considered. On p. 3-134 under "Groups and Individuals that Prioritize Ranching, Ranching Livelihood and Agricultural Lifestyle", ranching heritage and tradition is discussed and considered. This information was included in the alternatives in Volume II, Chapter 4 under the impact analysis. For instance on p. 4-370, it is discussed under Recreation in Impacts Common to All Alternatives.

The Miles City PRMP/FEIS complies with the Unfunded Mandates Reform Act ("UMRA"). 2 USC § 1501 et seq. by fully disclosing information, involving the public, and coordinating with State, local and Tribal governments in the Miles City PRMP/FEIS planning effort and will continue involvement during the implementation phase of the PRMP/FEIS.

The FEIS does not analyze site specific projects. Analysis would be completed for site specific ROW applications during plan implementation and RDFs would be applied as appropriate.

New ROW authorizations that require state agency review or approval would be subject to the permitting process and development restrictions, including the disturbance cap, in GRSG Core Areas under the Proposed Plan, and also under the Wyoming and Montana executive orders, as discussed in in Chapter 4, p. 4-1 to p. 4-14. These stipulations would benefit GRSG in Core

Areas by encouraging ROW development outside of Core Habitat Areas, restricting surface occupancy within 0.6 mile of occupied leks, prohibiting power lines greater than 115 kV outside of designated corridors, and locating new roads used to transport products or waste over 1.9 miles from occupied leks. These provisions would reduce disturbance to GRSG populations from human traffic, noise, and increased predation associated with tall structures (Chapter 4, p. 4-160).

By using IMPLAN, the Miles City PRMP/FEIS complied with NEPA by considering social science activities in the planning area and used the best available references and resources to support conclusions. References for the Miles City PRMP/FEIS are found in Volume I, Bibliography, BIB-1.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to socioeconomics in the Miles City PRMP/FEIS planning effort.

Impacts-Water

Issue Number: PP-MT-MILESCITY-GRSG-15-03-10

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Failure to address issues of water quantity relating to liquid minerals development and the slow rate, of recharge in fields that have been developed for coal bed methane. The preferred alternative (Alternative E) in the proposed fin a I RMP fails to address issues of water quantity concerns relating to liquid minerals development, including both oil and gas and coal bed natural gas. Oil and gas development uses large amounts of fresh water. The EPA has estimated that between 70 and 140 billion gallons of water are required annually for tracking, (See Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources, EPA, 2011. This water is completely lost to the system since it is contaminated with chemicals and much of it is disposed of into deep-injection wells. (See Gone for Good, Western Organization of Resource Councils, 2013) This is in contrast to agricultural water use. Agriculture is the largest water user in Montana, but the water

used is sent back into the overall water cycle. Similarly the BLM knows from past study that each coal bed methane well involves removing 16,000 gallons of water per day from the coal bed aquifer. Studies of the CBM fields have shown the groundwater table is not being recharged as quickly, if at all, as anticipated by the state (see MT Bureau of Mines and Geology Open-File Report 631, 2012 Annual Coal bed Methane Regional Groundwater Monitoring Report: Powder River Basin, Montana). Impacts water quantity from consumptive use in oil and gas and coal bed methane development could be a problem for southeastern Montana well into the future and need to be addressed in the final RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-03-3

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Existing and proposed new coal mining in the Tongue River drainage will exacerbate the electric conductivity and sodium adsorption ratios of water in the River. The fact that water quality in the (both coal and CBM) should

have been addressed in the MCFO RMP/FEIS in order to inform the BLM on whether certain coal fields lying within that drainage and its tributaries should be acceptable for further consideration for leasing. The MCFO RMP/FEIS failed to apply this information at the land-use planning level, deferring it to later site-specific decision makers.

Issue Number: PP-MT-MILESCITY-GRSG-15-03-4

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Another example of widespread water contamination due to industrial activity in the plan area is the widening contamination emanating from highly toxic fly ash ponds at Colstrip which are leaking into area groundwater wells and downstream creeks in the Rosebud Creek drainage. Even though it's an area near an active mine and potential new leasing, this critical issue has not been identified or factored into the coal planning in the proposed MCFO RMP/FEIS.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-28

Summary:

The PRMP/FEIS violates NEPA by failing to take a hard look at the impacts of water quantity relating to fluid mineral development and the slow rate of recharge in fields that have been developed for coal bed methane; water quality impacts on both ground and surface water ; whether certain coal fields should be acceptable for further consideration for leasing; water contamination due to industrial activity in the planning area; and impacts of hydraulic fracturing (or “fracking”), 78 Fed. Reg. at 31638/3.

Response:

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The FEIS fails to take a hard look at the impacts of hydraulic fracturing (or “fracking”), the process which will almost certainly be used for some of this activity. 78 Fed. Reg. at 31638/3 (BLM estimates that roughly 90 percent of new wells on federal lands are hydraulically fractured). Hydraulic fracturing using a fracturing fluid together with a propellant is used to extract oil and gas from shale formations, and a similar process is used for coalbed natural gas extraction. For example, there is absolutely no mention of fracking impacts to air quality from the emission of VOCs emitted during well completion or ambient dust from increased truck traffic, and no discussion of impacts to surface and groundwater quality from fracking chemicals or the possibility of spills or accidents. While BLM does provide estimates regarding water quantity, see FEIS 4-56, it marginalizes the amount consumed and fails to provide any actual analysis of impacts.

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

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

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

In Volume I, Chapter 3, Affected Environment, Oil and Gas, p. 3-103 to p. 3-105, the process of hydraulic fracturing, its history and use in the planning area is discussed and described. The section also discusses groundwater and the regulations permit holders must follow. In Volume II, Chapter 4, under ASSUMPTIONS AND METHODOLOGY for Groundwater and Quality and Quantity, hydraulic fracturing is included and the PRMP/FEIS acknowledges that mineral development would be the primary management action that would impact groundwater quantity. (Chapter 4, page 4-47)

The PRMP/FEIS, Chapter 4, under Water Resources, p. 4-46, the PRMP/FEIS considers and analyzes mineral development in the PRMP/FEIS planning area and the potential impacts of the activity to the water resources. The specific impacts of these management actions cannot be identified on a planning area-wide basis and need to be analyzed in a site-specific NEPA document. Impacts to groundwater quantity from minerals activities under the alternatives are not further analyzed other than to state that as minerals development increases in intensity and extent, the potential for adverse impacts to groundwater quantity and quality, including potentially connected impacts to surface water quality and quantity increase. Thus as site specific projects are proposed additional analysis would be completed and site specific stipulations would be implemented.

In Chapter 4, Water Resources, p. 4-64, under Alternative E, surface disturbance from minerals development could impact 16,000 acres of BLM administered mineral estate (See Volume III, Disturbance Appendix). Alternative E would increase the amount and severity of surface disturbance related to minerals development substantially compared to Alternative B, which could increase adverse impacts to water resources as overland flow and sediment increased above natural levels. Alternative E would decrease the amount of surface disturbance related to minerals development slightly compared to Alternatives A, C, and D. Alternative E would

decrease the severity of surface disturbance related to oil and gas development compared to Alternatives C and D because the less restrictive CSU stipulation in those alternatives would be replaced by an NSO stipulation. For a comparison of water resources maintained, conserved, and at risk from oil and gas development among the alternatives, see Table 4-20. Hydraulic fracturing of Bakken and Three Forks Formation oil wells on BLM-administered mineral estate would use an estimated 250 to 490 acre-feet of freshwater. For comparison purposes, this 20-year total of freshwater use for hydraulic fracturing represents only 5-10 percent of a single day's surface and groundwater withdrawals for irrigation use within the planning area. Impacts from water withdrawals for hydraulic fracturing would be shortterm and minor. See Water Resources – Impacts Common to All Alternatives (p. 4-49) and the Volume III, Minerals Appendix – Completion Operations for information on potential sources of water (p. MIN-18).

The PRMP/FEIS considered and analyzed emissions from mining activities in Chapter 4, Air Resources and Climate, Impacts Common to All, p. 4-6 to p. 4-21 where BLM emission sources include fluid mineral development (conventional natural gas, CBNG, and oil), solid mineral development (primarily coal), fuels management (prescribed fire, mechanical vegetation treatment), resource road maintenance, forest and woodland treatments, livestock grazing, vegetation management, recreation, and general BLM travel.

The Miles City PRMP/FEIS includes a bibliography and reference section in Volume I, Bibliography, p. BIB-1, which lists information considered by the BLM in preparation of the Miles City PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to consider and take a hard look at the environmental consequences/impacts of the process of hydraulic fracturing on water resources in the Miles City PRMP/FEIS.

Impacts-Recreation

Issue Number: PP-MT-MILESCITY-GRSG-15-01-8

Organization: Lund Law obo Prairie County Cooperative State Grazing

Protestor: Hertha Lund

Issue Excerpt Text: The BLM did not analyze or involve the community in its decision to close recreational access to the Terry Badlands. RMP/EIS Ch. 2 at 14, 3.

Summary:

The PRMP/FEIS violated NEPA by failing to analyze or provide public participation or community involvement in proposing to close recreational access to the Terry Badlands.

Response:

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

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

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

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

The Miles City PRMP/FEIS, Chapter 4, Wilderness Study Areas (p. 4-355) states:

“WSAs are managed as VRM Class I areas in accordance with BLM policy described in IM No. 2000-096 (BLM 2000a). The management objective for VRM Class I areas is to preserve the existing character of the landscape. Visual impairments outside and adjacent to WSAs would be allowed if they were in conformance with the appropriate VRM classification of the adjoining area. Although these impairments would be visible to a visitor inside the WSA, they would not be considered an impact that impaired wilderness suitability within the WSA.

“Acquired lands within the Terry Badlands WSA have wilderness characteristics and would be managed for its wilderness values. These lands would be managed in accordance with BLM Manual 6330, Management of Wilderness Study Areas. These acquired lands would expect the same level of impacts as the surrounding lands.

“BLM-administered oil and gas mineral acres in the Wilderness Study Areas (nondiscretionary closures) would be unavailable for leasing, thus no direct impacts from oil and gas development.

“The WSAs are considered Category 1 retention lands (83,000 acres) and will not be transferred from BLM management by any method during the life of the plan. These lands would not be impacted through a disposal action of any type.”

Vehicle access in the WSA is restricted to Calypso Trail. Wildlife viewing, rock collecting, photography, hiking and camping area allowed in the WSA Area:
http://www.blm.gov/mt/st/en/fo/miles_city_field_office/recreation.html.

The detailed impact analyses and conclusions are based on the BLM’s knowledge of resources

and the planning area, reviews of existing literature, an information provided by experts in the BLM, cooperating agencies, other agencies, interest groups, and concerned citizens. Impacts on resources and resource uses are analyzed and discussed in detail commensurate with resource issues and concerns identified throughout the process. Geographic information system (GIS) analyses and data from field investigations were used to quantify effects when possible. However, in the absence of quantitative data, qualitative information and best professional judgment was used. (Miles City PRMP/FEIS, Chapter 4).

The Miles City PRMP/FEIS includes a bibliography and reference section in Volume II, Bibliography, p. BIB-1, which lists information considered by the BLM in preparation of the Miles City PRMP/FEIS planning effort.

The BLM complied with NEPA's requirement to consider and analyze the environmental consequences/impacts related to the Terry Badlands WSA in the Miles City PRMP/FEIS.

Impacts- Livestock Grazing

Issue Number: PP-MT-MILESCITY-GRSG-15-01-11

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: These statements that could negatively impact grazing are in direct violation of the BLM's duty to adequately safeguard grazing under the TGA and FLMPA. Additionally, the BLM cannot decrease stocking rates, adjust seasons of use or take other negative actions against a permit without adequate monitoring data and without consulting with the grazing permittee.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-6

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: There are instances where the alternatives could affect grazing. RMP/EIS Ch. 2 at 9-10, Actions 4-6. However, the RMP/EIS makes no attempt to quantify any potential impacts to grazing. Equally important, the RMP/EIS does not provide any sort of comparison of the economic costs among the alternatives with regard to the impacts on grazing.

Summary:

- The BLM violated NEPA by failing to quantify impacts of the alternatives to grazing, including economic impacts;
- The BLM failed to safeguard grazing as directed by the TGA and FLPMA; and
- Without adequate monitoring data and without consulting with the grazing permittee, the BLM cannot decrease stocking rates, adjust seasons of use, or take other negative actions against a permit.

Response:

- The Miles City PRMP/FEIS fully assessed and disclosed the impacts to livestock grazing in the Resources Uses Section – Livestock Grazing (p. 4-244 to 4-253). Economic impacts were disclosed in the Economics Section (p. 4-367 to 4-385) and in the

Economics Appendix.

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

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

The BLM has adequately analyzed and disclosed the effects to livestock grazing and economics.

- FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C).

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

The Miles City PRMP/FEIS complies with the Taylor Grazing Act, which does not preclude the BLM from identifying some public lands not available to livestock grazing.

- Livestock grazing permit modification must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Subpart 4100. The protestor is concerned that BLM will “decrease stocking rates, adjust seasons of use or

take other negative actions against a permit without adequate monitoring data and without consulting with the grazing permittee” contrary to 43 CFR 4100.

Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits are still required be in accordance with 43 CFR Subpart 4110.3 Changes in Permitted Use and 43 CFR Subpart 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR Subpart 4160 are still be available to the affected parties. BLM has not taken a pre-decisional approach because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made.

Impacts – Lands with Wilderness Characteristics

Issue Number: PP-MT-MILESCITY-GRSG-15-13-4

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: The BLM’s inventory of lands with wilderness characteristics is incomplete and inaccurate, such that there is not an accurate baseline for the agency to use in evaluating the effects of management alternatives on lands with wilderness characteristics.

Summary:

The BLM’s inventory of lands with wilderness character is incomplete and inaccurate and does not allow for an accurate analysis of management alternatives of lands with wilderness character.

Response:

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.”

Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values”. Additionally, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard

Issue Number: PP-MT-MILESCITY-GRSG-15-13-5

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: Because BLM has not accurately evaluated or acknowledged the presence of lands with wilderness characteristics (as described in detail above), BLM has not adequately analyzed the direct, indirect and cumulative impacts of management decisions on these lands.

the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B)

The BLM relied on a current inventory of the resources of the public lands when preparing the Miles City RMP/EIS. The BLM described the inventory information it used for lands with wilderness characteristics on pages 3-86 through 3-88 of the Miles City RMP/EIS. Additionally, the BLM considered a range of alternatives regarding management of lands with wilderness characteristics, detailed on pages 2-66 through 2-68.

As required by FLPMA, the BLM relied on its current inventory of the public lands, developed pursuant to Manual 6310, in developing the Miles City RMP/EIS.

Impacts-Other

Issue Number: PP-MT-MILESCITY-GRSG-15-03-1

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Due to the use of stale data and information, land-use planning, coal management and impacts analysis in the MCFO RMP/FEIS are riddled with dubious, out-of-date, and/or invalid information. According to MCFO RMP/FEIS, in March 1983 Powder River Resource Area staff identified locations where unsuitability criteria applied within the areas that contained coal with development potential (M/N-140). This analysis is 32 years old. While some screens would remain static during that period (i.e., lands unsuitable because they are the sites of historic Plains Indian battlefields), many would not.

Issue Number: PP-MT-MILESCITY-GRSG-15-03-9

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: In 2014, of the 39,953 acres disturbed by coal surface mining in Montana since passage of the federal law

only 3,870 acres had achieved Phase III bond release indicating successful establishment of vegetative communities appropriate for post-mine land use. Far less, 67 acres, had achieved final (Phase IV) bond release in Montana. (See Office of Surface Mining Reclamation and Enforcement, Annual Evaluation Report for the Regulatory Program of Montana for Evaluation Year 2014, October 2014.) We recognize that not all lands that have been re-seeded are eligible for Phase III bond release because they must withstand a ten-year cycle before becoming eligible to apply. However, the fact is that for Montana coal surface mines that have been operating since the 1970s or early 1980s less than 10% of acres mined have passed the one measurable bench mark signifying successful reclamation as recognized by the Office of Surface Mining (OSM). This is cause for significant alarm (See Undermined Promise II, www.underminedpromise.org). For BLM to base its analysis of the impacts of mining on wildly inaccurate assessments regarding reclamation invalidates that examination and merits our protest of the proposed MCFO RMP/FEIS.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-29

Organization: Western Environmental Law

Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The failure to address the impacts of hydraulic fracturing is particularly egregious because, in promulgating the fracturing rule, BLM stated that impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas

development,” would be analyzed during the “land use planning” process. 80 Fed. Reg. at 16,191. BLM must follow through on that commitment here. Conversely, because BLM failed to consider these impacts in development of the fracturing rule, the fracturing rule plainly cannot provide a substitute for consideration of these impacts here.

Summary:

The PRMP/FEIS violated NEPA by failing to consider and address the impacts of hydraulic fracturing on “landscapes, air, wildlife, etc., as well as greenhouse gas emissions from oil and gas development,” during the land use planning process; and by using stale data, information, and assessments for the analysis of impacts to mining, including outdated estimates of the duration of mining impacts.

Response:

BLM’s regulations and policy require consultation with qualified surface owners (43 CFR 3420.1-4(4)(i); BLM Land Use Planning Handbook, H-1610-1, Appendix C) as part of the coal leasing process either while preparing a comprehensive land use plan or land use analysis. The Miles City PRMP/FEIS (Volume I, Chapter 2, p.2-76) details the three actions for the coal program, the first of which is to carry forward the coal leasing allocations from the existing Big Dry and Powder River RMPs. Where management actions from the current Big Dry and Powder River resource management plans (RMPs), as amended, were found to meet the BLM’s current goals and no issue was raised, alternatives to current management were not developed. In these cases, the decisions from the existing RMPs are still appropriate to meet the goals and objectives for management of the public lands (p. 2-14). Action 2, p. 2-76 for coal states that all future leases under the Miles City PRMP/FEIS “would be evaluated for their suitability for leasing or exchange” by using the twenty eligibility criteria outlined in 43 CFR 3461.5. Action 3 states that “at the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the lease application area is “unsuitable” for all or certain coal mining methods pursuant to 43 CFR 3461.5.

At present there are no active proposals for new coal leasing in the planning area. Since land ownership and owner qualifications will change through time, this screen will be applied when actual lease proposals are contemplated. This is in order to respond to the current landowners during the lease activity planning (Vol. III, Minerals Appendix, p. MIN-108).

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. The process of hydraulic fracturing is discussed in Volume III, Minerals Appendix (p. MIN-19 through p. MIN-21) and the anticipated impacts from water withdrawals for hydraulic fracturing are discussed for each alternative in Chapter 4, Water Resources – Impacts Common to All Alternatives (p. 4-49).

The Miles City PRMP/FEIS complies with NEPA and other regulations in its decision to conduct surface owner consultation and incorporate analysis of all coal mining methods at the activity planning stage. The Miles City PRMP/FEIS also considers and analyzes the environmental consequences/impacts from hydraulic fracturing at an appropriate level for a LUP and would conduct more detailed analysis on a project-specific basis..

GRSG-General

Issue Number: PP-MT-MILESCITY-GRSG-15-08-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The management specified in the PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant

variation. GRSG habitat needs, especially hiding cover, do not vary widely across its range, thus it is a failure on the part of the agencies not to provide consistent parameters or at minimum an explanation for the variation between plans.

Issue Number: PP-MT-MILESCITY-GRSG-15-11-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: A five percent disturbance cap, as used in Wyoming, is not

equivalent to three percent (or less) disturbance caps adopted elsewhere in GRSG range...Some claim that the five percent cap incorporated from the Wyoming state “core area” GRSG conservation strategy in federal GRSG plans in the state is equivalent to the three percent cap...in the NTT report and other references (see, e.g., Wyoming FEIS: 4-339) because the Wyoming strategy also counts other types of disturbance against its cap, including temporary habitat loss from fire and vegetation removal (e.g., Wyoming DEIS: 2-118, Table 2-1, Action 115; 2-181, Table 2.5), that are not typically counted in the three percent cap. But this rationale is flawed. Where fire and vegetation removal have not affected a given core area, energy development and other land use could account for all allowable disturbance under the Wyoming cap, which, at five percent, is nearly twice the limit for anthropogenic disturbance recommended by science. Moreover, Knick et al. (2013), the basis for the NTT report recommendation, used a 3-mile buffer around GRSG leks to determine their disturbance threshold, a land area much smaller than the typical analysis area to which Wyoming’s five percent cap is typically applied. A five percent cap applied to the same geography used by Knick et al. (2013) would result in significantly more disturbance in GRSG habitat.

Issue Number: PP-MT-MILESCITY-GRSG-15-11-3

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: The Miles City FEIS should follow the example set by the South Dakota plan. The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development

prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4 - the Miles City plan should avoid doing the same); prohibit renewable energy development, and require managers to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/around winter range to preserve the areas by reducing future fire risk (SD FEIS: 48).

Issue Number: PP-MT-MILESCITY-GRSG-15-11-4

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: Other proposed final federal GRSG plans would adopt taller average grass height in GRSG nesting and brood-rearing habitat...For example, desired habitat conditions in GRSG habitat in the Oregon FEIS includes perennial grasses 2:7 inches high on arid sites and 2:9 inches on mesic sites in GRSG breeding habitat, including lekking, pre-nesting, nesting, and early brood-rearing habitats (citing Gregg et al. 1994; Hanf et al.1994; Crawford and Carver 2000; Hagen et al. 2007; Jon Bates, USDA ARS, pers. cotrtn. 2/10/2015) (Oregon FEIS: 2-41, Table 2-4). Desired habitat condition in the HiLine plan includes perennial grasses at 2: 7 inches high in GRSG breeding habitat (HiLine FEIS: 42, Table 2.4; 195, Table 2.27). The Proposed Plan in the Idaho FEIS includes desired conditions for GRSG habitat that include perennial grasses and forbs 2:7 inches high

during nesting and early brood rearing season (Idaho FEIS:220 Table 2-3). While these plans also provide that desired conditions may not be met on every acre of GRSG habitat and that a specific site's ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (similar to the Bighorn Basin FEIS) (and recognizing that these additional disclaimers, by themselves, further complicate grazing management in GRSG range), the plans at least adopt science-based minimum standards for evaluating grazing effects and informing adaptive management of GRSG nesting and brood-rearing habitat.

Issue Number: PP-MT-MILESCITY-GRSG-15-11-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Nevada/Northeastern California plan has adopted this desired condition for managing GRSG habitat (2-18, Table 2-2). This provision sets a science-based (Lockyear et al. in press) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

Issue Number: PP-MT-MILESCITY-GRSG-15-11-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Miles City plan should follow the example set by the

Summary:

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

Nevada and Oregon plans. Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [GRSG] habitat due to climate stress" as a threat to GRSG; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on GRSG and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species. The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas," generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for GRSG over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current sage- GRSG range. The purpose of these areas is to benefit GRSG over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

Response:

The BLM State Director determines the planning area for Land Use Planning (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. While the BLM and the Forest Service have used a consistent method and framework for developing alternatives (based on the recommendations in the NTT Report) and planning areas, the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences (PRMP/FEIS, Vol. I, Chapter 2, p. 2-14 through p. 2-17). Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG – Density and Disturbance Cap

Issue Number: PP-MT-MILESCITY-GRSG-15-08-10

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan does not recognize grazing as a surface disturbing or disruptive activity. PRMP/FEIS at 2-18. This means that mitigation measures would not be applied to this activity. Id. at 2-18.

But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupt vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. It also fails to include these disturbances within the anthropogenic disturbance cap. PRMP/FEIS at 2- 52.

Summary:

Protests dispute the application of density and disturbance caps of being insufficient to protect GRSG because the calculation does not include disturbance associated with livestock grazing.

Response:

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

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the PRMP/FEIS that address the impacts (PRMP/FEIS, Vol. I, Chapter 2, p. 2-70.) The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in the PRMP/FEIS.

GRSG – Adaptive Management

Issue Number: PP-MT-MILESCITY-GRSG-15-07-19

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Second, BLM cannot implement the “responses” to the soft triggers because there is nothing to implement. The Proposed RMP does not define any concrete actions that BLM will implement in response to the soft triggers. See Proposed RMP/Final EIS at 2-12. The planning regulations do not permit BLM to change the management prescriptions in an RMP via an open-ended placeholder.

Summary:

The Adaptive Management Plan associated with the LUP Revision is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist.

Response:

Applying specific responses at a Land Use Plan Level would not be appropriate as such may not address the site-specific issues or “causal factors” that initiated the tripped soft trigger. The PRMP/FEIS provides for various implementation level responses that will more appropriately address the causal factors in these situations (Vol. I, Chapter 2, p. 2-11). BLM is within its authority and appropriately applies an adaptive management plan to conserve GRSG habitat.

GRSG – Monitoring

Issue Number: PP-MT-MILESCITY-GRSG-15-08-8

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Number: PP-MT-MILESCITY-GRSG-15-07-35

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the soft and hard adaptive management triggers and responses set forth in the Proposed RMP as arbitrary because the adaptive management strategy does not describe the factors BLM will consider when assessing the “causal” factors of triggers being reached.

Summary:

There is no clear connection between the PRMP/FEIS’ implementation and monitoring plan and the habitat objectives identified in Table 2-4. MON-13.

Response:

Monitoring for the GRSG habitat objectives, described in Table 2-4 (Vol. I, Chapter 2, pp. 2-15 and 2-16) of the Miles City PRMP/FEIS, is not found in the Monitoring Appendix, Table 1 (pp. MON-2 through MON-29). Rather, the GRSG Monitoring Framework (GRSG Monitoring Framework Appendix) describes the methods to monitor habitats and evaluate the implementation and effectiveness of the BLM planning strategy (BLM IM 2012-044) (BLM 2011e) to conserve the species and its habitat (GRSG MON-1). The BLM intends to use the data collected from the effectiveness monitoring to identify any changes in habitat condition related to the goals and objectives of the plan and other range-wide conservation strategies (US Department of the Interior 2004; Striver et al. 2006; US Fish and Wildlife Service 2013). The information collected through the Monitoring Framework Plan outlined in the GRSG Monitoring Framework Appendix would be used by the BLM to determine when adaptive management hard and soft triggers (discussed below) are met (p. 2-11).

Soft triggers are indicators that management or specific activities may not be achieving the intended results of a conservation action. Soft triggers require immediate monitoring and surveillance to determine causal factors and may require curtailment of activities in the short- or long-term, as allowed by law (p. 2-12).

Hard triggers are indicators that management is not achieving desired conservation results. Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation objectives set forth in the BLM plans. As such, the Proposed Plan/Final EIS includes a “hard-wired” plan-level response; that is, it provides that, upon reaching the trigger, a more restrictive alternative, or an appropriate component of a more restrictive alternative analyzed in the EIS will be implemented without further action by the BLM. Specific “hard-wired” changes in management are identified in Table 2-3, Specific Management Responses (p. 2-13 and 2-14).

The Miles City PRMP/FEIS clearly explains the connection between the habitat objectives identified in the plan and how those objectives will be monitored.

GRSG - Livestock Grazing

Issue Number: PP-MT-MILESCITY-GRSG-15-08-4

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: In order to conserve GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg

predation, or egg crushing that livestock pose to nesting GRSG. See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting season is crucial for the species’ survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are shortcomings of the plan.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-6

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS includes the Desired Conditions for Seasonal Habitats for GRSG on BLM Administered Lands. Table 2-4, PRMP/FEIS at 2-15,16. The habitat parameters are based on some of the published science regarding the needs of the species for breeding, nesting/early brood rearing, late brood-rearing/summer, and winter habitats. Ibid. The PRMP/FEIS claims that, “These habitat indicators are consistent with the rangeland health indicators used by the BLM.” Ibid. However, the FEIS provides no comparison between the GRSG habitat indicators and the BLM's existing rangeland health indicators. In fact, it is not evident that consistency exists between the two indicators as that would preclude the need for any adjustments to the current plan and monitoring system.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-7

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS doesn't analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations for protecting GRSG habitat. Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year, the PRMP/FEIS has not considered limiting grazing in this way within the planning area. The PRMP/FEIS also doesn't specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover GRSG, the PRMP/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

Summary:

- The PRMP/FEIS fails to require and analyze seasonal restrictions of livestock grazing during nesting season; and
- The PRMP/FEIS fails to compare between the GRSG habitat indicators and the BLM's existing rangeland health indicators, it is not evident that consistency exists between the two indicators as that would preclude the need for any adjustments to the current plan and monitoring system.

Response:

- When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

In accordance with BLM's Land Use Planning Handbook and BLM IM No. 2012-169, BLM considered a range of alternatives with respect to both areas that are available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. The analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Miles City PRMP/FEIS and that address resource issues identified during the scoping period. The Miles City PRMP/FEIS analyzed five alternatives, which are described in Chapter 2, Alternatives (p. 2-1 through 2-157). A number of alternatives were also considered but not carried forward for detailed analysis (p. 2-22 through 2-25).

No issues or conflicts were identified during this land use planning effort that require the complete elimination of livestock grazing within the planning area for their resolution (BLM Washington Office IM 2012-169) (BLM 2012c). Livestock removal and use adjustment where appropriate have been incorporated in this planning effort. Because the BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the BLM-administered lands in RMPs, the analysis of an alternative to entirely eliminate grazing is not needed (Miles City PRMP/FEIS, p. 2-23 through 2-25).

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

All alternatives would allow the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, site-specific NEPA and compliance with 43 CFR Subpart 4160, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRS habitat objectives.

The BLM considered a reasonable range of alternatives and considered grazing

restrictions in the Miles City PRMP/FEIS in full compliance with NEPA; changes to individual permits is not appropriate at the land management planning scale and would occur at the implementation stage.

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

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

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

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

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

The habitat objectives in Table 2-4 (Miles City PRMP/FEIS, p. 15 through 2-17) summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in Table 2-4 were adjusted based on appropriate science and monitoring data to define the range of characteristics used in this subregion. The defined habitat objectives provide the broad vegetative conditions

across the landscape that indicate the seasonal habitats used by GRSG. These habitat indicators are consistent with the rangeland health indicators used by the BLM.

The habitat objectives will be part of the GRSG habitat assessment framework to be used during land health evaluations (see GRSG Monitoring Framework Appendix). These habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas. Therefore, the determination on whether the objectives have been met will be based on the specific site's ecological ability to meet the desired condition identified in the table.

All BLM use authorizations will contain terms and conditions regarding the actions needed to meet or progress toward meeting the habitat objectives. . If monitoring data show the habitat objectives have not been met and no progress is being made towards meeting them, there will be an evaluation and a determination made as to the cause. If it is determined that the authorized use is a cause, the use will be adjusted by the response specified in the instrument that authorized the use (Miles City PRMP/FEIS, p. 2-15).

The BLM complied with NEPA's requirement use the best available science and to adequately analyze the impacts of the alternatives to GRSG habitat in the Miles City PRMP/FEIS.

GRSG - Mitigation

Issue Number: PP-MT-MILESCITY-GRSG-15-07-28

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The terms of federal leases do not authorize BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See, e.g., BLM Form 3110-11, Offer to Lease and Lease for Oil and Gas (Oct. 2008). Although lease rights are subject to “applicable laws, the terms, conditions, and attached stipulations of [the] lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance,” see BLM Form 3110-11, neither BLM's planning regulations nor its leasing regulations contain any requirement to provide compensatory mitigation and do not authorize BLM to require compensatory

mitigation. See 43 CFR pts. 1600, 3100. Moreover, no BLM or Department of the Interior order requires compensatory mitigation of oil and gas lessees. In fact, for nearly two decades, BLM has consistently taken the position that it would not require compensatory mitigation of lessees. See BLM Instruction Memorandum No. 2008-204, Offsite Mitigation (Oct. 3, 2008); BLM Instruction Memorandum No. 2005-069, Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal, and Energy Rights-of-Way Authorizations (Feb. 20, 2005); Wyoming BLM Instruction Memorandum No. WY-96-21, Statement of Policy Regarding Compensation Mitigation (Dec. 14, 1995). Additionally, the requirement that compensatory mitigation result in an improvement to GRSG or its habitat by producing a “net conservation gain” is not contemplated in any regulations or formal departmental policy. Accordingly, the terms of federal oil and gas leases do not

contemplate the Proposed RMP's requirement that lessees provide

compensatory mitigation to provide a net conservation gain.

Summary:

The PRMP/FEIS violates existing regulations at 43 CFR 1600 and 3100 by requiring compensatory mitigation, including to achieve a "net conservation gain" of GRSG habitat.

Response:

FLPMA and other applicable law authorize the BLM to provide for reasonable mitigation of impacts caused by development on public lands. In FLPMA, Congress declared it to be the policy of the United States that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values...." FLPMA §102(a)(8).

FLPMA also directs the BLM to manage the public lands in accordance with the principles of multiple use and sustained yield. FLPMA § 302(a). In defining multiple use and sustained yield, Congress called for "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment" and for "achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." FLPMA § 103(c) & (h). The multiple use and sustained yield principles guide the BLM through its land use planning process, FLPMA § 202(c)(1), and its land use planning regulations contemplate that the BLM will monitor and evaluate the effectiveness of mitigation measures. 43 CFR § 1610.4-9. Moreover, through land use planning, the BLM identifies desired outcomes in the form of goals and objectives for resource management. 43 CFR § 1601.0-5(n)(3). "Goals" are broad statements of desired outcomes that are not usually quantifiable, such as maintain ecosystem health and productivity, promote community stability, ensure sustainable development, or meet Land Health Standards. "Objectives" identify specific desired outcomes for resources, are usually quantifiable and measurable, and may have established timeframes for achievement. BLM Land Use Planning Handbook, H-1601-1 (2005) at 12. Mitigation is one tool that the BLM can use to achieve the goals and objectives it establishes in land use plans.

BLM Instruction Memorandum (IM) No. 2008-204 outlines policy for the use of offsite mitigation for BLM land use authorizations. In making decisions that are within its discretion (taking into account statutes, regulations, and contractual/property rights of the requester), the BLM has an obligation to approve only land use authorizations that are consistent with its goals and objectives. This may mean that the BLM may be unable to permit certain land use authorizations without appropriate mitigation measures. Onsite mitigation alone may not always be possible or sufficient, though often resources are present offsite that can offer suitable compensation for remaining onsite impacts. Consequently, offsite mitigation may be an effective management tool to ensure appropriate land use authorizations.

In accordance with the preceding law, regulation, and policy, the requirement for a net conservation gain derives from the Purpose and Need of the Miles City PRMP/FEIS, part of which is to incorporate consistent objectives and conservation measures for the management of GRSG habitat and to incorporate appropriate management actions and practices to enhance or

restore GRSG habitat on BLM-administered land (p. 1-4). The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat (p. 2-4 to 2-11).

Chapter 4, Mitigation (Volume II, p. 4-1) describes the environmental consequences associated with the impacts to GRSG and its habitat from activities carried out in conformance with this plan, in addition to BLM management actions. In undertaking BLM management actions, and consistent with valid existing rights and applicable law, including 43 CFR 3100, in authorizing third party actions that result in habitat loss and degradation, the BLM will require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation.

Throughout the planning area, BLM-authorized activities associated with all resource and all resource use programs would be subject to mitigation and minimization guidelines and best management practices (BMPs) (see the Mitigation Measures and Conservation Actions Appendix) including those specific mitigation measures, conservation actions, and Best Management Practices for GRSG (see the GRSG Regional Mitigation Strategy Appendix.)

The Miles City PRMP/FEIS complies with FLPMA and other applicable law, including 43 CFR 1600 and 3100 by identifying appropriate compensatory mitigation measures, including to achieve a “net conservation gain” of GRSG habitat.

Administrative Procedures Act

Issue Number: PP-MT-MILESCITY-GRSG-15-01-22

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to comply with the Executive Order requiring regulatory planning and review. Executive Order 12866 requires the BLM to have the Office of Management review all significant rules and regulations. This analysis has not been done. The BLM Failed to Provide an Energy Effect Analysis. Executive Order 13211 requires that the BLM analyze how this RMP would impact energy needs in the United States. This analysis has not been done. The BLM failed to provide a Federalism Analysis. Executive Order 13132 requires that the BLM provide a federalism analysis. This analysis has not been done.

The BLM failed to provide a Civil Justice Reform Analysis. Executive Order 12988 requires that the BLM analyze the impact of the RMP on civil justice. This analysis has not been done.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-24

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to provide a Takings Analysis. Executive Order 12630 requires that federal government actions which may result in a taking of private property must undergo a takings analysis prior to implementation. Executive Order 12630, 62 Fed. Reg. 48, 445 (Governmental Actions and Interference with Constitutionally Protected Property Rights (1988)) (stating that “governmental

actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public.”) The BLM has failed to complete a takings analysis.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-28

Organization: Lund Law obo Prairie County Cooperative State Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM has violated the Regulatory Planning and Review Requirement. Executive Order 12866 states that, “[t]he American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves the health, safety, environment, and wellbeing and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of state, local and tribal governments; and regulations that are effective, consistent, sensible, and understandable.” Pursuant to this Executive Order, the agencies were supposed to seek input from local governments, minimize the regulatory burdens, and harmonize federal regulatory actions with related state, local and tribal regulatory functions. Again, the BLM has not met the requirements in this Executive Order.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-3

Organization: Montana Petroleum

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedures Act, when it implemented a number of changes to management practices – including a “net

Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest BLM’s adoption of several elements of the Proposed RMP— specifically, the compensatory mitigation requirement, the “net conservation gain” standard, and conservation measures that include lek buffer distances, RDFs, and density and disturbance caps—because each constitutes a substantive rule that BLM cannot apply before it completes the formal rulemaking procedures required by the APA. See 5 USC § 553. Additionally, the Trades protest the limitations on modifications and waivers of NSO stipulations in PHMA because they improperly amend a BLM regulation without completing the formal rulemaking procedures.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-4

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. First, the Proposed RMP prohibits waivers and modifications despite the regulation’s language that stipulations “shall be subject to modification or waiver.” Second, the Proposed RMP expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and the Montana Fish, Wildlife, and Parks Department. These direct contradictions reflect that BLM is attempting to alter its regulations through the RMP.

conservation standard,” required design features, lek buffer distances, and density and disturbance caps – without first completing a formal rulemaking process. The BLM failed to complete a number of Congressional and Executive Order requirements during the RMP Process, including:

- The Regulatory Flexibility Analysis Act, 5 USC § 601,
- Small Business Regulatory Enforcement Fairness Act. 5 USC § 804(2),
- Executive Order Requiring Regulatory Planning and Review, EO 12866,
- Energy Effect Analysis, EO 13211,
- Federalism Analysis, EO 13132,
- Civil Justice Reform Analysis, EO 12988
- Takings Analysis, EO 12630, and
- Regulatory Planning and Review Requirement, EO 12866.

Response:

The FLPMA details the BLM’s broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Miles City PRMP/FEIS specifically addresses goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see pages 1-2 and 1-3, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

The regulations concerning land use planning, 43 CFR 1610, states that “guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed... [including] national level policy which has been established through ... Director approved documents. (Section 1610.1(a)(1)).

The Executive Summary to this PRMP/FEIS details how Director-approved guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts. Chapter 1 of the Miles City PRMP/FEIS also details its role in the national GRSG strategy as described in the aforementioned IM.

Finally, the protestors are incorrect that the Proposed LUPA’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. That regulation does not require BLM to provide for waivers or modifications but instead provides regulatory limits on BLM’s ability to allow waivers or modifications if BLM determines (e.g., consistent with the plan and its regulatory authority) that it wishes to grant one.

Therefore, these elements of the Miles City PRMP/FEIS do not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally -- and the process followed for this planning effort specifically -- provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA. The proposed plan describes the basis for its proposed actions and the science upon which it is based; it is not arbitrary or capricious under the APA -- which, regardless, is the standard of review of agency action in federal court, not BLM's administrative protest procedures. Additional rationale will be provided in the Record of Decision.

Additionally, as the land-use planning process is not a rulemaking process, legislation and executive orders that apply to rulemaking in general do not apply to land use planning. To the extent that they apply, the BLM's Land Use Planning regulations (43 CFR 1610), handbook (H-1610), and policies are designed to satisfy all legal requirements, especially those laws and executive orders that mandate public involvement an analysis of federal actions.

Energy Policy Act of 2005

Issue Number: PP-MT-MILESCITY-GRSG-15-07-30

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed RMP should clarify that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed RMP. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of the National Environmental Policy Act (NEPA) "and other applicable law" have been completed. 30 USC § 226(p)(2). Thus, BLM can only defer decisions on permits when the requirements of NEPA "and other applicable law" have not been met. See *id.* BLM's planning authority conferred through FLPMA is not "other applicable law" that allows BLM to defer development due to the density and disturbance limitations on existing federal leases because RMPs developed pursuant to FLPMA are subject to valid existing rights.

See *Colo. Env't'l Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. BLM should revise the Proposed RMP to clearly state that BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-33

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The requirement that lessees mitigate impacts to GRSG to provide a "net conservation gain" is more restrictive than necessary. BLM could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 USC § 1732(b). Though inconsistent with FLPMA, BLM did not even consider requiring that mitigation achieve "no net loss" of GRSG habitat in PHMA and

GHMA. Because the requirement that mitigation achieve a “net conservation gain” is inconsistent with EPAct, BLM must revise the Proposed RMP to remove the “net conservation gain” requirement.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-34

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Likewise, the lek

buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in Section X.B, *infra*. Furthermore, in the Final EIS, BLM did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed RMP/Final EIS at 4-105 – 4-131. Because the lek buffer distances are unnecessarily restrictive, BLM must revise the Proposed RMP to identify measures that comply with the directives of EPAct.

Summary:

The Miles City PRMP/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing by:

- Deferring APDs
- Implementing lek buffer distances
- Providing for a “net conservation gain” of GRSG habitat

Response:

The Miles City PRMP/FEIS does not propose deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals is found in Volume I, Chapter 2, p. 2-76 of the PRMP/FEIS.

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 USC section 15801 et. seq.; BLM MOU WO300-2006-07). In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval, and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing. (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Miles City PRMP/FEIS presents a set of oil and gas conditions of approval and best management practices necessary to meet the goals and objectives for each resource and resource use in the planning area.

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for GRSG—A Review” (USGS 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. As stated in the GRSG Conservation Buffer Appendix:

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

As such, the BLM is not imposing specific stipulations, best management practices, or conditions of approval regarding lek buffers through the Miles City PRMP/FEIS and is not in violation of the Energy Policy Act. Instead, BLM will analyze the impacts of specific lek buffer distances at the implementation stage (i.e., Application for Permit to Drill) and determine the appropriate buffer distance at that time.

The guidance in the Miles City PRMP/FEIS to provide for a net conservation gain is not a stipulation, condition of approval, or best management practice that will be applied to leases or Applications for Permit to Drill. Instead, it is part of the mitigation strategy in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. As it relates to mitigation, p. 2-19 through p. 2-20 of the PRMP/FEIS state:

“Consistent with the proposed plan’s goal outlined in Table 2-5, Comparison of Alternatives, the intent of the Miles City PRMP/FEIS is to provide a net conservation gain to the GRSG species. To do so, in all GRSG habitats, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM will require and assure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. Actions which result in habitat loss and degradation include those identified as threats which contribute to GRSG disturbance as identified by the U.S. Fish and Wildlife Service in its 2010 listing decision (75 FR 13910) and shown in Table 2 in the GRSG Monitoring Framework Appendix. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840 – Special Status Species Management, Section .02B, which states ‘to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA.’”

Because it is not a stipulation, condition of approval, or best management action applied to a lease or application for permit to drill, this mitigation guidance does not violate the Energy Policy Act of 2005.

Air Quality, Climate Change, and Noise

Issue Number: PP-MT-MILESCITY-GRSG-15-07-55

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 USC § 7401 – 7671q. Under the express terms of the CAA, EPA has the authority to regulate air emissions. In Montana, EPA has delegated its authority to the Montana Department of Environmental Quality (MDEQ). See 42 USC § 7401 - 7671q; 40 CFR pts. 50 - 99; 40 CFR § 52.1370 – 52.1397 (Montana’s State Implementation Plan); Mont. Code Ann. §§ 75-2-201 – 75-2-234 (2014); Mont. Admin. R. Title 17, Ch. 8. The Secretary of the Interior, through the Interior Board of Land Appeals (IBLA), has determined that, in states such as Montana, the state, and not BLM has authority over air emissions:

Issue Number: PP-MT-MILESCITY-GRSG-15-07-56

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: BLM should also recognize that the agency does not have the authority to implement, regulate, or enforce the PSD increment. BLM’s lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of Understanding (MOU) issued by the Department of the Interior, Department of Agriculture, and the EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. See Memorandum of Understanding Among Department of Agriculture, Department of the Interior and the EPA

Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Montana’s PSD program currently controls Wyoming’s enforcement of the PSD program within the State of Montana. 80 Fed. Reg. 4793 (Jan. 29, 2015); 76 Fed. Reg. 40,237 (July 8, 2011); 71 Fed. Reg. 40,922 (July 19, 2006); 71 Fed. Reg. 3776 (Jan. 24, 2006); 71 Fed. Reg. 3770 (Jan. 24, 2006); 66 Fed. Reg. 42,427 (Aug. 13, 2001). There is no justifiable or legal support for BLM’s alleged authority over PSD analysis. Given the limits on BLM’s authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, BLM must revise the objectives set forth in the Proposed RMP regarding visibility and PSD consumption.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-57

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Section 202(c)(8) of FLPMA does not require or authorize BLM to enforce air quality controls. Instead, the cited section of FLPMA provides: “In the development and revision of land use plans, the Secretary shall— . . . (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans.” 43 USC § 1712(c)(8). The language of the statute demonstrates BLM is required to “provide for compliance,” not independently regulate air emissions.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-58

Organization: Montana Petroleum

Association

Protestor: Dave Galt

Issue Excerpt Text: The ARMP, included in the Air Resources and Climate Appendix, similarly represents a legally impermissible extension of BLM authority with respect to air matters. The ARMP is inappropriate for several reasons. First, the provisions of the Air Plan set forth in detail when and how BLM will conduct air quality modeling for oil and gas operations. The provisions of the ARMP do not comply with the MOU among the United States Department of Agriculture, United States Department of the Interior, and the United States EPA regarding air quality analyses and mitigation for federal oil and gas decisions through the NEPA process. This Memorandum, executed on June 23, 2011, is the current national management guidance determining when and how air quality modeling for oil and gas projects will be conducted.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-59

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Second, the language in the ARMP also impermissibly attempts to require monitoring and modeling in the area as if the Planning Area had been designated as non-attainment under the CAA. In fact, only a portion of the Planning Area is currently in or predicted to be in a non-attainment status. Thus, all of BLM's language requiring "enhanced mitigation" if a project is expected to result in "potential future impacts to NAAQS," or if, on a Planning Area-wide basis, an exceedance of NAAQS occurs prior to BLM's completion of photochemical grid modeling, or if BLM-calculated design value exceeds 85% of a NAAQS after BLM's completion of

photochemical grid modeling, should be limited to activities in that area. Proposed RMP, ARMP, pg. ARMP-20 – 21. Further, BLM must remove all references to the 85% standard because such a standard has no basis or support in an air quality context. BLM should very carefully review the proposed air resources plan and remove, in consultation with the MDEQ, the provisions that do not comport with existing law relative to air quality or the existing qualitative data.

Issue Number: PP-MT-MILESCITY-GRSG-15-07-60

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Moreover, the "enhanced mitigation measures" BLM intends to impose on oil and gas operations are unlawful. BLM includes as potential "enhanced mitigation measures" electric or natural gas-fired rigs, "reduced emission completions beyond those required by USEPA regulations," well pad density limitations, and reduction in number of drill rigs operating simultaneously. Proposed RMP, ARMP, pg. ARMP-20 (emphasis added). Given BLM's lack of authority over air quality, it is inappropriate for the agency to impose emissions or mitigation measures on oil and gas operations at all, especially when a project proponent has already agreed to mitigation in full compliance with state and federal requirements. Instead, emission controls should only be imposed by agencies with expertise and authority over air quality in Montana, which, according to the Secretary of the Interior, is MDEQ. See Wyoming Outdoor Council, et al., 176 IBLA at 26.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-19

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: In its Proposed RMP/FEIS, the BLM failed to adequately analyze and disclose the climate impacts of its proposal, particularly regarding the impact of burning 70 billion tons of coal and drilling 7,343 new oil and gas wells. BLM must disclose the easily quantifiable emissions that will result from burning this coal. Instead, BLM refused to quantify any level of CO2 emissions from combustion and failed to offer any rationale explanation as to why those emissions could not be quantified and disclosed to both the public and decisionmakers. BLM significantly under reported the climate impacts of its proposed plan, misleading the public first by failing to account for the vast majority of the greenhouse gas emissions that will result from BLM's decision, then by failing to fully account for the harm those emissions will cause, and finally by asserting that these emissions do not matter because they account for only a small percentage of statewide totals.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-2

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Miles City RMP fails to take a hard look at the impacts of climate change, including by underreporting the climate impacts of its proposal, excluding any social cost of carbon analysis, failing to commit to mitigation measures to address the serious issue of methane emissions and waste, and failing to address the impacts of coal, oil, and gas development on human resiliency.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-21

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: By not calculating any of the CO2 emissions from combustion of the 70 billion tons of coal made available by the Proposed RMP, BLM has omitted from consideration the vast majority of the greenhouse gases associated with the plan, or, in this case, over 116 billion tons of CO2 emissions. NEPA requires agencies to analyze and disclose the direct and indirect impacts of their decisions. BLM's failure to meet this simple, clear, and long-standing mandate renders BLM's Final EIS both misleading and legally invalid.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-22

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: In addition to failing to calculate the indirect CO2 emissions that will result from burning coal from the planning area, BLM also failed to take the next step and tell the public what impact those emissions will have on the environment. Instead, BLM relied solely on the amount of CO2e as a proxy for disclosing the impact of those emissions. In doing so, BLM violated NEPA by failing to utilize the social cost of carbon – a tool created by federal agencies and generally accepted in the scientific community – that would have allowed the agency to analyze the impact of these emissions.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-26

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: There is absolutely no mention, much less analysis, in the Proposed RMP/FEIS of these growing impacts or the necessity to employ climate mitigation measures to ensure landscape and human resiliency and their ability to adapt and respond to climate change impacts.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-27

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: Excluding climate change effects from the environmental baseline ignores the reality that the impacts of proposed actions must be evaluated based on the already deteriorating, climate-impacted state of the resources, ecosystems, human communities, and structures that will be affected. Accordingly, BLM must clarify that existing and reasonably foreseeable climate change impacts as part of the affected environment in the planning area, which then must be assessed as part of the agency's hard look at impacts, and integrated into each of the alternatives, including the no action alternative.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-9

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The MCFO must consider foreseeable impacts to visibility and air quality degradation that will result from development authorized by the Miles

Summary:

The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (42 USC Sections 7401 – 7671q), nor does the agency have the authority to implement, regulate,

City RMP and EIS. In particular, the MCFO must consider the air quality impacts from oil and gas development in the planning area. Much of air pollution from oil and gas operations, which is specifically discussed, below, also degrades visibility. Section 169A of the Clean Air Act (“CAA”), 42, USC § 7401 et seq. (1970) sets forth a national goal for visibility, which is the “prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.” Congress adopted the visibility provisions in the CAA to protect visibility in “areas of great scenic importance.”

Issue Number: PP-MT-MILESCITY-GRSG-15-11-7

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Properly addressing climate change in GRSG planning would require the BLM to analyze the effectiveness of their proposed rivation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis of climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate as their baseline for analysis. For example, the impacts of habitat disturbance may be more pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

or enforce the PSD increment. The Secretary of the Interior, through the IBLA, has determined that, in Montana, the State of Montana and not the BLM has authority over air emissions. Therefore, BLM must revise objectives in the PRMP/FEIS regarding visibility and PSD consumption. In order to properly address impacts of air quality and climate change in GRSG planning and to comply with NEPA, BLM needs to do the following:

- Evaluate reasonably foreseeable impacts to visibility and air quality from development authorized in the PRMP/FEIS;
- Use the social cost of carbon as an evaluation tool;
- Evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
- Examine cumulative environmental consequences in a changed climate as the baseline; and
- Examine impacts such as habitat disturbance in concert with climate change.

Response:

Authority and Air Quality Impacts

The BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”. Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2). NEPA also requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)).

Through its RMPs, the BLM establishes desired outcomes for air quality and sets “area-wide restrictions” needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2).

The Miles City PRMP/FEIS seeks to manage the public lands in a manner that appropriately protects air quality and its related values, as described in the management goals for air quality (see Table 2-5 – Air Resources and Climate). In the Miles City PRMP/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal land management actions anticipated under the Miles City PRMP/FEIS on air quality. The BLM developed emission control strategies and mitigation measures [i.e. “area-wide restrictions] to address those impacts and achieve desired outcomes for air quality. Chapter 4, Section Air Resources and Climate (beginning on p. 4-4) explains the methodology used to assess impacts to air quality, including from development activities.

Establishing air quality and visibility measures and conducting a PSD analysis in the Miles City PRMP/FEIS that may be applied to future actions in the planning area does not mean that the BLM is writing new regulations, nor is the BLM establishing itself as a regulatory agency or establishing mitigation measures that are intended to supersede the agencies with regulatory authority over air quality, such as the Montana Department of Environmental Quality (MDEQ). Rather, the BLM is responding to estimated impacts from the Miles City PRMP/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act.

The Miles City PRMP/FEIS adequately assesses the potential impacts to air quality and does not exceed the BLM's statutory authority by proposing restrictions for activities that impact air quality and/or visibility.

Climate Change

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM "consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources". The BLM applies this requirement to the preparation of RMP revisions and amendments, as indicated in Chapter 1, Issues Addressed (p. 1-8). Climate is discussed in Chapter 3, Climate Change (p. 3-4), Chapter 4, Air Resources and Climate (p. 4-4). Regarding the social cost of carbon, no court case or existing guidance currently requires that estimates of the social cost of carbon associated with potential greenhouse gas emissions be included in a NEPA context, although the social cost of carbon is currently used in a regulatory context.

As indicated in Chapter 4, p. 4-5 climate change is considered with regard to the potential effect it could have on various resources. For example, "Climate change is likely to affect wildlife breeding patterns, water and food supply, and habitat availability to some degree. Sensitive species in the planning area, such as GRSG, which are already stressed by declining habitat, increased development, and other factors, could experience additional pressures as a result of climate change." It would be highly speculative to analyze a future climate change scenario as a baseline for the cumulative impacts assessment.

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

The BLM complied with Secretarial Order 3289 in developing the Miles City PRMP/FEIS.

Fluid Minerals

Issue Number: PP-MT-MILESCITY-GRSG-15-05-8

Organization: Beatty & Wozniak obo: ExxonMobil / XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Montana Fish, Wildlife and Parks Department (MFWP)

and FWS, BLM is ceding its authority over oil and gas development to the FWS; in other words, providing FWS a de facto veto authority over BLM. BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency. See 43 CFR § 3101.1-4.

Issue Number: PP-MT-MILESCITY-GRSG-15-10-3

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

fails to take a hard look at hydraulic fracturing.

Issue Excerpt Text: The Miles City RMP

Summary:

The Miles City PRMP/FEIS violates FLPMA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

The Miles City PRMP/FEIS violates NEPA by failing to take a “hard look” at hydraulic fracturing.

Response:

Approval of exceptions, modifications, and waivers

As stated in 43 CFR 3101.1-4, “a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.” While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer’s determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, “BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented,” (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

Management Action 3 under the heading “GRSG Habitat – Priority Habitat Management Areas” describes the process the BLM proposes to use to approve exceptions to oil and gas lease stipulations under the PRMP/FEIS. “The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action satisfied (i) or (ii),” (Miles City PRMP/FEIS, p. 2-7 and p. 2-8).

By applying this review method, the Miles City PRMP/FEIS provides specificity to the process of granting exceptions, modifications and waivers as directed by Washington Office Instruction Memorandum 2008-032, and therefore does not violate FLPMA, the MLA, or BLM policy and guidance for the aforementioned reasons.

Hydraulic Fracturing

The scope and nature of the specific proposed action determines the level of NEPA analysis that is performed. Because RMPs set forth management direction that guides future, site-specific projects and do not, themselves, authorize any such site-specific projects, the NEPA analysis at the plan-level is necessarily broad and often qualitative. This plan-level NEPA analysis provides

an analytical foundation for subsequent project-specific NEPA documents. As required by 40 CFR § 1502.16, a discussion is provided of “[t]he environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented...” An additional description of hydraulic fracturing, as well as other procedures for considering proposals to conduct exploration, leasing and production of oil and gas are included in the Minerals Appendix of the Miles City PRMP/FEIS.

The Miles City PRMP/FEIS complies with NEPA in analyzing the potential, indirect environmental impacts that occur when the Proposed Plan and other alternatives are implemented in the future. These impacts are disclosed in Chapter 4 of the PRMP/FEIS. Chapter 4 of the PRMP/FEIS generally describes some of the potential impacts from hydraulic fracturing. “Hydraulic fracturing for conventional oil recovery is associated with existing oil development disturbance and typically short-term. Minor additional visual impacts would occur on the constructed locations or access roads and be temporary in nature since this recovery method is used to complete a new well or during workover operations. No long-term visual impacts as a result of hydraulic fracturing are expected,” (p. 4-217). Although specific implementation actions are not proposed in the PRMP/FEIS, established procedures for ensuring that all resources, including groundwater, are protected are included in the Minerals Appendix. For example, “The MBOGC regulations require new and existing wells which will be stimulated by hydraulic fracturing must demonstrate suitable and safe mechanical configuration for the stimulation treatment proposed... In accordance with MBOGC Rule 36.22.1015 operators are required to disclose and report the amount and type of fluids used in well stimulation to the Board or, if approved by the Board, to the Interstate Oil and Gas Compact Commission/Groundwater Protection Council hydraulic fracturing web site FracFocus.org),” (Minerals Appendix, p. MIN-21). For further discussion of the impacts of hydraulic fracturing, see the section titled “Impacts-Water” in this report.

Further analysis of the impacts of hydraulic fracturing would be done at the implementation level, and are not looked at in depth for the purposes of this land use plan. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13). A more quantified or detailed and specific analysis would be required only if the scope of the decision included implementation actions. As specific actions that may affect the area come under consideration, the BLM and the Forest Service will conduct subsequent NEPA analyses that include site-specific project and implementation-level actions. The site-specific analyses will tier to the plan-level analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for implementation actions.

Solid Minerals including Mining Law of 1872

Issue Number: PP-MT-MILESCITY-GRSG-15-03-6

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Surface-owner consultation, a required and important step in planning, is out-of-date and invalid. Under Public Law 95-87, the 1977 SMCRA, all comprehensive land-use plans involving potential coal leasing shall consult with qualified private surface owners over federal coal with development potential and ask the surface owner to state his/her preference for or against the offering of the deposit under his/her land for lease. The screening of qualified split-estate surface owners is woefully out-of-date, having been completed in 1983, more than 30 years ago. A child born in 1983 would now be 32 years old. Land ownership has changed hands. Generations have come and gone without having been consulted during this land-use planning process. Yet, there was no effort made under the proposed MCFO RMP/FEIS to address this essential and important step. This gaping flaw in the plan is another reason we are protesting the MCFO RMP/FEIS. We call on the BLM to conduct this step as required under SMCRA.

Issue Number: PP-MT-MILESCITY-GRSG-15-03-7

Organization: Northern Plains Resource Council

Protestor: Steve Charter

Issue Excerpt Text: Application of unsuitability screens for important wildlife habitat (e.g. eagle nests) is based on data available as of Feb. 18, 1983. The proposed MCFO RMP/FEIS clearly contains more current data on important wildlife species and their critical habitat and range, however (except, perhaps in the case of GRSG habitat) it was not utilized in planning the ongoing management of coal. According to the MCFO RMP, “areas proposed for coal development would be evaluated for

unsuitability when a lease application is received” (See “Environmental consequences: fish, aquatic and wildlife habitat, including special status species,” p. 4-108). Hence, the BLM abdicates its responsibility under the federal coalmanagement program of using unsuitability screens at the land-use planning stage for identifying areas where coal development is suitable for consideration.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-5

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: BLM has made no attempt to update coal decisions in the Big Dry RMP that were made 19 years ago or the coal decisions from the Powder River RMP that were made 30 years ago. PRMP/EIS at MIN-104 to MIN-119. BLM has not considered new technologies, economics, improved environmental impact mitigation techniques, or information on coal development potential in the area. This is inconsistent with the requirement of BLM’s planning regulations to prepare an analysis of the management situation, 43 CFR § 1610.4-4, which BLM has indicated should be based on “the current conditions and of the resources and the uses/activities in the planning area.” BLM Land Use Planning Handbook at 20.

Issue Number: PP-MT-MILESCITY-GRSG-15-06-6

Organization: Great Northern Properties Limited Partnership

Protestor: Charles Kerr

Issue Excerpt Text: Since the Big Dry and Powder River RMPs were prepared, significant coal exploration has been

conducted by the private sector under authorization of the State of Montana prospecting permits and the federal coal exploration license program, which BLM should use to update its assessment of coal resources in the planning area. Since this

RMP planning process is intended to cover the foreseeable future of the resource area, the RMP/EIS's analysis of coal development potential within the planning area should be revised to reflect this new information.

Summary:

The Miles City PRMP/FEIS violates the Surface Mining Control and Reclamation Act of 1977 by failing to conduct surface owner preference screens within the planning area.

Additionally, the Miles City PRMP/FEIS is inconsistent with BLM planning regulations because it has not considered new technologies, economics, mitigation techniques, or information on coal development potential in the planning area.

Response:

BLM's regulations and policy require consultation with qualified surface owners (43 CFR 3420.1-4(4)(i); BLM Land Use Planning Handbook, H-1610-1, Appendix C) as part of the coal leasing process either while preparing a comprehensive land use plan or land use analysis. Page 2-67 of the Miles City PRMP/FEIS details the three actions for the coal program, the first of which is to carry forward the coal leasing allocations from the existing Big Dry and Powder River RMPs. At present there are no active proposals for new coal leasing in the planning area. Since landownership and owner qualifications will change through time, this screen will be applied when actual lease proposals are contemplated. This is in order to respond to the current landowners during the lease activity planning.

Action 2 for coal states that all future leases under the Miles City PRMP/FEIS "would be evaluated for their suitability for leasing or exchange" by using the twenty eligibility criteria outlined in 43 CFR 3461.5. Action 3 states that "at the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the lease application area is "unsuitable" for all or certain coal mining methods pursuant to 43 CFR 3461.5. Therefore, the BLM has not violated SMCRA or its own policy and regulations in its decision to conduct surface owner consultation at the activity planning stage and to incorporate analysis of all coal mining methods at the activity planning stage.

Special Status Species

Issue Number: PP-MT-MILESCITY-GRSG-15-07-14

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Additionally, the Final

EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a "net conservation gain." Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the

mitigation framework. BLM must examine whether adequate mitigation opportunities exist in the planning area, such as through conservation easements or restoration activities. This analysis is particularly important because FWS has not endorsed any mitigation banks or exchanges in Colorado, Utah, Montana, and California; accordingly, land users may have a difficult time securing mitigation opportunities.

Issue Number: PP-MT-MILESCITY-GRSG-15-08-17

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text:

For the foregoing reasons, protections

Summary:

The Final EIS does not analyze the effects that compensatory mitigation in the form of “ net conservation gain” will have on land users, or whether sufficient compensatory mitigation is available to meet the requirement of the mitigation framework.

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

Response:

The BLM has adequately analyzed the proposed GRSG Mitigation Strategy in the Miles City PRMP/FEIS. The GRSG Regional Mitigation Strategy Appendix describes in the detail the proposed mitigation strategy to ensure protection of GRSG and habitat, including through the potential use of compensatory mitigation when necessary to off-set impacts associated with implementation level decisions. See Miles City PRMP/FEIS, Volume III, GRSG Regional Mitigation Strategy Appendix at p. GRSG REG MIT-1. The BLM also provides the criteria for how compensatory mitigations will be applied, and indicates that the BLM and U.S. Forest Service, via the WAFWA Management Zone GRSG Team, will develop a strategy to guide the application of the mitigation hierarchy for implementation level decisions, which would include compensatory mitigation. See Miles City PRMP/FEIS, GRSG Regional Mitigation Strategy Appendix, p. GRSG REG MIT-3. Thus, the BLM identification and analysis of potential mitigation strategies, including the compensatory mitigation, is adequate and appropriate for the land use planning decision, and the potential effects associated with the potential application of compensatory mitigation would be appropriately analyzed in connection with specific implementation level planning and decisions.

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

FLPMA and other applicable law authorize the BLM to provide for reasonable mitigation of impacts caused by development on public lands. In FLPMA, Congress declared it to be the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values....” FLPMA §102(a)(8). BLM Instruction Memorandum (IM) No. 2008-204 outlines policy for the use of offsite mitigation for BLM land use authorizations issued by the BLM. In making decisions that are within its discretion (taking into account statutes, regulations, and contractual/property rights of the requester), the BLM has an obligation to approve only land use authorizations that are consistent with its goals and objectives. This may mean that the BLM may be unable to permit certain land use authorizations without appropriate mitigation measures. Onsite mitigation alone may not always be possible or sufficient, though often resources are present offsite that can offer suitable compensation for remaining onsite impacts. Consequently, offsite mitigation may be an effective management tool to ensure appropriate land use authorizations.

The proposed land use plan revision for Miles City PRMP revision analyzed in the FEIS does satisfy the BLM’s Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM’s Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual 6840.02. B). Manual 6840 directs the BLM to “address Bureau sensitive species and their habitats in land use plans and associated NEPA documents” when engaged in land use planning with the purpose of managing for the conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM’s multiple use mission as specific in the FLPMA. (Manual 6840.2). The BLM’s Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that “result in a reasonable conservation strategy for these species,” and “should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans.” (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions “may include identifying stipulations or criteria that would be applied to implementation actions.” (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the GRSG as detailed in the Proposed Plan (Miles City RMP/FEIS, p. 2-3 to p. 2-14), for example, “Oil and gas leasing would be open and surface occupancy and use would be prohibited within 0.6 miles of the perimeter of leks (NSO) (61,000 acres)” and “...surface occupancy and use within 2 miles of leks would be restricted or prohibited. Prior to such activities, a plan to mitigate impacts to nesting GRSG or their habitat would be prepared by the proponent and implemented upon approval, by the AO (CSU) (652,000 acres)” (Miles City RMP/FEIS, p .2-4).

As described and analyzed in the Miles City Proposed RMP/FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. Conservation measures included in the NTT report based alternative focus primarily on GRSG PPH. The data for this report were gathered from BLM, Forest Service, and

other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the FEIS. Since, land planning-level decision is broad in scope. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. Again, the Miles City PRMP/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Miles City PRMP/FEIS, the management proposed in the Miles City PRMP/FEIS satisfies BLM’s intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Cultural Resources

Issue Number: PP-MT-MILESCITY-GRSG-15-01-1

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The BLM is required to preserve cultural heritage through the NEPA process. See 42 USC § 4331(b)

Issue Number: PP-MT-MILESCITY-GRSG-15-01-2

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The BLM should have taken the required steps to preserve the

cultural heritage of ranching in the area covered by the RMP.

Issue Number: PP-MT-MILESCITY-GRSG-15-01-25

Organization: Lund Law obo Prairie County Cooperative State Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The BLM Has Violated the National Historic Preservation Act Pursuant to this Act, 16 USC§ 470-470x-6, the BLM was supposed to consult with the local governments impacted to determine whether the RMP would adversely affect historic property. This consultation has not occurred.

Summary:

The BLM has violated the National Historic Preservation Act (NHPA) and NEPA for the following reasons:

- BLM did not take required steps to preserve cultural heritage of ranching; and
- BLM did not consult with local governments to assess adverse effects on historic properties.

Response:

Cultural Heritage of Ranching

The BLM has satisfied the procedural requirements of both NEPA and the NHPA. NEPA requires federal agencies to take a “hard look” at environmental impacts relating to proposed federal actions, consider a reasonable range of alternatives, and propose measures to mitigate impacts. It is the “continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may... (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain wherever possible, an environment which supports diversity and variety of individual choice...” 42 USC Section 4331(b)(4). This provision, however, does not mandate preservation of important cultural heritage of ranching, nor does NEPA as a whole mandate a substantive outcome. Rather, these resources must be considered as part of the NEPA process consistent with other essential national policies, including managing federal public lands on the basis of “multiple use and sustained yield” pursuant to the Federal Land Policy and Management Act (FLPMA).

Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

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

Accordingly, the BLM acknowledged the importance of ranching within the planning area (Miles City PRMP/FEIS, Vol. I, Chapter 3, p. 3-134). The BLM also considered the potential impacts of the proposed action on historic farming and ranching in the planning area (Vol. II, Chapter 4, p. 4-360).

The BLM also satisfied the procedural obligations, and general preservation policy, of the NHPA in developing the Miles City PRMP/FEIS. NHPA requires federal agencies to take into account the effect of the federal undertaking on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to review and comment on the effects of the undertaking (54 USC. Section 306108 [known as the “Section 106” process]). The specific requirements of the Section 106 process are set forth in 36 CFR Part 800.

Volume II, Chapter 5 of the Miles City PRMP/FEIS includes the federal, tribal, state, and local representatives that were invited to participate as cooperating agencies for the Miles City PRMP/FEIS, including the SHPO, Tribes, and local governments (pp. 5-5 through 5-6). In addition to consulting with the SHPO/THPO, local governments had opportunities to participate in the development of the PRMP/FEIS including identifying any potential adverse effects to historic properties during scoping and the comment period on the DRMP/DEIS.

The BLM has met its obligations under NEPA, NHPA, and FLPMA to consider management

related to ranching as an important part of the heritage within the planning area, including evaluating potential effects to cultural resources and conducting proper consultation in preparation of the Miles City PRMP/FEIS.

Travel Management

Issue Number: PP-MT-MILESCITY-GRSG-15-13-7

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: BLM’s Travel and Transportation Manual (Manual 1626) requires BLM to complete certain tasks through the RMP if it is deferring travel planning, as it is here. Among these required tasks include producing a map of the known network of transportation linear features and defining interim management objectives for areas where route designations were not completed concurrent with the RMP. BLM Manual 1626.06(8)(2). BLM Handbook 8342 states that BLM must assess the current ground transportation linear feature database during the pre-planning stage for the RMP since it is essential that that a credible baseline inventory is available for eventual TMP efforts and to decide which areas are higher priority for designating routes. BLM Handbook 8342(1V)(A). Thus, even though BLM can defer designation of a travel network, it still must document the current system of existing routes now,

during the RMP stage. No additional routes created after the start of this RMP should be considered as “existing.” The Proposed RMP fails to map the known network of transportation linear features as it exists today. This is required if BLM is going to defer travel planning, which it is doing here. BLM must correct this and produce a map of the existing travel route network before signing the ROD.

Issue Number: PP-MT-MILESCITY-GRSG-15-13-8

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: According to both the TMP Manual and Handbook, delineating travel networks can be deferred for up to 5 years after signing the Record of Decision for the RMP. BLM Manual 1626.06(8)(3); BLM Handbook 8342(1)(C)(ii). However, BLM must also come up with an action plan and planning schedule to indicate areas that will have travel planning completed concurrently with the RMP process and which areas will be deferred.

Summary:

The PRMP/FEIS is inconsistent with BLM Manual 1626 because it fails to map the known network of transportation linear features as it exists today (BLM Manual 1626.06(8)(2)) and is inconsistent with BLM Handbook 8342 because BLM failed to assess the current ground transportation linear feature database during the pre-planning stage for the RMP (BLM Handbook 8342(1V)(A)).

Response:

BLM Manual 1626 (p. 06B1f) states: “If the final travel and transportation network is to be deferred in the RMP, then the RMP documents the decision-making process used to develop the

initial network provides the basis for future implementation level decisions and helps set guidelines for making transportation network adjustments throughout the life of the plan. The following tasks should be completed in the RMP for each planning area or TMA:

a) Produce a map of the known network of transportation linear features, including modes of travel;

BLM Handbook 8342 (p. 9-10) states:

“i. Inventory

An assessment of the current ground transportation linear feature (GTLF) database should be conducted during the pre-planning stage.”

In the Miles City PRMP/FEIS Volume III, Recreation Appendix (p. REC-8, Table 1), estimated miles of existing routes are identified for 13 of the 14 travel planning areas, with an unknown mileage associated with the 3,091 acre Glendive Short Pine OHV TMA – which currently allows open cross-country motorized travel. Glendive is the smallest of the 14 travel planning areas (the remaining 13 TPAs range in size from 13,963 to 574,079 acres of BLM administered lands) and under the proposed alternative the designation for Glendive would change from open to limited and a map of the area (Volume I, Map 13) is included with the PRMP/FEIS.

Given the discretion provided by the language “should” the Miles City PRMP/FEIS complies with BLM Handbook 8342 by providing approximate mileage associated with 13 of the 14 travel planning areas.

The Miles City PRMP Revision included maps of the current known network of transportation linear features in the Draft RMP/EIS document. Map 16 from the Draft RMP/EIS included major and minor roads, which are the only known linear features at this time.

Livestock Grazing – General

Issue Number: PP-MT-MILESCITY-GRSG-15-01-12

Organization: Lund Law

Protestor: Hertha Lund

Issue Excerpt Text:

The Standards for Rangeland Health and Guidelines “provide the technical and scientific basis for measuring progress

towards healthy and productive rangelands.” Standards for Rangeland Health and Guidelines, Preamble. However, the RMP requires the closing of allotments instead of making progress towards meeting the functions and conditions included within the Standards. Therefore, the RMP is more restrictive than the Standards the RMP is supposed to meet.

Summary:

The RMP requires the closing of allotments instead of making progress towards meeting Standards, which is in violation of the Grazing Administration Regulations, 43 CFR 4100.

Response:

Livestock grazing permit modification must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. The protestor states “the RMP

requires the closing of allotments instead of making progress towards meeting the functions and conditions included within the Standards”. This is incorrect as the closure of livestock grazing allotments is not required under the PRMP/FEIS.

Allotment management and permit administration would use criteria found in Handbook 1740-1 and WO IM 2009-018 (BLM 2008d) and new criteria outlined in the Miles City PRMP/FEIS Livestock Grazing Appendix and Monitoring Appendix. The BLM will follow the BLM’s 1997 Record of Decision for Standards for Rangeland Health and Guidelines for Livestock Grazing Management Final Environmental Impact Statement for Montana and North and South Dakota.

At the time a permittee or lessee voluntarily relinquishes a permit or lease, the BLM will consider whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives, such as reserve common allotments or fire breaks (Miles City PRMP/FEIS, p 2-71).

Future changes to livestock grazing permits to meet resource objectives outlined in the PRMP/FEIS would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA occurs.

Lands with Wilderness Characteristics

Issue Number: PP-MT-MILESCITY-GRSG-15-13-3

Organization: Montana Wilderness Association

Protestor: Brian Sybert

Issue Excerpt Text: As stated above, MWA submitted detailed comments on where and how BLM's LWC inventory is noncompliant with BLM Manual 6310 ... As summarized in our September 19, 2014 letter to the Miles City Field Office (Exhibit E), these issues include:

- The identification of large units that were then wholly discounted due to certain impacts in portions of the unit, with no regard as to whether a portion of the unit may meet necessary criteria (e.g. Cedar Creek MT020022; Hubbard Area MT020001).
- Lack of any analysis or regard to the definition of a wilderness inventory road as unit boundaries (most units).
- Determinations based on external sights and sounds that cannot be considered

invasive or omnipresent (numerous examples, including Custer Creek MT020012; Timber Creek MT020635; North Horse Creek MT020005).

- Determinations of naturalness that relies on the presence of fences, water troughs, and other minor infrastructure (e.g. Timber Creek MT024635; Hubbard Area MT020001).
- Determinations of naturalness that relies on the presence of nonnative species (e.g. Homestead
- MT020031; South Fallon MT020020; Sheep Mountains MT020040).
- Determinations of outstanding opportunities for solitude or primitive/unconfined recreation that hinge on the area being “flat” and the ability to view others as high, regardless of the true (and very low) rate of encountering other humans (e.g. Custer Creek MT020012).
- Determinations of outstanding opportunities for solitude or primitive/unconfined recreation that rely on those opportunities not occurring in every

portion of the unit (e.g. Big Dry

MT020013).

Summary:

The lands with wilderness characteristics inventory used for the Miles City is not compliant with BLM Manual 6310.

Response:

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.”

Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values”. Additionally, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B)

The BLM relied on a current inventory of the resources of the public lands when preparing the Miles City RMP/EIS. The BLM described the inventory information it used for lands with wilderness characteristics on p. 3-86 through p. 3-88 of the Miles City RMP/EIS (Volume I, Chapter 3). Additionally, the BLM considered a range of alternatives regarding management of lands with wilderness characteristics, detailed in Volume I, Chapter 2, p. 2-66 through p. 2-68.

As required by FLPMA, the BLM relied on its current inventory of the public lands, developed pursuant to Manual 6310, in developing the Miles City RMP/EIS.