

*BLM Director's Protest Resolution
Report*

**HiLine (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-HILINE-GRSG-15-XX
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

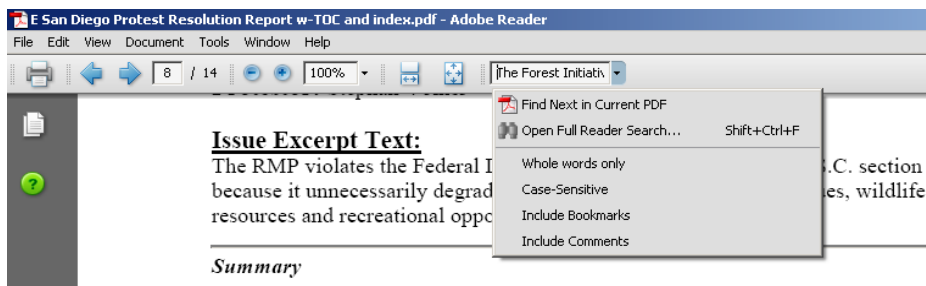
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

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
Jeffrey McCoy	Mountain States Legal Foundation obo North Central Mineral Ventures	PP-MT-HILINE-GRSG-15-01	Denied-Issues Comments
Hertha Lund	Lund Law obo North Blaine County Grazing District	PP-MT-HILINE-GRSG-15-02	Denied-Issues Comments
Beth Kampschorr	Friends of the Missouri Breaks Monument	PP-MT-HILINE-GRSG-15-03	Denied-Issues Comments
Laura Skaer	American Exploration and Mining Association	PP-MT-HILINE-GRSG-15-04	Denied-Issues Comments
Bret Sumner	Beatty & Wozniak obo Exxon/XTO Energy	PP-MT-HILINE-GRSG-15-05	Denied-Issues Comments
Dave Galt	Montana Petroleum Association	PP-MT-HILINE-GRSG-15-06	Denied-Issues Comments
Alan Joscelyn	Attorney General, State of Montana	PP-MT-HILINE-GRSG-15-07	Denied-Issues Comments
Travis Bruner	Western Watershed Project	PP-MT-HILINE-GRSG-15-08	Denied-Issues Comments
Mark Salvo	Defenders of Wildlife	PP-MT-HILINE-GRSG-15-09	Denied-Issues Comments
Kyle Tisdell	WELC	PP-MT-HILINE-GRSG-15-10	Denied-Issues Comments
Robert Steele	Imerys	PP-MT-HILINE-GRSG-15-11	Denied-Issues Comments
Craig Kauffman	Safari Club International	PP-MT-HILINE-GRSG-15-12	Dismissed-Only Comments

Issue Topics and Responses

FLPMA-General

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

Organization: Mountain States Legal Foundation obo North Central Mineral Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: Even if the Secretary had the authority to extend withdrawals indefinitely, the preferred alternative does not meet the criteria for an extension of a withdrawal set forth in FLPMA. FLPMA provides that a withdrawal can be extended “only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension” (43 USC § 1714(f)). For the Sweet Grass Hills Area, the original purported purposes of the withdrawal are no longer applicable and, thus, the withdrawal cannot be extended. In the draft RMP, the BLM repeated the four original purported justifications for the withdrawal in an attempt to comply with FLPMA’s requirements for a withdrawal extension (Draft RMP and EIS at 112) (listing four main purposes of the proposed withdrawal: preserve areas of traditional importance to Native Americans; protect aquifers in the area that provide potable water to local residents; preserve high value habitat for peregrine falcons; and protect seasonally important elk and deer habitat). After comment, the BLM removed the Peregrine Falcon and Elk and Deer habit justifications from the proposed RMP. PRMP/FEIS at 962. By eliminating two of the four original justifications for the withdrawal, the BLM has already acknowledged that “the purpose for which the withdrawal was first made” cannot justify an extension of the withdrawal. 43 USC § 1714(f). Despite this, the BLM still

takes the position that “[t]he recommendation for a 20-year extension to the solid mineral withdrawal remains relevant and valid.”

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

Organization: Mountain States Legal Foundation obo North Central Mineral Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: BLM responded to MRJV’s comments about this purported justification by citing to chapters 2 and 3 of the proposed RMP and FEIS. PRMP/FEIS at 962. This response fails to demonstrate that a withdrawal is necessary to protect resources important to Native Americans. Instead, as MRJV demonstrated previously, the BLM’s management of the area since 1996 demonstrates that the Sweet Grass Hills are not significant enough to justify a withdrawal. See MRJV Comments at 7-8. The BLM has continued to allow a wide range of uses in the Sweet Grass Hills area since 1996, and the proposed RMP continues that management. Furthermore, the BLM fails to specify the specific sites protected by a withdrawal, instead relying on vague and religious terms in an attempt to demonstrate cultural significance. The BLM has failed to show a secular purpose for the withdrawal and, thus, cannot justify a withdrawal based on preserving areas of traditional importance to Native Americans (*Lyng v. Northwest Indian Cemetery Protective Association*, 485 US 439, 451 (1988) (“Whatever may be the exact line between unconstitutional prohibitions on the free exercise of religion and the legitimate conduct by government of its own affairs, the location of the line cannot depend on

measuring the effects of a governmental action on a religious objector's spiritual development.”)). Even if there were specific cultural sites that warrant protection, a withdrawal is not necessary to protect those sites. All mining plan of operations must comply with laws and regulations that mitigate impacts to cultural resources (43 CFR § 3809.420(b)(8)). Aquifers that provide potable water to local residents. The BLM responded to MRJV’s comments on this issue by stating that “the BLM proposed to request renewal of the withdrawal in order to reduce the potential for water quality degradation (big or small) and alteration of the natural hydrologic flow regime” (PRMP/FEIS at 963). However, that is not the stated purported purpose of the withdrawal (Id. at 650). Instead, the proposed RMP states a very specific purpose for a withdrawal extension, to protect “aquifers in the area that provide potable water to local residents” (Id). As demonstrated previously, the laws and regulations in effect are sufficient to protect the potable water of local residents. MRJV Comments at 8-9. Even in its response, the BLM acknowledged that “[t]he laws and acts in place that the operator would have to adhere to upon imitation of planning and operation efforts would help serve to uphold water quality standards...” (PRMPIFEIS at 963). Furthermore, as demonstrated previously, the BLM has provided no evidence how mining operations could affect the aquifers that provide potable water to residents (MRJV Comments at 9). The Tootsie Creek drainage, where mining operations would occur, is not connected with the Sage Creek aquifer (Id). Accordingly, a withdrawal is not necessary to protect the aquifers that provide potable water to local residents.

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

Organization: Beatty & Wozniak obo Exxon/Mobil and 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-HILINE-GRSG-15-05-9

Organization: Beatty & Wozniak obo Exxon/Mobil and XTO Energy
Protestor:Bret Sumner

Issue Excerpt Text: XTO protests the RMP’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-HILINE-GRSG-15-06-30

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. For these reasons, BLM must revise the Proposed RMP to remove the requirement that FWS consent to exceptions to NSO stipulations in PHMA.

Issue Number: PP-MT-HILINE-GRSG-15-06-34

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. See 43 USC § 1702(j) (defining “withdrawal”), 1714(l)(1) (referencing withdrawals resulting from closure of lands to leasing under the Mineral Leasing Act of 1920). FLPMA requires that the Secretary of the Interior notify both houses of Congress of withdrawals of five thousand acres or more no later than the effective date of the withdrawal; as part of this notification, FLPMA also imposes additional procedural requirements. Id. § 1713(g). At a minimum, the Secretary of the Interior must report its decision to exclude a principal or major use of the public lands (mineral leasing) from tracts of land more than 100,000 acres to the House of Representatives and Senate, and complete additional procedural requirements. Id. § 1712(e). Accordingly, the Secretary of the Interior must comply with FLPMA and

Summary:

The BLM recommends extending the Sweet Grass Hills mineral withdrawal beyond its initial 20-year term without demonstrating that the purposes for which the original withdrawal were made are still valid.

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, as well as mining– 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.

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a Greater

notify Congress of the de facto withdrawals of PHMA from mineral leasing.

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

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The 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.

GRSG management strategy that abrogates the BLM's authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species.

Response:

Section 204 of FLPMA details the process for the Secretary of the Interior to withdraw lands. This authority is reserved to the Secretary and can only be delegated to an individual in the Secretary's Office appointed by the President with the advice and consent of the Senate.

The HiLine PRMP/FEIS details on page 56 the proposed action related to the existing Sweet Grass Hills mineral withdrawal. It does not itself extend the withdrawal, but rather recommends extending the withdrawal for an additional 20-year term. The current withdrawal runs through 2017, at which time the Secretary will either act on the RMP's recommendation according to law, or the withdrawal will expire.

The HiLine PRMP/FEIS does not violate FLPMA's criteria for determining whether a withdrawal should be extended. That determination will be made as part of the Secretary's withdrawal decision.

The BLM is not violating 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 HiLine 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). The Proposed RMP recommends the withdrawal of approximately 927,000 acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy. 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 Record of Decision is signed 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. 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 not made as part of this planning effort. There is no "de facto" withdrawal.

The HiLine PRMP/FEIS 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 HiLine PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the HiLine 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 HiLine PRMP/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

On page 31, the HiLine PRMP/FEIS describes the rationale used for determining a range of alternatives for GRSG Management. 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 1.4 million acres from mineral entry. BLM’s decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on pages 37-38, is based on the value of the habitat to the GRSG. Also, Appendix M provides additional information on how the BLM would manage mineral resources in PHMA and GHMA areas to avoid, minimize, and mitigate impacts of that resource use on the GRSG habitat.

For the development of fluid minerals under existing leases, the HiLine PRMP/FEIS details BLMs objectives pages 34-35 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.

The HiLine PRMP/FEIS will not result in “unnecessary or undue degradation” of public lands.

The Federal Land Policy Management Act 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 HiLine PRMP/FEIS is a RMP revision that specifically addresses goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, 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 third wildlife goal of the HiLine PRMP/FEIS, detailed on page 39, is 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 BLM does not seek jurisdiction over wildlife, but seeks to enhance or restore the habitat on which GRSG and other species depend.

Additionally, the BLM developed the HiLine 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.

Valid Existing Rights

Issue Number: PP-MT-HILINE-GRSG-15-04-10

Organization: American Exploration and Mining Association

Protestor: Bret Laura Skaer

Issue Excerpt Text: The inability to create new roads (see Ch.2 at 40) will make exploration and development of existing or future claims that are not adjacent to existing roads impossible. The BLM’s assertion to respect VERs, does not ensure access to locatable mineral exploration and development (discussed in detail below). Again, the requirement to have a VER will stifle, if not completely thwart, mineral exploration or mineral development prior to discovery of a valuable mineral deposit.

Issue Number: PP-MT-HILINE-GRSG-15-04-11

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: These travel restrictions substantially impair the rights of claim holders to access their claims and are thus completely inconsistent with FLPMA § 1732(b).

Issue Number: PP-MT-HILINE-GRSG-15-04-13

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The Term “Valid Existing Rights” Throughout the PLUPA is misleading. The Proposed Plan makes numerous references to land management changes that will be “subject to valid existing rights” (VERs) under the General Mining Law of 1872 including, but not limited to:

- If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) within GRSG PHMAs in any given Biologically Significant Unit, 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 Biologically Significant Unit until the disturbance has been reduced to less than the cap (Ch. 2 at 41); ...if the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) or if anthropogenic disturbance and habitat loss associated with conversion to agricultural tillage or fire exceed 5% within a project analysis area in PHMAs, then no further

discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 Mining Law, valid existing rights, etc.) will be permitted by BLM within PHMA in a project analysis area until the disturbance has been reduced to less than the cap... (id.); Subject to applicable laws and regulations and valid existing rights, if the average density of one energy and mining facility per 640 acres (the density cap) is exceeded on all lands (regardless of land ownership) in the Priority Habitat Management Area within a proposed project analysis area, then no further disturbance from energy or mining facilities will be permitted by BLM (Ch. 2 at 42).

Issue Number: PP-MT-HILINE-GRSG-15-04-14

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PRMPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, investment in legitimate exploration will cease upon the mere recommendation of an area for withdrawal whether the withdrawal ever takes place or not. This is already happening based on the PRMPA..

Issue Number: PP-MT-HILINE-GRSG-15-04-18

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM's proposal to authorize new roads only for administrative access, public safety or access to VERs (see Ch. 2 at 40), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, BLM fail to maintain access and thus, conflict with § 22 of the General Mining Law.

Issue Number: PP-MT-HILINE-GRSG-15-04-9

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The widespread travel restrictions discussed in Chapter 2 at 36-37 of the PRMPA/FEIS conflict with the rights of locators of claims, including rights of ingress and egress. By limiting travel to existing and designated routes, prohibiting upgrades of existing routes and creation of new routes, and imposing potentially substantial seasonal constraints will substantially interfere with and likely obstruct exploration and development of existing and future mining claims. Unless claims, both existing and future, are located near or adjacent to existing or designated routes, exploration and development of these claims could be impossible.

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

Organization: Beatty & Wozniak obo
Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The HiLine RMP's proposed GRSG management prescriptions violate the BLM's contractual and statutory obligations to XTO and other lessees. The BLM cannot impose new NSO stipulations or conditions of approval (COAs) on existing leases that differ from those entered under the original contractual terms, especially for XTO's leases issued prior to enactment of FLPMA.

Issue Number: PP-MT-HILINE-GRSG-15-05-3
Organization: Beatty & Wozniak obo
Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: Here, the HiLine RMP 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 RMP proposes requiring NSO requirements during leking, 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-HILINE-GRSG-15-05-4
Organization: Beatty & Wozniak obo
Exxon/Mobil and 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-HILINE-GRSG-15-05-5
Organization: Beatty & Wozniak obo
Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: The HiLine RMP'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-HILINE-GRSG-15-05-6
Organization: Beatty & Wozniak obo
Exxon/Mobil and XTO Energy
Protestor: Bret Sumner

Issue Excerpt Text: With the HiLine RMP, however, the BLM is, in effect, disregarding economic impacts and instead planning to revise and restrict XTO's valid existing lease rights through the imposition of a net conservation gain standard, development and disturbance caps, and additional restrictive measures added to the proposed RMP since release of the draft document.

Issue Number: PP-MT-HILINE-GRSG-15-06-20
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/Final EIS attempts to impose

numerous restrictions on existing oil and gas leases.

Issue Number: PP-MT-HILINE-GRSG-15-06-21

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the BLM's imposition of new restrictions that are inconsistent with existing leases. First, BLM does not have the authority to impose new restrictions on valid existing leases through an RMP amendment. 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-HILINE-GRSG-15-06-22

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-HILINE-GRSG-15-06-23

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The 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-HILINE-GRSG-15-06-24

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-HILINE-GRSG-15-06-25

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...to the extent consistent with lease rights granted.” The 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)). The 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-HILINE-GRSG-15-06-27

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-HILINE-GRSG-15-06-29

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The 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-HILINE-GRSG-15-08-13

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The 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 HiLine PRMP/FEIS violates valid existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

The HiLine PRMP/FEIS violates BLM Sensitive 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:Valid Existing Rights:

The HiLine PRMP/FEIS is subject to valid existing rights (FLPMA, Section 701(h)), (FEIS, p 16). For example, on p. 62, one of the objectives for Fluid Minerals is that “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMAs and GHMAs, 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 in the Disturbance Cap Guidance the following direction would be applied (Chapter 2, p. 41):

“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.) will be permitted by BLM within GRSG PHMAs in any given BSU until the disturbance has been reduced to less than the cap.”

With 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, the 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 HiLine PRMP/FEIS provides management direction for conditions of approval on valid existing leases (see Objective FM 2), it does so only consistent with lessees’ valid existing rights.

One protest suggested that provisions for valid existing rights would not protect most mining claims which would therefore chill investment, effects of the proposed actions on locatable minerals and economics are discussed further in Chapter 4 of the HiLine PRMP/FEIS.

Other protests that suggest valid existing rights are violated by travel management restrictions such as right-of-way and access provisions, these issues are discussed further in the Travel Management section of this document.

Special Status Species

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). However, the BLM does not have the authority to determine if listing under the Endangered Species Act is warranted for a particular species, or if the management outlined in the HiLine PRMP/FEIS avoids the need for listing of Bureau sensitive species under the Endangered Species Act.

Based on the science considered and impacts analysis presented in the HiLine PRMP/FEIS, the management proposed in the HiLine PRMP/FEIS satisfies BLM's intent to manage the public lands in a manner that avoids the need for listing of Bureau sensitive species under the Endangered Species Act. Additional information on special status species is available under the section of this report titled Special Status Species.

The management proposed in the HiLine PRMP/FEIS complies with BLM's Special Status Species policy.

Multiple Use Mandate

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

Organization: Mountain States Legal Foundation obo: North Central Mineral Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: As demonstrated previously, an extension of the Sweet Grass Hills withdrawal would violate FLPMA's multiple use mandate. MRJV comments at 10-11. In response, the BLM simply stated that the BLM's multiple-use and sustained yield mission are addressed in Chapter I (PRMPIFEIS at 964). Merely reiterating the multiple use mandate does not mean that the BLM is managing for multiple use. As demonstrated above, the proposed extension of the Sweet Grass Hills withdrawal would not achieve the purported goals of the withdrawal. On the other hand, an extension

of the withdrawal would greatly hinder the development of minerals in the Sweet Grass Hills Area, in violation of Congress's intent when it passed the Mining Law. As a result, the preferred alternative in the Proposed RMP would needlessly prevent multiple use of the Sweet Grass Hills Area, in violation of FLPMA and Congress's intent to foster mineral development (43 USC § 1701; 30 USC § 21a).

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

Organization: Friends of the Missouri Breaks Monument

Protestor: Beth Kampschror

Issue Excerpt Text: The HiLine 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 HiLine District, the Proposed RMP would still protect only 16,393 acres of lands with wilderness characteristics in a planning area with 2.4 million acres of public lands. This does not represent balanced management for the multiple uses of the public lands, which include wilderness and wildlife values in addition to primitive recreation experiences.

Issue Number: PP-MT-HILINE-GRSG-15-04-2

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (see Ch.2 at 27, 33, 38, 54, 55), and the widespread travel and transportation restrictions (see Ch.2 at 36-37) under the Proposed Action are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102(a)(12).

Issue Number: PP-MT-HILINE-GRSG-15-04-8

Organization: American Exploration and Mining Association

Summary:

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

- failing to balance conservation with development across the planning area;
- recommending withdrawals from mineral entry (e.g., Sweet Grass Hills) and restrictions on travel and transportation [FLPMA section 102(a)(12)]; and
- imposing a “no significant impact” standard for oil and gas operations.

Response:

Protestor: Laura Skaer

Issue Excerpt Text: The BLM is required to strike an appropriate balance between potentially competing interests and land management objectives. Moreover, on a planning area scale, this balance is to be achieved in the RMPA process and in the project permitting process on a project-specific scale. Therefore, the PRMPA/FEIS’ mineral withdrawals, prohibitions, and restrictions are contrary to explicit statutory language in FLPMA, and § 22 of the General Mining Law.

Issue Number: PP-MT-HILINE-GRSG-15-05-13

Organization: Beatty & Wozniak obo Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The HiLine RMP 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.

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.

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. Likewise, the HiLine PRMP/FEIS does not violate the statement of Congressional policy contained in FLPMA section 102(a)(12) simply recognizing that minerals, food, timber and fiber are part of BLM’s multiple use mission

All alternatives considered in the HiLine PRMP/FEIS, as described in Chapter 2 (Vol.1, p. 25-276), 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 HiLine PRMP/FEIS complies with FLPMA’s multiple use mandate.

Consistency with State and Local Plans

Issue Number: PP-MT-HILINE-GRSG-15-02-11

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: GRSG within the area should be managed following the plan written by the State of Montana. Currently, since the GRSG is not listed under the Endangered Species Act, the State of Montana has developed a GRSG plan.

Issue Number: PP-MT-HILINE-GRSG-15-04-21

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The PRMPA/FEIS Does Not Incorporate the Montana GRSG Conservation Assessment and Strategy (State Plan). The AEMA formally protests the PRMPA/FEIS because it fails to accommodate, account for, and incorporate the Montana State Plan, known as the “Montana GRSG Habitat Conservation Program” (Governor EO 10-2014, hereinafter “Montana Plan”). The Montana Plan provides a strong conservation framework for the protection and enhancement of GRSG populations and its habitat, while being equally mindful to protect the sovereign resources interests of the State of Montana. The Montana Plan is more than sufficient to meet the purpose and need articulated in the FEIS, and therefore, it should have been identified as the

Preferred Alternative in a SEIS. Section 202(c)(9) mandates that the Secretary coordinate the land use planning process with State and local governments and that the resulting federal land use management plans must be substantially consistent with State and local land management plans.

Issue Number: PP-MT-HILINE-GRSG-15-04-22

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: While BLM provides for some provisions of the Montana Plan to be “considered” during adaptive management decisions (provides the ability to change the 3% cap to 5% under strict population habitat criteria), overall the PRMP/FEIS is inconsistent with the Montana Plan and thus does not comply with FLPMA 202(c)(9). The failure of the PRMPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the PRMPA/FEIS. BLM must address the inconsistencies identified by the State and local governments with the PRMPA and provide appropriate public notice and comment on such changes.

Issue Number: PP-MT-HILINE-GRSG-15-04-23

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: FLPMA 202(c)(9) requires the Secretary to develop a federal RMPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Montana Plan is consistent with FLPMA multiple use and sustained yield

objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the PRMPA. Consequently, the Secretary must revise the PRMPA to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the multiple-use and sustained yield FLPMA mandates.

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

Organization: Beatty & Wozniak obo Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Importantly, the Billings RMP 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-HILINE-GRSG-15-06-1

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’s 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.

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

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Given FLPMA’s clear directives and Montana’s determined effort to conserve the GRSG through its Montana Plan, BLM is obligated to ensure that the Proposed RMP is consistent with Montana’s existing GRSG management program.

Issue Number: PP-MT-HILINE-GRSG-15-06-35

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM has not adequately explained or justified the proposal to designate nearly 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,

Summary:

The BLM is in violation of Section 202(c)(9) of FLPMA because the HiLine PRMP/FEIS is inconsistent with state and local plans including the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014).

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 the HiLine PRMP/FEIS, including the the

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-HILINE-GRSG-15-07-1

Organization: State of Montana Attorney General

Protestor: Alan Joscelyn

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.

Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014). The BLM has worked closely with state, local, and Tribal governments during preparation of the HiLine PRMP/FEIS. Chapter 5, page 791 (Consultation and Coordination) describes the coordination that has occurred throughout the development of the HiLine PRMP/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, page 18 (Related Plans). The BLM conducted an internal review process to identify if there were any inconsistencies between the plan and local, state, and Tribal plans.

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 Plan (see Chapter 2, page 2-18). 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 HiLine PRMP/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). 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-HILINE-GRSG-15-06-13

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 alternative

lek buffer distances. Finally, the Final EIS did not analyze the alternative of the Montana Plan.

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

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The PRMP/FEIS maintains the same authorized livestock use allocation across all alternatives (PRMP/FEIS at 92). As such, there is no analysis of the beneficial impacts of entirely removing livestock grazing from the planning area or from GRSG habitat, even though this is a documented threat to the species.

Issue Number: PP-MT-HILINE-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. Clait Braun identified the need for the seasonal restrictions in 2006: “Grazing should not be allowed until after 20 June and all livestock should be removed by 1 August with a goal of leaving at least 70% 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, protect, and enhance GRSG habitats.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text:

Summary:

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

- BLM’s goal of achieving a “net conservation gain” on GRSG habitat;
- the monitoring framework;

The HiLine RMP continues to ignore any alternative that would meaningfully reduce climate impacts and protect the environment, such as an alternative with stipulations to limit oil and gas development or an alternative that permanently protects critical areas.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM failed to consider a reasonable range of alternatives. As explained above, perhaps the biggest flaw in BLM’s HiLine 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-HILINE-GRSG-15-10-6

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The 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.

- adaptive management triggers and responses;
- alternatives to the lek buffer distances;
- the Montana Plan;
- excluding livestock grazing from the planning area or GRSG habitat;
- livestock grazing seasonal restrictions;
- reduce climate impacts and greenhouse gas emissions by limiting fossil fuel development; and
- provided by conservation groups.

Response:

General

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 briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (HiLine PRMP/FEIS, Alternatives Considered but Not Analyzed in Detail (p. 204)). 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 (HiLine PRMP/FEIS, p. 3) and that address resource issues identified during the scoping period. The HiLine PRMP/FEIS analyzed five distinct alternatives in detail, which are described in the section, Current Management and Alternatives (p. 49). 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 HiLine PRMP/FEIS glossary (p. 1168) as “The actual benefit or gain above baseline conditions.” and is addressed again in the Summary of Changes to Alternative E to Develop the Proposed RMP/Final EIS (Chapter 2, p. 28). 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 2.28, Summary Comparison of Alternatives, p.207). In addition, net conservation gain is derived from the purpose and need which calls for incorporating measures to “conserve, enhance and/or restore GRSG habitat”; and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework is described in the section Monitoring Framework for GRSG Habitat Management (p. 47) of the HiLine PRMP/FEIS and describes a methodology to ensure consistent assessments about GRSG habitats are made across the species range. This framework describes the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of actions to conserve the species and its habitat (Appendix M.2) across the species range. Being a methodology for monitoring implementation does not require it to be varied between the action alternatives.

Adaptive Management and Triggers

The identification of hard and soft triggers is 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 (HiLine PRMP/FEIS, p. 45-46). These adaptive management strategies would be developed in partnership with the State of Montana, project proponents, partners, and stakeholders, incorporating the best available science. Being a strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require triggers to be varied between the action alternatives. Should a hard trigger be reached a more restrictive alternative, or an appropriate component of a more restrictive alternative analyzed in the EIS would be implemented without further action by the BLM. Specific “hard-wired” changes in management are identified in Table 2-53. (p. 45).

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

The HiLine PRMP/FEIS references language from the Montana State Executive Order No.10-2014 in the Adaptive Management Strategy for GRSG Habitat Management (p. 43) section in reference to adaptive management and monitoring. In addition, the HiLine PRMP/FEIS states, “If the BLM finds that the State of Montana is implementing a GRSG Habitat Conservation Program that is effectively conserving the GRSG, in addition to the change in disturbance cap noted above, the BLM will review the management goals and objectives to determine if they are being met and whether amendment of the BLM plan is appropriate to achieve consistent and effective conservation and GRSG management across all lands regardless of ownership. Consideration of and inclusion of the executive order did not warrant development of a stand-alone alternative.

Remove Grazing from GRSG Habitats

The section, Alternatives Considered but Not Analyzed in Detail (p. 204) provides a detailed and succinct discussion as to why an alternative to make the entire area unavailable to livestock grazing (No Livestock Grazing/Reduced Grazing) was not analyzed in detail. No issues or conflicts were identified during this land use planning effort that requires the complete removal 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 HiLine PRMP/FEIS, the “no action alternative” is to continue the status quo, which includes livestock grazing. For this reason and those stated above, a no grazing alternative for the entire planning area was dismissed from further consideration in this RMP/EIS (p. 205).

The allocation of AUMs, approximately 386,600 AUMs (Table 2.28 Summary Comparison of Alternatives, p. 209) of forage annually is consistent with land use plan decisions identified in Appendix C, BLM Land Use Planning Handbook (H-1601-1) which states, “For lands available for livestock grazing, identify on an area wide basis the amount of existing forage available for livestock...” While this allocation is not varied across the action alternatives, this planning

document includes a range of alternatives with possible management actions for resource uses to meet the purpose and need to protect, conserve and restore GRSG habitat.

Lek Buffer Distances

A variety of approaches to managing disturbances near leks, including varying buffer distances (ranging from .25 to 1.0 miles), were evaluated in the Hiline PRMP/FEIS, as documented in Table 2.30, Summary Comparison of Alleviated Threats to GRSG by Alternative.

Livestock Seasonal Restrictions

As identified in the PRMP/FEIS alternatives, each alternative (A through E) describes a different management approach for GRSG habitat which will conserve, protect, and enhance GRSG habitat to varying degrees. Approaches as to how this is accomplished depends upon the nature of each particular alternative as described in the Livestock section (p. 92). Table 2.4 Desired Conditions for GRSG Habitat describes GRSG seasonal habitat desired conditions. Resources and resource uses such as livestock grazing would be adjusted during the permit/lease renewal process to assure desired habitat conditions consistent with the ecological site capability are being met. This would assure moving towards desired habitat conditions to conserve, protect and enhance GRSG habitat. The environmental consequences of needed adjustments in livestock grazing will be addressed in the subsequent site-specific NEPA document associated with the permit/lease renewal.

Reduce Coal Development

The BLM Land Use Planning Handbook (H-1601-1), Appendix C, Section F. Coal identifies the types of land use decisions to be made with regards to coal leasing. The PRMP/FEIS identifies the acres unsuitable (26,131 to 290,048 acres) for leasing (Table 2.5, p. 2-61) which varies by alternative (Alt A-26,131 acres; Alt B-290,048 acres). Item 5 (Appendix C, p. 22) identifies estimating the amount of coal recoverable by either surface or underground operations which the PRMP/FEIS estimates as averaging 2.8 million tons annually (Table 2.15, p. 2-258). This is consistent with the land use plan decisions to be made during the RMP planning process as identified in Appendix C, Section F.

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 HiLine PRMP/FEIS acknowledged the conservation groups alternatives that were submitted and considered in section Alternatives Considered but Not Analyzed in Detail (p. 202). The narrative provides a detailed and succinct discussion as to why the conservation groups proposed actions and alternatives were considered but eliminated from detailed study in the HiLine PRMP/FEIS. It states that the proposed actions and alternatives were determined to have substantially similar effects to the actions and habitat areas considered within the range of alternatives for the PRMP/FEIS which also adequately addresses GRSG conservation measures (p. 203).

Conclusion

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

Cumulative Effects

Issue Number: PP-MT-HILINE-GRSG-15-06-18

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. The 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.” 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, 1,589,376 acres are designated for leasing subject to NSO and 85,721 acres are closed to mineral leasing entirely (See Proposed RMP, Table 2.3 at 31). Nationwide, the BLM and the Forest Service propose to designate an additional 31 million mineral acres as subject to NSO stipulations. 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. The BLM has not, however, examined the cumulative impacts of its management actions on federal oil and natural gas leasing and development. See Proposed RMP at Chapter 4. The BLM must analyze these cumulative impacts in an EIS before it issues a ROD and Final RMP.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM has failed to take a hard look at the impacts of climate change—perpetuating a disconnect between the agency’s recognition of the effects of climate change and the agency’s

decisionmaking that allows for the continued leasing and development of massive quantities of coal, oil and gas. The BLM failed to analyze cumulative and incremental effects of oil, and gas

development on climate change, and failed to consider the Conservation Groups detailed Comments and Supplemental Comments on the Draft EIS addressing climate change and GHG emissions.

Summary:

BLM did not adequately address cumulative effects because the HiLine PRMP/FEIS does not consider the impacts of the PRMP together with the impacts of the 13 other RMP revisions or amendments in GRSG habitat, including the cumulative impacts on mineral leasing and development. BLM has also failed to take a hard look at climate change impacts.

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 (see Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts.

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. Chapter 4 throughout the various resource sections contains descriptions of the geographic scope for the cumulative impacts analysis. Spatial boundaries vary and are larger for resources that are mobile or migrate (e.g., migratory birds) compared with stationary resources. Occasionally, spatial boundaries could be contained within the planning area boundaries or an area within the planning area. Spatial boundaries were developed to facilitate the analysis and are included under the appropriate resource section heading. The cumulative effects analysis for all topics included an analysis of cumulative effects at the planning area level. For Special-Status Species – GRSG, cumulative effects analysis included an analysis at the WAFWA Management Zone I, in addition to the planning-level analysis. This delineation of the impact area is the reason why the other GRSG plan amendments were not included in this analysis.

The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impact are addressed under each section in alternatives (Chapter 4) and 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 the reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed

and presented. The information presented in the HiLine PRMP/FEIS enables the decision-maker to make a reasoned choice among alternatives.

Cumulative impacts to fluid minerals are discussed within the resource section in Chapter 4, beginning on page 534. Cumulative impacts associated with climate change are discussed within the Air Quality and Climate Change section in Chapter 4.

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

Public Comments

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

Organization: Mountain States Legal Foundation obo: North Central Mineral Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: The BLM failed to respond substantively to MRJV's comments and failed to demonstrate the necessity of the withdrawal. Instead, the BLM responded by citing back to the Proposed RMP and FEIS, which is not significantly different from the draft RMP and EIS (See PRMP/FEIS at 960-65).

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

Summary:

The BLM failed to respond substantively to comments, including those relating to the proposed recommendation to extend the withdrawal for the Sweet Grass Hills Area from location and entry under the Mining Law.

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 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.

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM has not responded adequately to our concerns and comments raised during the call for public comment on the DRMPA/DEIS, specifically, those issues related to FLPMA, the General Mining Law, Mining and Minerals Policy Act, and NEPA. Consequently, the PRMPA/FEIS suffers from the same legal, procedural, and scientific short-comings as the DRMPA/DEIS and therefore we incorporate by reference our previous comments, in full, in protest of the PRMPA/FEIS.

- (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).

From Chapter 5 of the FEIS, page 960, one comment from the Draft EIS stated in part: "...the Secretary of the Interior does not have the authority to extend the withdrawal. First, the extension would perpetuate an indefinite withdrawal of the area, in violation of Congressional intent. Secondly, even if the Secretary has the authority to extend the withdrawal, the proposed extension does not meet the criteria for an extension laid out in the Federal Land and Policy Management Act" ("FLPMA").

The BLM responded to this and other similar comments that resulted in no change to the RMP. The agency response states, Alternative E (Preferred Alternative) in the HiLine PRMP/FEIS recommends the Sweet Grass Hills withdrawal be continued. Prior to expiration of the Sweet Grass Hills withdrawal on April 9, 2017, the BLM would submit an application to the Secretary of the Interior for approval to consider extending the withdrawal pursuant to Section 204 of FLPMA. This extension process would include opportunity for public involvement by notifications in the newspaper and in the Federal Register. A withdrawal extension may not be made for a period longer than the length of the original withdrawal period, which for the Sweet Grass Hills is 20 years. There is no limit on the number of times a withdrawal may be extended, if warranted. For additional similar comments on this subject and the responses provided to these comments, please see Chapter 5 of the HiLine PRMP/FEIS, starting on page 960.

The BLM carefully considered all the public comments it received. Only substantive comments are addressed and responded to in the HiLine PRMP/FEIS. Comments such as those merely expressing approval or disapproval of a proposal without reason did not receive a response in the HiLine PRMP/FEIS. Gaps in the numbering of comment letters do not represent missing information; rather, they were determined to be form-type letters or consisted of comments that were either not substantive or outside the scope of this planning process. Chapter 5, Consultation and Coordination, Comment Responses, page 811; page 961 for response to comments regarding withdrawals.

The BLM adequately responded to comments received including to those comments relating to withdrawals in the HiLine PRMP/FEIS.

Joint and Lead Agencies

Issue Number: PP-MT-HILINE-GRSG-15-02-5

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

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

Understanding (“MOU”), giving the counties cooperating agency status in the planning process (MOU at § 1, paragraph 2). 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.

Summary:

The BLM entered into a Memorandum of Understanding (MOU) with the 17 counties in 2005 that granted the counties cooperating agency status, yet BLM ignored the counties’ positions and the counties have had little ability to impact the outcome of the HiLine PRMP/FEIS.

Response:

Only 3 counties (Blaine, Phillips & Valley) are cooperating agencies in the HiLine RMP revision process. 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 HiLine RMP/EIS, and identification of issues and data during scoping and during the draft HiLine RMP/EIS public comment period. The HiLine PRMP/FEIS further describes the participation of cooperating agencies in Chapter 5, page 791 (Consultation and Coordination).

It is important to note that BLM’s comment response process for all participating organizations and individuals, does not treat comments received as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the HiLine PRMP/FEIS, including comments from the counties.

The BLM properly involved all cooperating agencies in the development of the HiLine PRMP/FEIS. BLM appreciates the counties’ involvement in the planning effort and will continue to coordinate as appropriate.

Supplemental EIS

Issue Number: PP-MT-HILINE-GRSG-15-06-10

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Furthermore, the Proposed RMP also contains wholly new components. 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. The BLM first presented the public with these components when it released the Proposed RMP. 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, 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-HILINE-GRSG-15-06-11

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The net conservation gain requirement, lek buffer distances, and adaptive management triggers and responses were not presented in the Draft RMP. Although the Draft RMP acknowledged that the Proposed RMP/Final EIS would include more details about the revised monitoring and mitigation plans, see Draft RMP at 164; app. R, these “placeholders” did not allow the public a meaningful opportunity to comment on the substance of the revised monitoring and mitigation plans. The inclusion of the net conservation gain requirement, revised mitigation plan, revised monitoring plan, lek buffer distances, and adaptive management triggers and responses coupled with the re-formulated alternative adopting components of the alternatives analyzed in the Draft EIS, hence constitutes “substantial changes from the previously proposed actions that are relevant to environmental concerns” and should have been presented in a Supplemental Draft EIS for public comment.

Issue Number: PP-MT-HILINE-GRSG-15-06-12

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,” the BLM must prepare a Supplemental Draft EIS.

Issue Number: PP-MT-HILINE-GRSG-15-06-19

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest the inclusion of new components in the Proposed RMP not only as a violation of NEPA but also as a violation of FLPMA. BLM's introduction of new components in the Proposed RMP, including 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, deprived the public of a meaningful opportunity to comment on these components as required by BLM's planning regulations. 43 CFR § 1610.2. 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-HILINE-GRSG-15-10-9

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. Further, the FEIS's analysis of ozone neglects to address and consider that the impacts of climate change will worsen ozone pollution.

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

Organization: Imerys

Protestor: Robert Steele

Issue Excerpt Text: In addition, the BLM created new maps in April, 2015 that dramatically alters the maps presented in the DEIS. The maps in the Proposed Hi Line RMP are Map 2.5, Map 2.13, Map 2.16, and Map 2.18. In addition, Table 2.29 of the same document shows DEIS vs FEIS Recommended withdrawal of more than 952,000 acres versus the approximately 34,000 acres in the Draft. These changes represent new information and substantial changes to the Draft EIS.

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

Organization: Imerys

Protestor: Robert Steele

Issue Excerpt Text: A Supplemental Environmental Impact Statement (SEIS) for the LUPA should have been prepared by the Agencies due to significant post-DEIS information that was utilized in preparing the Preferred Alternative in the FEIS. The “Ashe Memo”, lek buffer distance study, and new or updated BLM maps collectively constitute new, relevant and material information that materially shaped the Preferred Alternative and has heretofore not been subject to meaningful review and comment by the public.

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

Organization: Imerys

Protestor: Robert Steele

Issue Excerpt Text: The new habitat category, “Sagebrush Focal Areas” (SFAs), has dramatically reshaped the proposed Federal action due to its management as: 1) recommended for withdrawal from the Mining Law of 1872, “subject to valid existing rights”; 2) managed as no surface occupancy (NSO), without waiver, exception, or modification, for fluid mineral leasing; and 3) prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases and closure of roads. Because this new management category appeared for the first time in the Preferred Alternative of the FEIS, meaningful public comment on the Proposed Plan was precluded, and thus, a SEIS is required.

Summary:

- The BLM did not analyze the cumulative impacts of the Montana Plan. The BLM only noted that the Montana Plan was complementary to the Proposed RMP. Because the Montana Plan constitutes “significant new information”, the BLM should prepare a Supplemental EIS;
- 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 HiLine PRMP/FEIS does not consider EPA’s new ozone standards and neglects to consider impacts from climate change; and
- The new category of sagebrush focal areas has changed the proposed federal action as it relates to valid existing mining rights. Because this new management category was first defined in the HiLine PRMP/FEIS, the public has not had the opportunity to review these management changes.

Response:

NEPA Handbook 1790-1, 5.3, page 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)).

5.3.1 When Supplementation is Appropriate, page 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.

5.3.2 When Supplementation is Not Appropriate, page 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, page 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 CFR 1502.9(c)). The

proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

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 Draft RMP/EIS 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 (M.2 and M.8) in the Proposed RMP/Final EIS. Identification of 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 (Page 28).

A management action was added 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 Draft RMP/EIS release, applying these buffers was addressed in the Draft RMP/EIS 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, and exclusion of wind energy ROWs. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed (Page 29).

As noted in the Draft RMP/EIS, one of the goals/objectives of this planning effort is to protect both the habitat and the species. The habitat in the SFAs exhibits areas of high-quality sagebrush habitat, areas with highest breeding densities, and areas identified as essential to conservation and persistence of the species. These areas have been identified in the Proposed Plan based on recommendations in a USFWS memorandum, and, as to BLM land, are proposed to be managed as PHMA with the following additional management: recommended for withdrawal; NSO without waiver, exception, or modification for fluid mineral leasing; and prioritized for management and conservation actions including, but not limited to review of livestock grazing permits/leases. Alternative B identified recommendation for withdrawal; Alternative E identified NSO, and prioritization the review of grazing permits and leases, and analyzed the impacts of those decisions. As such, the management of these areas as SFAs and the impacts of the associated management decisions was addressed in the Draft RMP/EIS and is qualitatively within the spectrum of alternatives analyzed (Page 28).

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. The BLM has refined the Proposed Plan to provide a layered management approach that offers the

highest level of protection for GRSG in the most valuable habitat.

Climate Change and ozone analysis begins on page 461 of the FEIS.

In reference to new mapping in the FEIS, the HiLine District includes GRSG (GRSG) habitat and the RMP reflects the following changes to decisions for the conservation of GRSG. The boundaries of the preliminary priority GRSG habitat were expanded in the Preferred Alternative to better match the core GRSG habitat delineated by MFWP. This increased the GRSG Protection Priority Area from approximately 930,000 BLM surface acres to 1,006,000 acres and increased the size of the Grassland Bird/GRSG Priority Area from 299,000 acres to 426,000 acres. In the Preferred Alternative of the Final EIS, the GRSG Protection Priority Area and the Grassland Bird/GRSG Priority Area are referred to as Priority Habitat Management Areas (PHMA). General GRSG habitat is referred to as General Habitat Management Areas (GHMA). A 927,000 acre Sagebrush Focal Area (SFA) that represents a recognized “stronghold” for GRSG was designated in south Phillips and Valley Counties. The SFA, as it relates to BLM land, approximates the Greater Sage- GRSG Protection Priority Area ACEC that was proposed and analyzed in Alternative B of the Draft EIS. An assessment of the Proposed RMP consistency with USFWS Conservation Objectives Team (COT) Report was completed (see Appendix M.3), and a summary comparison of alleviated threats to GRSG by alternative was also prepared (see Table 2.30). A new GRSG mitigation strategy was added (Appendix M.4). A complete summary of new proposed GRSG habitat management actions is provided below in the GRSG Habitat Management section.

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 state agencies to follow for land uses and activities in GRSG habitat in addition to establishing the MSGOT and habitat conservation program. The State conservation efforts are complimentary to the conservation measures proposed in the BLM land use plans and when combined will provide conservation efforts across land ownership boundaries (FEIS 1.5.2, page 1-29). The FEIS analyzes the cumulative effects of Statewide efforts in Montana. Section 4.6 Cumulative Impacts. See Montana Statewide Efforts, section 4.6.7.1.4, page 4-618.

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 the preferred alternative 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 of the preferred alternative 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 HiLine PRMP/FEIS are similar or identical to those described Draft RMP/EIS (Chapter 2, page 29).

A Supplemental EIS is not necessary. Changes in the proposed action are not substantial. The effects of the changed proposed action are still within the range of effects analyzed in the Draft EIS.

Best Available Science

Issue Number: PP-MT-HILINE-GRSG-15-02-12

Organization: Lund Law

Protestor: Hertha Lund

Issue Excerpt Text: The BLM seemed to base the RMP on its 2011 National Technical Team Report (“NTT Report”), which is not based on best available science in violation of the ESA (Exhibit D attached to DRMP Comments – Megan Maxwell, BLM’s NTT Report: Best Available Science or a Tool to Support a Pre-Determined Outcome? Northwest Mining Association (2013)).

Issue Number: PP-MT-HILINE-GRSG-15-02-8

Organization: Lund Law

Protestor: Hertha Lund

Issue Excerpt Text: The Data Quality Act (“DQA”) requires the BLM to meet basic informational quality standards (66 Fed. Reg. 49719). This standard of quality requires that the data used and published by the BLM meet four elements: a) quality; b) utility (referring to the usefulness of the data for its intended purpose); c) objectivity (the data must be accurate, reliable, and unbiased); and, d) integrity (Id).

Issue Number: PP-MT-HILINE-GRSG-15-05-12

Organization: Beatty & Wozniak

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 HiLine RMP.

The HiLine RMP 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-HILINE-GRSG-15-06-36

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed LUPA 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-HILINE-GRSG-15-06-37

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% 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 (Id). These technical errors limit the ability of outside reviewers or the public to verify claims in the NTT Report and reduce the report’s scientific credibility. 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 Survey GRSG Monograph (Mar.

18, 2015), Attachment 7, available at http://www.usgs.gov/info_qual/greater_GRS_G_ecology-and-conservation.html. U.S. Forest Serv., 470 F. App’x 630, 633 (9th Cir. 2012) (citing Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 988 (9th Cir. 1985)). The Proposed LUPA, however, also fails this standard because the agencies ignored “evidence before them” that contradicted the results and conclusions in the NTT and COT Reports. Greer Coal., Inc. v. U.S. Forest Serv., 470 F. App’x 630, 633 (9th Cir. 2012). et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10% to 30% 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% canopy cover standard. Misleading citations, failure to properly reference and list sources in the Literature Cited section, and similar technical errors render the NTT Report difficult to read, difficult to verify, and far less than the “best available science.” 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. 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-HILINE-GRSG-15-06-38

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% 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. 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. 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% 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. The 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% in

1981 to 20 to 25% in 1987 to 5 to 10% 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-HILINE-GRSG-15-06-39

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-HILINE-GRSG-15-06-40

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-HILINE-GRSG-15-08-17

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-HILINE-GRSG-15-09-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Increasing the disturbance cap from three percent to five percent has no basis in science and would be contrary to recommendations in the NTT report and other authorities.

Issue Number: PP-MT-HILINE-GRSG-15-06-41

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% 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.

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. Naugle et al. 2011 overall is an inappropriate basis for the lek buffers). 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 GRSB 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 Env't'l & Anthropogenic Features on GRSB Populations, 1997 – 2007, in GRSB: 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 GRSB 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. 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 GRSB 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 GRSB range. 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 GRSB 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 GRSB); D.H. Johnson, et al., Influences of Env't'l & Anthropogenic Features on GRSB Populations, 1997 – 2007, in GRSB: 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, GRSB 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-HILINE-GRSG-15-09-1

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 HiLine 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 HiLine 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 and disturbance caps in the Proposed Alternative.

Response:

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

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 and the Forest Service 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 and the Forest Service 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, Chapter 3) and impact analysis (PRMP/FEIS, Chapter 4). A list of information and literature used is contained in the Bibliography on page 1125.

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 DLUPA/EIS, 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 DLUPA/EIS 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.

The HiLine PRMP/FEIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer, et al. 2014) during NEPA analysis at the implementation stage. As stated in Appendix M, "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.” (p. 1589). 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-HILINE-GRSG-15-02-17

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to comply with the Intergovernmental Cooperation Act. The Intergovernmental Cooperation Act (“ICA”), 31 USC § 6501-6506, and companion Executive Order 12372, require all federal agencies to consider local viewpoints during the planning stages of any federal project (31 USC § 6506(c)).

Issue Number: PP-MT-HILINE-GRSG-15-02-24

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM has violated the Soil and Water Resources Conservation Act. Pursuant to this Act, the BLM was supposed to coordinate with local governments. See 16 USC § 2003(b), 2008. As already explained, the BLM has failed to adequately coordinate with local governments.

Issue Number: PP-MT-HILINE-GRSG-15-02-25

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: The BLM has violated

the Resource Conservation Act of 1981. Pursuant to this Act (16 USC § 3451 et seq.), the BLM was supposed to coordinate with local governments. As already explained, the BLM has failed to adequately coordinate with local governments.

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

Organization: Beatty & Wozniak obo Exxon/Mobil and XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The RMP 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 RMP 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, the BLM is required to supplement existing NEPA documents when, as it has done for the RMP, 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 RMP 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

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

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

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Trades protest

Summary:

- The BLM has not complied with Executive Order of 1/18/2011 directing agencies toward an open exchange of information with the public.
- The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed RMP or analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses.

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

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 the 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 monitoring plan and mitigation strategy. 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.

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.

Public input received during the scoping process was considered to ensure that all the issues and concerns would be addressed, as appropriate, in developing the alternatives. Many comments addressed management of oil and gas development and other resources including travel planning, designating special management areas, and hunting and angling areas of interest. The scoping and public comment processes are summarized in Chapter 5 (Chapter 2, page 25).

Alternative E was identified in the Draft RMP and Environmental Impact Statement (EIS) as the Preferred Alternative. Based on comments received during the public comment period on the

Draft RMP/EIS and additional internal review, the BLM developed the Proposed RMP which is a variation of Alternatives B, C and E and is within the range of alternatives in the Draft EIS. The Proposed RMP appears as Alternative E (Preferred Alternative), which is a modification of the Alternative E that appears in the Draft RMP/EIS.

The BLM identified 1,185 individual comments from the comment documents received, which touched on a wide range of issues. While many of the comments supported the Preferred Alternative in the Draft RMP/EIS, commenters also identified areas where the document could be improved. The HiLine District carefully evaluated and responded to these comments (see Chapter 5). The HiLine PRMP/FEIS contains a number of changes made in response to comments. 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/Final EIS for managing BLM-administered lands in north central Montana. The Proposed RMP/Final EIS focuses on addressing public comments, while continuing to meet the BLM's legal and regulatory mandates. The Proposed Alternative is a variation of the Preferred Alternative E and is within the range of alternatives analyzed in the Draft RMP/EIS. Chapter 5 of the FEIS discusses the public participation process. This chapter describes the public participation opportunities and the consultation and collaborative efforts made as part of the RMP/EIS revision process. It includes a summary of the issues brought forward during the public comment period, list of the commenters, and the comments with responses (Chapter 2, page 25).

A complete summary of changes to Alternative E to develop the Proposed RMP/Final EIS begins in Chapter 2 on page 26. This summary explains where new provisions found in the Proposed RMP were analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses.

Chapter 5, starting on page 789 provides details of the public participation opportunities during the planning and NEPA process. This also includes information regarding Tribal participation, as well as cooperating agency activity and coordination with the State of Montana. The agency provided adequate public involvement opportunities in the planning and NEPA process.

Impacts-GRSG

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

Organization: Western Watersheds Project

Protector: Travis Bruner

Issue Excerpt Text: There is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or whether the HiLine GRSG can actually withstand the 3% disturbance cap and exemptions proposed in the plan (PRMP/FEIS at 41). This is

especially problematic because the plan allows for this to change to a 5% cap based on the Montana state conservation program for GRSG habitat (PRMP/FEIS at 41).

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

Organization: Western Watersheds Project

Protector: Travis Bruner

Issue Excerpt Text: For no alternative does the 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-HILINE-GRSG-15-08-8

Summary:

The HiLine 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;
- there is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions; and
- the plan does not consider no grazing on newly acquired lands in PHMA and GHMA.

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. In the HiLine PRMP\FEIS Chapter 4 and GRSG Key Habitat Areas and GRSG Priority Habitat in appendix M provides analysis of the impacts of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations.

According to the HiLine PRMP/FEIS (p. 28), the monitoring framework was refined in the Proposed RMP/Final EIS, and further clarification as to how disturbance cap calculations would be measured were developed for the Proposed RMP/Final EIS. During the public comment period, the BLM received comments on how monitoring and disturbance cap calculations would occur at implementation. The Draft RMP/EIS 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 (M.2 and M.8) in the Proposed RMP/Final EIS. The effectiveness of these decisions on changes GRSG populations will be evaluated based on criteria in the monitoring plan.

The Proposed Plan emphasizes sustainable development with constraints on resource uses to protect GRSG and other natural resources. GRSG protective measures, such as NSO stipulations,

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: The proposed plan states that newly acquired lands will be designated as reserve common allotments, allocated for grazing, or designated as unavailable for grazing (PRMP/FEIS at 95). Given that grazing is recognized by USFWS as a threat to GRSG, the plan should have at least considered and ultimately planned to manage newly acquired lands in PHMA and GHMA for the benefit of GRSG, i.e. no grazing.

would be implemented in and outside of priority habitat. In conjunction with state and regional planning efforts, implementation of disturbance caps in GRSG priority habitat, conservation easements on private lands, and implementation of the Proposed Plans for other BLM planning areas in MZ I, the Proposed Plan for the HiLine RMP would meet the goals and objectives for GRSG in this plan and the objectives laid out in the COT report for fire, invasive plants, range management, recreation, and infrastructure (HiLine RMP/FEIS, p. 1646).

Instructional Memorandum 2012-044 provided direction for the National GRSG Conservation Measures (NTT report). 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

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 Hi Line PRMP/FEIS and that address resource issues identified during the scoping period. The Hi Line PRMP/FEIS analyzed five alternatives, which are described in Chapter 2, Alternatives (p. 25 through 275). A number of alternatives were also considered but not carried forward for detailed analysis (p. 202 through 206), including a No Livestock Grazing/Reduced Grazing Alternative (p. 204-205).

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 changes in season of use, are provided for in this RMP/EIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the Standards for Rangeland Health.

Appendix F of the HiLine PRMP/FEIS provides criteria to consider when the BLM acquire lands. This criterion does not preclude the BLM from removing land from grazing based on resource objective consistent with the reason for the acquisition. 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.

Impacts-Air Quality, Climate Change, and Noise

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

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). The 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 M). 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, the BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: The Proposed RMP failed to provide a hard look detailed analysis of impacts. See *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-HILINE-GRSG-15-10-12

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, the 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 the BLM’s NEPA obligations.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdel

Issue Excerpt Text: While the HiLine Field Offices provide 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 HiLine planning area, and BLM fails to identify any relationship between this data and its decision making process for the Proposed RMP

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The HiLine RMP fails to appropriately assess air impacts from development authorized under the plan, including by failing to revise its ozone analysis in light of the best science.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: In the FEIS, the BLM

failed to consider the multiple effective and environmentally sustainable methods and practices to reduce methane waste. As noted in our Draft Comments, while the 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.

Summary:

The HiLine PRMP/FEIS violated NEPA by failing to adequately 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. The HiLine PRMP/FEIS 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; failed to assess air impacts from development authorized under the plan; failed to use the best available science in the ozone analysis; and failed to provide analysis of how methane emissions will impact specific resources.

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).

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 HiLine 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), 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.

Chapter 4 of the HiLine PRMP/FEIS describes the environmental, economic and social consequences of implementing the alternatives presented in Chapter 2 of the HiLine PRMP/FEIS. The impact analyses and conclusions are based on interdisciplinary team knowledge of resources within the planning area, reviews of existing literature, and information provided by other agencies, institutions, and individuals. (Chapter 3 provides a detailed description of each resource). Spatial analysis was conducted using ESRI’s ArcGIS Desktop 9.1 software. Effects are quantified where possible; in the absence of quantitative data, best professional judgment was used. Impacts are sometimes described using ranges of potential effects or in qualitative terms if appropriate. The analysis represents best estimates of impacts since specific locations and proposed actions are often unknown (HiLine PRMP/FEIS, p. 449).

Chapter 4 of the HiLine PRMP/FEIS describes the environmental consequences associated with the impacts to GRSG and its habitat from activities carried out in conformance with the plan, in addition to BLM management actions. 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 mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. (HiLine PRMP/FEIS, page 450).

The HiLine PRMP/FEIS used the best available information for 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. Information from the documents, “Incorporating the impacts of noise pollution into GRSG conservation planning” presented at the 27th Meeting of the Western

Agencies Sage and Columbian Sharp-tailed GRS Technical Committee Workshop. Twin Falls, Idaho, and the document currently under preparation, “Experimental evidence for avoidance of chronic anthropogenic noise by GRS” were reviewed by the BLM and used for analysis in developing the HiLine PRMP/FEIS. (HiLine PRMP/FEIS, p.1125).

In the Chapter 2 of the HiLine PRMP/FEIS, noise limits and buffer were discussed under Wildlife. (FEIS, Chapter 2, page 178). BLM received comments to this issue during the DEIS phase and BLM responded to the comment with, “Refer to Chapter 2, Wildlife, Decisions Common to All Alternatives, Mitigation Measures and Conservation Actions For Surface-Disturbing and Disruptive Activities and Appendix M. A ¼ mile lek buffer for noise and related disruptive activities including those that do not result in habitat loss (e.g., motorized recreational events) is required in PHMA and recommended in GHMA. The recommended literature has been reviewed and added to the bibliography for the Proposed RMP/Final EIS” (FEIS, Chapter 5, page 858).

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 HiLine PRMP/FEIS 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 HiLine PRMP/FEIS.

Air quality for the planning area was discussed and analyzed in Chapter 4 under Air Resources and Climate Change in the HiLine PRMP/FEIS (HiLine PRMP/FEIS, p.461). The HiLine Field Office (HFO) resource specialists provided the construction, operations, developed acreage, and production activity data used to estimate emissions for resource emission sources. Other activity data were derived from the surface disturbance and RFA tables (Appendix G (p. 1937)). For conventional natural gas, coalbed natural gas (CBNG), and oil development, emissions were prepared for activities on federal mineral estate in the planning area. The estimation of emissions from coal mining activity relied on information contained in the Environmental Protection Agency’s (EPA’s) National Emission Inventory (NEI) (EPA 2011a) and the Final Mineral Occurrence and Development Potential Report (BLM 2009c) for the planning area. Methane emissions are discussed in Chapter 4 under Air Resources and Climate Change in Assumptions and Claim (HiLine PRMP/FEIS, p. 477).

Ozone emissions is discussed in Chapter 4, Air Resources and Climate Change (Page 461). Ozone is also discussed in the Affected Environment section in Chapter 3, Air Resources and Climate (page 277). Emission inventories include BLM sources and non-BLM sources within the planning area. Criteria pollutants include CO, NO_x, ozone, PM_{2.5}, PM₁₀, and SO₂, as well as VOCs, which are ozone precursors. Hazardous air pollutants (HAPs), such as benzene and toluene, are also included in the inventories. Due to a lack of lead-emitting sources, lead emissions were not estimated. (FEIS Chapter 4, page 461).

The BLM received a comment during the DEIS regarding lack of discussion on emissions. The BLM responded, “The Preferred Alternative restricts oil and gas leasing compared to the No-Action Alternative. The BLM reviewed GHG emissions, based on new data from the USEPA’s Greenhouse Gas Mandatory Reporting Rule (MRR). Oil and gas operators did not report

methane emissions from many types of the oil and gas air pollutant sources listed by the commenter based on year 2011 activity. For other sources, methane emissions accounted for less than 1% of CO₂e. EPA and MDEQ regulations will reduce future methane emissions” (See the summary of MRR data in Chapter 3, Climate Change, National Actions to Reduce GHGs, and Appendix B, Section 1.5.2. Appendix C, Best Management Practices, Air Resource BMPs includes additional BMPs; FEIS, Chapter 5, page 870).

The HiLine PRMP/FEIS includes a bibliography and reference section beginning on page 1125 of the HiLine PRMP/FEIS, which lists information considered by the BLM in preparation of the HiLine PRMP/FEIS planning effort.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts to noise limits to leks and air quality emissions in the HiLine PRMP/FEIS.

Impacts-Cultural Resources

Issue Number: PP-MT-HILINE-GRSG-15-02-3

Organization: Lund Law obo: North Blaine County 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.

Summary:

The HiLine PRMP/FEIS failed to consider historical and current information detailing the cultural heritage of ranching within the planning area.

Response:

In Chapter 3 of the HiLine PRMP/FEIS under Cultural Resources the section Farming and Ranching (p. 301) succinctly describes the local ranching heritage for the planning area. In Chapter 4 – Environmental Consequences the section Social (p. 610 through 615) discusses the impacts to farming and ranching operations resulting from the four alternatives analyzed in the HiLine PRMP/FEIS.

The BLM considered relevant information for the Cultural Resources impact analysis.

Impacts-Oil and Gas

Issue Number: PP-MT-HILINE-GRSG-15-06-15

Organization: Montana Petroleum Association

Protestor: Dave Galt

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 289,756

Issue Excerpt Text: The Final EIS also

acres of lands, and imposes new compensatory mitigation requirements, new lek buffers, and new density and disturbance caps. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in SFA and PHMA and CSU stipulations in GHMA, will cumulatively stymie oil and gas development on federal lands within the planning area. The Final EIS does not adequately recognize the cumulative impacts of leasing and development restrictions on federal lands.

Issue Number: PP-MT-HILINE-GRSG-15-06-17

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, the 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 1,657,155 acres of habitat as general right-of-way avoidance areas and 60,692 acres as general right-of-way exclusion areas (Proposed RMP, Table 2.3 at 32). At the same time, the Proposed RMP states that 803,656 acres of public lands in the planning area are currently under lease for oil and gas (Proposed RMP, 63, Table 2.7 at 65). 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. The BLM must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area. Accordingly, the BLM must analyze the impacts of the right-of-way avoidance and exclusion areas in the Proposed RMP.

Summary:

The HiLine PRMP/FEIS does not adequately analyze the impacts of the Proposed RMP on oil and gas development, in particular the impacts of applying ROW restrictions, lek buffers and disturbance caps.

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 HiLine 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.

The PRMP/FEIS acknowledges that stipulations to oil and gas leases (including timing, CSU, and NSO) contained in the Proposed RMP cannot be retroactively applied to existing oil and gas leases or other existing valid use authorizations such as rights-of-way (PRMP/FEIS p. 530). “Site-specific actions such as APDs and new rights-of-way in areas with existing leases would be

allowed, subject to surface use stipulations, COAs, and BMPs; however, these stipulations must be reasonable and consistent with existing lease rights,” (p. 530). 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 (PRMP/FEIS, p. 527), and therefore, these constraints were included in the RFD scenarios created for each alternative in the attempt to quantify predicted future development (summarized in Appendix E).

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, if appropriate, 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-Water

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The BLM failed to take a hard look at hydraulic fracturing (or “fracking”) impacts from oil and gas leasing and development in the planning area. Although the BLM acknowledges that “[h]ydraulic fracturing can open up pathways for fluids or gases from geologic layers to flow where they are not intended, which presents an opportunity for

groundwater contamination,” historically, the BLM has been dismissive of possible impacts to water quality from hydraulic fracturing (FEIS at 697). Here, the HiLine Field Offices correctly recognize that fracking can result in groundwater and surface water impacts (See *id.* at 698) (providing that “[p]roduction water, when spilled, could contaminate soils and impact surface and groundwater quality”). Yet, the agency’s decisionmaking is not reflective of this identified harm, and fails to sufficiently analyze impacts, providing only that “[s]ite-specific mitigation measures, BMPs, and reclamation.

Summary:

The HiLine PRMP/FEIS violated NEPA by failing to take a hard look at hydraulic fracturing (or “fracking”) impacts from oil and gas leasing and development in the planning area. The HiLine PRMP/FEIS recognizes fracking can result in groundwater and surface water impacts, however fails to sufficiently analyze impacts, providing only that “[s]ite-specific mitigation measures, BMPs, and reclamation.

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 HiLine Revision/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), 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 II, Chapter 3, Affected Environment, Fluid Minerals, page 332-333, the process of hydraulic fracturing is discussed and described under the subtopic, Vertical, Directional and Horizontal Drilling. In Volume III, Chapter 4, under Alternatives Common to All, Fluid Minerals, page 696, the process of hydraulic fracturing is again discussed and, “Site-specific mitigation measures, BMPs, and reclamation standards would be implemented and monitored in order to minimize effects to water resources. The Gold Book, Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (BLM and USFS 2007), would be followed. Guidance in the hydraulic fracturing rule published as final on March 26, 2015 (80 Fed. Reg. 16128) would also be applied as appropriate. Potential effects to water resources are both short-term and long-term.” Thus as site specific projects are proposed additional analysis would be completed and site specific stipulations would be implemented.

The HiLine PRMP/FEIS includes a bibliography and reference section in Volume 3, Bibliography, page 1125 which lists information considered by the BLM in preparation of the HiLine PRMP/FEIS.

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 in the HiLine PRMP/FEIS.

Impacts-Grazing

Issue Number: PP-MT-HILINE-GRSG-15-02-6

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: There are instances where the alternatives could affect grazing.

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.

Issue Number: PP-MT-HILINE-GRSG-15-02-9

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

Issue Excerpt Text: These statements could negatively impact grazing and 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.

Summary:

- The HiLine PRMP/FEIS violates 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. Without adequate monitoring data and without consulting with the grazing permittee; and
- The BLM cannot decrease stocking rates, adjust seasons of use, or take other negative actions against a permit without violating the Range Regulations, 43 CFR Subpart 4100.

Response:

- The Hi Line PRMP/FEIS fully assessed and disclosed the impacts to livestock grazing and economics in Chapter 4, Environmental Consequences, specifically in the Livestock Grazing Section (p. 558 - 562), the Soil Resources and Vegetation – Rangeland Section (p. 616 – 634) and in the Economics Section (p. 497 – 511). Additional information used in the analysis can be found in Appendix G - Livestock Allocations, Appendix I – Yearling Conversion Factors and Appendix R – Economic Impacts Analysis Methodology.

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 Hi Line 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 HiLine 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 is taking a pre-decisional approach here in already projecting reductions in Animal Unit Months (“AUMS”) based on their claims of declines in permitted grazing. Without any data collection, results of Rangeland Health Assessments, Allotment Photos and Information, or other necessary monitoring data, the BLM in Alternative D is anticipating reductions in livestock grazing.”

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-Other

Issue Number: PP-MT-HILINE-GRSG-15-09-6

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The Cumulative Impacts section discusses climate change implications for rangeland, based on projected amount and timing of precipitation (621-22), but doesn't address implications of climate change, or its potential interactions with other threats, for GRSG. The word "climate" is not mentioned in the "Wildlife" section (731-783).

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

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, the 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). The BLM must follow through on that commitment here. Conversely, because BLM failed to consider these impacts in development of the Fracking Rule, the Fracking Rule plainly cannot provide a substitute for consideration of these impacts here.

Summary:

The FEIS violated NEPA by failing to consider and analyze climate change and potential interactions with other threats to GRSG in the cumulative impacts section; failed 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."

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 HiLine Revision/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.

Impacts from climate change to wildlife area discussed in Chapter 4, Climate Change, Assumptions, pages 477-478 and have been considered in the analysis for the FEIS. The Fracking Rule went into effect June 2015 and public meetings and comment periods were held in development of the rule. The rule is used to complement existing regulations and will be in effect for site specific proposed projects. For response to cumulative impacts, see the Cumulative Impacts section of this report above.

In Chapter 3, Affected Environment, Fluid Minerals, page 332-333, the process of hydraulic fracturing is discussed and described under the subtopic, Vertical, Directional and Horizontal Drilling. In Chapter 4, under Alternatives Common to All, Fluid Minerals, page 696, the process of hydraulic fracturing is again discussed and, “Site-specific mitigation measures, BMPs, and reclamation standards would be implemented and monitored in order to minimize effects to water resources. The Gold Book, Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (BLM and USFS 2007), would be followed. Guidance in the hydraulic fracturing rule published as final on March 26, 2015 (80 Fed. Reg. 16128) would also be applied as appropriate. Potential effects to water resources are both short-term and long-term.” Thus as site specific projects are proposed additional analysis would be completed and site specific stipulations would be implemented. (See Impacts to Water section of this report).

Greenhouse Gas (GHG) emissions (CO₂, CH₄, and N₂O) are described in the Climate Change impact analysis. Emission inventories, modeling methods, and modeling results are included in the HiLine Resource Management Plan Air Resource Technical Support Document (ARTSD) (BLM 2014), which is available on the HiLine RMP website at <http://blm.gov/8qkd>. (Chapter 4, air Resources and Climate Change, page 461).

The HiLine PRMP/FEIS includes a bibliography and reference section in Volume 3, Bibliography, page 1125 which lists information considered by the BLM in preparation of the HiLine PRMP/FEIS.

The BLM complied with NEPA’s requirement to consider and take a hard look at the environmental consequences/impacts to GRSG from climate change and impacts from the process of hydraulic fracturing in the HiLine PRMP/FEIS.

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

Endangered Species Act

Issue Number: PP-MT-HILINE-GRSG-15-09-9

Organization: Defenders of Wildlife

Protestor: Mark Salvo

that this failure to support the existing black-footed ferret population's habitat needs through agency inaction is a failure of the agency's obligations under the ESA and applicable BLM guidance.

Issue Excerpt Text: Defenders submits

Summary:

The BLM, through inaction, failed to meet its obligation under ESA for black-footed ferret population's habitat.

Response:

The BLM has identified and address conservation measures for the Black-footed ferret throughout HiLine PRMP/FEIS (see chapter 2). For example, in the HiLine PRMP/FEIS (p. 27) "Additional language was added clarifying the State of) Montana's role in managing native wildlife populations, including proposals to reestablish native species such as black-footed ferrets and wild bison. The BLM would work cooperatively with Montana Fish, Wildlife and Parks (MFWP), U.S. Fish and Wildlife Service (USFWS), other agencies, partners, and cooperators in the development of wildlife restoration plans" and "Alternative E provides a number of stipulations to minimize disturbance impacts from oil and gas activities at local scales through stipulations limiting timing or distance from key wildlife resource values. These are addressed below under each wildlife category for BLM lands"... and for black-footed ferret "An NSO stipulation would be implemented within 1/4 mile of essential black-footed ferret habitat to limit surface-disturbing activities. This would result in approximately 82,517 acres of black-footed ferret habitat on BLM lands where direct and indirect impacts would be avoided" (HiLine PRMP/FEIS, p. 766).

Additionally, "Actions and impacts noted for black-tailed prairie dogs are actions and impacts that would affect black-footed ferrets indirectly through impacts to their habitats. No management actions specific to black-footed ferrets are proposed in Alternative E because of the failure of reintroduction efforts to establish a current population of ferrets on BLM lands; however, the BLM would manage prairie dog habitat to maintain prairie dog populations and distribution and also provide habitat for ferrets and other special status species. Impacts to ferret habitat are noted in the prairie dog section" (HiLine PRMP/FEIS, p. 779 to 780).

Chapter 5, in the U.S. Fish and Wildlife section describes the consultation that occurred and collaborative efforts with the State of Montana; the eight counties in the area; the Tribes; and the U.S. Fish and Wildlife Service. Federal agencies are required to comply with provisions of the Endangered Species Act of 1973, as amended. This includes a requirement to consult with the U.S. Fish and Wildlife Service (USFWS) on any action that may affect species listed as threatened and endangered or result in destruction or adverse modification of habitat designated as critical for listed species. In addition, federal agencies must confer with the USFWS on any action that is likely to jeopardize the continued existence of any species proposed to be listed or

any action that may result in the destruction or adverse modification of critical habitat proposed to be designated for listed species (HiLine PRMP/FEIS, p. 793).

Contacts were made with the USFWS early in the planning process, and early drafts of alternatives were provided for discussion. An initial list of federally listed threatened or endangered plant, animals, or fish species or habitats present in the planning area was requested in 2008. Three federally listed threatened wildlife species and four endangered species either occur in the planning area or use habitat found within the planning area. These include pallid sturgeon (endangered), black-footed ferret (endangered/experimental non-essential), Canada lynx (threatened), grizzly bear (threatened), least tern (endangered), piping plover (threatened), and whooping crane (endangered) (HiLine PRMP/FEIS, p. 793).

Informal meetings were held with the USFWS to discuss issues and alternatives and the USFWS participated during cooperating agency meetings. Four additional face-to-face meetings between BLM resource specialists and USFWS Ecological Services biologists regarding GRSG took place between April 2012 and July 2014. Informal consultation between Montana BLM biologists and USFWS biologists at the Helena Montana Ecological Services Field Office continued through May 2015. A Biological Assessment evaluating the impacts of the Preferred Alternative on federal threatened, endangered and proposed species will be submitted to the USFWS prior to issuance of the Record of Decision (HiLine PRMP/FEIS, p. 793) . In developing the HiLine Revision, the BLM has fully complied with ESA.

GRSG-General

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

Organization: Western Watersheds Project
Protestor: Travis Bruner

Issue Excerpt Text: We protest the lack of consistent management parameters across the range of the species, or adequate explanations for variation where that exists. The management specified in the PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range- wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. 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-HILINE-GRSG-15-09-3

Organization: Defenders of Wildlife
Protestor: Mark Salvo

Issue Excerpt Text: 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 HiLine 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 (SO 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-HILINE-GRSG-15-09-4

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-HILINE-GRSG-15-09-7

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The HiLine plan should follow the example set by the Nevada and Oregon plans. Although the Nevada plan also has its deficiencies concerning climate change management, it better

addresses BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of 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 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.

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, surface disturbance caps, and GRSG habitat in general and may lead to arbitrary decisions in each sub-region.

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 for developing alternatives and planning areas, the specifics of each sub-region necessitated modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level (see Chapter 2, page 33, of the FEIS) .

Regarding the exemptions for certain Transmission Line Right-of-ways in this plan, these ROW applications are currently being analyzed and similar provisions and stipulations are proposed there as are required under this plan.

There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

GRSG – Adaptive Management

Issue Number: PP-MT-HILINE-GRSG-15-06-32

Organization: Montana Petroleum Association

Protestor: Dave Galt

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.

Issue Excerpt Text: The Trades protest the

Summary:

The Adaptive Management Plan associated with the HiLine PRMP/FEIS is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what casual 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 HiLine PRMP/FEIS provides for various implementation level responses that will more appropriately address the causal factors in these situations (see Chapter 2, pages 43 and 44, of the HiLine PRMP/FEIS).

The BLM is within it authority and appropriately applies and adaptive management plan to conserve GRSG habitat.

GRSG - Livestock Grazing

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

Organization: Western Watersheds Project

Protestor: Travis Bruner

of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated.

Issue Excerpt Text: We protest the failure

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-HILINE-GRSG-15-08-6

Organization: Western Watersheds Project
Protector: Travis Bruner

Issue Excerpt Text: The BLM also fails to define grazing as a surface disturbing activity. PRMP/FEIS at 558. This means that unlike stipulations applied to oil and gas leased that prohibit surface occupancy and use during breeding and nesting (March 1- June 15; e.g. PRMP/FEIS at 73), grazing is not seasonally restricted by the HiLine plan. And yet, the best science recommends that grazing be restricted during this same

period. The distinction is arbitrary and capricious, and the PRMP/FEIS should be revised to limit spring season harms to GRSG.

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

Organization: Western Watersheds Project
Protector: 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. 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 BLM fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science; and
- Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.

Response:

- The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24). The BLM NEPA Handbook also directs the BLM to "use the best available science to support

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

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 Hi Line PRMP/FEIS that address these impacts. The HiLine PRMP/FEIS (p.36 for Livestock Grazing) contains goals, objectives, and management actions that addresses the threats outlined Table 2.2 (p. 30 to 31) and will help GRSG Habitat meet GRSG habitat objectives. For example, under the Proposed Amendment, “The NEPA analysis for renewals and modifications of livestock grazing permits/leases that include lands within SFAs and PHMAs will include specific management thresholds based on the GRSG habitat objectives Table 2.4, Desired Conditions for GRSG Habitat, Land Health Standards (43 CFR 4180.2) and ecological site potential, and one or more defined responses that will allow the authorizing officer to make adjustments to livestock grazing that have already been subjected to NEPA analysis” and “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” (HiLine PRMP/FEIS, p. 52). The BLM did not fail to use the best available science in the development of scientifically-referenced habitat objectives or in the goals, objectives and management actions designed to meet them in the HiLine PRMP/FEIS.

- 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 HiLine PRMP/FEIS and that address resource issues identified during the scoping period. The HiLine PRMP/FEIS analyzed five alternatives, which are described in Chapter 2, Alternatives (p. 25 through 275). Five alternatives were also considered but not carried forward for detailed analysis (p. 202 through 206), including a No Livestock Grazing/Reduced Grazing Alternative (p. 204-205).

NEPA requires that agencies study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. 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 (WO IM 2012-069). Further, the BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities during the site-specific permit renewal process.

The HiLine RMP planning area is located in the northern portion of the Great Plains Ecoregion (EPA 2010a) and the rangelands in the planning area are classified as mixed-grass prairie. The rangelands of the Great Plains have a long evolutionary history of grazing and grazing is accepted by grassland ecologists as a keystone process of the grassland ecosystem (Fuhlendorf and Engle 2001, Milchunas, et al. 1988, Knapp et al. 1999). There is also agreement among many scientists and natural resource managers that some level of grazing disturbance is necessary to assure the ecological integrity of the mixed-grass prairie ecosystem (Parks Canada 2002). In addition to the inherent role of large herbivore grazing in maintaining ecosystem health within the planning area, current resource conditions on BLM-administered land, as described earlier, do not support the need for a planning area-wide reduction or prohibition of livestock grazing (p. 204).

Historical grazing allocations have been included in the existing RMPs and allocation of vegetation generally ranges from 25% to 40% for livestock and 60% to 75% for other uses (e.g. wildlife, soil protection, etc.). As no substantial resource issues were identified that warranted a comprehensive change across the planning area, forage allocation and use levels by allotment were carried forward, incorporating ongoing adaptive management that has been used on a site-specific basis as resource issues have been identified. (p. 205).

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 changes in season of use, are provided for in this RMP/EIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity

planning and associated environmental. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the Standards for Rangeland Health.

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

The BLM considered a reasonable range of alternatives and considered grazing restrictions in the HiLine PRMP/FEIS in full compliance with NEPA; changes to individual permits are not appropriate at the land management planning scale and would occur at the implementation stage.

GRSG - Mitigation

Issue Number: PP-MT-HILINE-GRSG-15-06-16

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 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. BLM cannot condition permits on a requirement that land users cannot fulfill due to lack of

mitigation. Accordingly, BLM must analyze the availability of compensatory mitigation in the Final EIS.

Issue Number: PP-MT-HILINE-GRSG-15-06-26

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, particularly to achieve a “net conservation gain” of GRSG habitat, and fails to adequately analyze:

- the requirement that land users provide compensatory mitigation to obtain a “net conservation gain”; and
- whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework.

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 mission 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 HiLine PRMP/FEIS, part of which is to incorporate objectives and adequate conservation measures into RMPs in order to conserve, enhance, and/or restore GRSG habitat (p. 3). To this end, the HiLine PRMP/FEIS incorporates specific management actions and conservation measures to conserve GRSG and its habitats on BLM land .

Chapter 4, Mitigation (Vol. 2, p. 450) 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 resources and all resource use programs would be subject to mitigation and minimization guidelines and Best Management Practices (BMPs) (Appendix C), including specific Mitigation Measures and Conservation Actions for GRSG (Appendix M.1). For analysis purposes, it has been assumed that these practices and conservation actions would be implemented during site-specific project planning where appropriate (p. 460).

As to the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework, land use plans (LUP) do not typically analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of an LUP does not directly result in any on-the-ground impacts. The BLM will analyze appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area.

The HiLine 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. The HiLine PRMP/FEIS provides an appropriate level of analysis for the requirement that land users provide compensatory mitigation to obtain a “net conservation gain,” and the availability of sufficient compensatory mitigation to satisfy the requirements of the mitigation framework would be appropriately analyzed on a project-specific basis.

GRSG – Data and Inventories

Issue Number: PP-MT-HILINE-GRSG-15-09-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Does the plan include specific, downscaled climate projections for the area (including data from relevant Rapid Ecological Assessment(s), where available)? The planning area is within the Northwestern Plains Rapid Ecological

Assessment, which has produced downscaled climate projections for the area, and the State of Montana, which has also developed and published relevant, local climate change projections (www.climatechangeMT.org), but the HiLine FEIS did not incorporate these data, including only a general description of climate change effects in effects in the “Climate Change” section (referencing the IPCC and USGCRP) (293-295).

Summary:

The HiLine PRMP/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by not incorporating climate projections from the Northwestern Plains Rapid Ecological Assessment.

Response

The Northwestern Plains Rapid Ecological Assessment was not available for use until it was made available through Montana Information Bulletin No. MT-2014-021 on August 6, 2014. As such, it was not available for incorporation into the HiLine PRMP/FEIS. Data used regarding climate can be found in the Air Resources and Climate Change sections of Chapters 3 and 4 (p. 277 and 461, respectively). The information used was relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives for the HiLine PRMP/FEIS.

Administrative Procedures Act

Issue Number: PP-MT-HILINE-GRSG-15-02-13

Organization: Lund Law obo: North Blaine County Grazing District

Protestor: Hertha Lund

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.

Issue Excerpt Text:

The BLM’s dependence on the NTT also

Issue Number: PP-MT-HILINE-GRSG-15-02-18

Organization: Lund Law obo: North Blaine County Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to comply with the regulatory flexibility analysis requirement. The Regulatory Flexibility Analysis Act, 5 USC § 601 et seq., requires the BLM to perform an analysis on whether the approach outlined in the RMP is the most flexible necessary to meet the goals. This analysis has not been done, which means the public, including my clients, have not had the opportunity to comment based on legally-mandated analysis by the BLM.

Issue Number: PP-MT-HILINE-GRSG-15-02-19

Organization: Lund Law obo: North Blaine County Grazing District
Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to provide a Small Business Regulatory Enforcement Fairness Act Analysis Pursuant to 5 USC § 804(2). The BLM was supposed to determine whether the RMP would negatively impact small businesses in the area. This analysis was not done per § 1610.5-2(a)(1). Finally, the provisions of the Proposed RMPA constituting legislative rules have not been subject to notice required by 5 USC § 553(b).

Issue Number: PP-MT-HILINE-GRSG-15-02-20

Organization: Lund Law obo: North Blaine County 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. In addition, 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. Last, 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-HILINE-GRSG-15-02-22

Organization: Lund Law obo: North Blaine County 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-HILINE-GRSG-15-02-26

Organization: Lund Law obo: North Blaine County 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-HILINE-GRSG-15-06-3

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).² 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.

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

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The APA requires that agencies explain their decisions sufficiently that “the agency’s path may reasonably be discerned” (Alaska Dep’t of Env’tl Conservation v. Env’tl Protection Agency, 540 U.S. 461, 496 – 97 (2004)). Given that the Montana Plan and the Wyoming Plan contain many identical restrictions and that the Montana Plan was available prior to release of the Proposed RMP, BLM was required to provide a reasoned explanation of its choice to adopt the plan in Wyoming but not in Montana.

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

Organization: Montana Petroleum 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.

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

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. Because the provisions of the Proposed RMP related to exceptions, modifications, and waivers of stipulations attempt to amend BLM’s regulation at 43 CFR § 3101.1-4 without following the formal rulemaking procedures required by 5 USC § 553, BLM must revise the Proposed RMP to remove the limitations on waivers, modifications, and exceptions.

Issue Number: PP-MT-HILINE-GRSG-15-06-7

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The BLM cannot finalize the provisions of the Proposed RMP requiring compensatory mitigation, requiring that mitigation achieve a “net conservation gain,” imposing conservation measures, and prohibiting exceptions, modifications, and waivers in PHMAs and SFAs until it follows formal rulemaking procedures, as required by the APA. Second,

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedures Act, when it:

- used the RMP revision process to justify a pre-determined outcome;
- failed to fully analyze and consider existing state plans to address GRSG management; and
- implemented a number of changes to management practices - including a “net 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 development of the HiLine PRMP/FEIS, including:

- The Regulatory Flexibility Analysis Act, 5 USC § 601;

the public has not been afforded an adequate opportunity to comment on certain portions of the Proposed RMP that constitute legislative rules as required by 5 USC § 553(d). The APA allows for a comment period of “not less than” 30 days, see 5 USC § 553(d). In this case, because BLM introduced many rules in the Proposed RMP (rather than the Draft RMP)—including the lek buffer distances, the “net conservation gain” mitigation requirement, and the limitations on modification and waiver of, and exception to, lease stipulations—the public only has the opportunity to protest these components during a fixed 30-day window. See 43 CFR § 1610.5-2(a)(1). Third, the provisions of the Proposed RMP constituting legislative rules have not been subject to notice required by 5 USC § 553(b).

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

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: Finally, by failing to characterize the mandates of the Proposed RMP as legislative rules, the BLM skirts other procedural requirements imposed on legislative rules.

- 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 HiLine PRMP/FEIS is a targeted revision specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, 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.

Rulemaking/Land Use Planning

The regulations concerning land use planning, 43 CFR 1610, state 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 of this RMP Amendment 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.

Finally, the protestors are incorrect that the Proposed RMP’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, the elements of the HiLine Proposed RMP 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 regulation, and BLM Director-approved planning guidance. Moreover, the planning process 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 is the standard of review of agency action in federal court, not BLM's administrative protest procedures.

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-HILINE-GRSG-15-06-28

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill... The 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. The 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-HILINE-GRSG-15-06-31

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. 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 at 527 – 47. Because the lek buffer distances are unnecessarily restrictive, the BLM must revise the Proposed RMP to identify

measures that comply with the directives of EPA Act.

Summary:

The HiLine 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; and
- providing for a “net conservation gain” of GRSG habitat.

Response:

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 HiLine 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 Section M-5 of Appendix M: 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 recognizes 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 (p. 1589).

As such, the BLM is not imposing specific stipulations, best management practices, or conditions of approval regarding lek buffers through the HiLine PRMP/FEIS and is not in violation of the Energy Policy Act. Instead, the 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 HiLine 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. Consistent with the proposed plan's goal outlined in Table 2.4, the intent of the HiLine PRMP/FEIS is to provide a net conservation gain to the species. To do so, in all GRSG habitat, 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. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Refer to Appendix M.1, Mitigation Measures and Conservation Actions for GRSG Habitat, as well as the other Appendices in the M-series for more details in this regard. 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.” As such, this standard does not violate the Energy Policy Act of 2005.

Air Quality, Climate Change, and Noise

Issue Number: PP-MT-HILINE-GRSG-15-06-42

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, the EPA has the authority to regulate air emissions. In Montana, the 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 IBLA, has determined that, in states such as Montana, the state, and not BLM has authority over air emissions:

Issue Number: PP-MT-HILINE-GRSG-15-06-43

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The 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 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 (August 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 42 Major emitting sources are those that emit or have the potential to emit 250 tons per year of any regulated pollutant, or any of the 28 listed industrial sources that have the potential to emit 100 tons per year of any regulated pollutant. 42 USC § 7479(1); 40 CFR § 51.166(b)(1), 52.21(b)(1) control visibility and PSD increment analysis, the BLM must revise the objectives set forth in the Proposed RMP regarding visibility and PSD consumption.

Issue Number: PP-MT-HILINE-GRSG-15-06-44

Organization: Montana Petroleum Association

Protestor: Dave Galt

Issue Excerpt Text: The language of the statute demonstrates BLM is required to "provide for compliance," not independently regulate air emissions (Id). So long as the Proposed RMP does not interfere with the enforcement of state and federal pollution laws, BLM has satisfied its obligations under FLPMA. FLPMA does not authorize BLM to independently regulate air quality control measures such as those imposed in the Proposed RMP.

Issue Number: PP-MT-HILINE-GRSG-15-09-8

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

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

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-HILINE-GRSG-15-10-3

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The HiLine 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 oil and gas development on human resiliency.

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

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The HiLine Field

Offices must consider foreseeable impacts to visibility and air quality degradation that will result from development authorized by the HiLine RMP and EIS. In particular, the HiLine Field Offices 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.”

Summary:

The BLM violated the Clean Air Act (42 USC Sections 7401 – 7671q), for the following reasons:

- The BLM does not have direct authority over air quality or air emissions nor does the agency have the authority to implement, regulate, or enforce the PSD increment;
- The BLM must consider foreseeable impacts to visibility and air quality degradation that will result from development, including oil and gas activities;
- The BLM has not included climate mitigation measures in the PRMP/FEIS; and
- The BLM failed to use the social cost of carbon in the analysis.

BLM must also:

- Evaluate reasonably foreseeable impacts to visibility and air quality from development authorized in the EIS;
- 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 HiLine 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 Chapter 2, Air Resources and Climate Change and Table 2.28– Air Quality). In the HiLine PRMP/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal land management actions anticipated under the HiLine 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 and visibility. Chapter 4, Air Resources and Climate Change explains the methodology used to assess impacts to air quality, including from energy and mineral development.

Establishing air quality and visibility measures and conducting a PSD analysis in the HiLine 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. Rather, the BLM is responding to estimated impacts from the HiLine PRMP/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act.

The HiLine PRMP/FEIS adequately assesses the potential impacts to air quality from minerals development 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. An analysis of greenhouse gases and climate change is presented in Chapter 4, Climate Change (page 477 of the FEIS), including a discussion on climate change mitigation appropriate to the scale of analysis for an RMP level planning action. This section of the document also broadly discusses the potential implications of climate change on natural resources to the extent that is possible, given that climate change science and predictions of climate change impacts are a continually growing and emerging science. It would be highly speculative to include a future climate change scenario as the baseline in the cumulative effects assessment. 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, even though the social cost of carbon is currently used in a regulatory context. The BLM complied with Secretarial Order 3289 in developing the HiLine PRMP/FEIS.

Fluid Minerals

Issue Number: PP-MT-HILINE-GRSG-15-05-11

Organization: Beatty & Wozniak obo Exxon/Mobil and 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, the BLM is ceding its authority over oil and gas development to the FWS – in other words, providing FWS a de facto

veto authority over decision-making vested solely with BLM via the Mineral Leasing Act and FLPMA. 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-HILINE-GRSG-15-10-4

Organization: Western Environmental Law Center

Protestor: Kyle Tisdell

Issue Excerpt Text: The HiLine RMP fails to take a hard look at hydraulic fracturing.

Summary:

The HiLine 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 HiLine 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).

Appendix E, section E.4 of the HiLine PRMP/FEIS further describes oil and gas stipulations and exception, modification, and waiver criteria, as well as the process for approval.

By applying this review method, the 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.

The HiLine 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. 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...” The BLM did look at the impacts of hydraulic fracturing (as a component of fluid minerals) on the environment in the PRMP/FEIS. Under the section Impacts [to water resources] Common to All Alternatives, the FEIS identifies fluid minerals, hydraulic fracturing in particular, as posing a potential impact (p. 696). This segment discusses the purpose of hydraulic fracturing and discloses information such as the varying types of fracturing fluids and conditions for their use (Table 4.92) and common fracturing fluid chemical additives (Table 4.93). Although specific implementation actions are not proposed in the PRMP/FEIS, measures are in place to protect water resources and presented in the FEIS (p. 697). Additional analysis of the impacts of hydraulic fracturing would be included in implementation-level actions.

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-HILINE-GRSG-15-01-2

Organization: Mountain States Legal Foundation obo: North Central Mineral

Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: The proposed RMP

would perpetuate an indefinite withdrawal of the Sweet Grass Hills Area. Despite the BLM's statement to the contrary, the Secretary does not have the authority to indefinitely withdraw public lands. See PRMP/FEIS at 960-62 (Response to comment providing that “[t]here is no limit on the number of times a withdrawal may be extended, if warranted.”). With the passage of FLPMA, Congress delegated the authority to make and extend withdrawals over 5,000 acres (“large-tract withdrawals”), only on the condition that Congress could veto any large-tract withdrawal decision with the passage of a concurrent resolution. 43 USC 1714(c),(f). Because this “legislative veto” is unconstitutional, and Congress would not have delegated the authority to make large-tract withdrawals without the ability to veto such a withdrawal, the Secretary has no authority to extend the withdrawal currently in place in the Sweet Grass Hills Area.

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

Organization: Mountain States Legal Foundation obo: North Central Mineral Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: The legislative history shows that Congress was especially concerned with indefinite withdrawals of public lands. The language used in the proposed RMP indicates that the BLM's reasoning behind the withdrawal will not change in the next twenty years when the withdrawal is once again up for reconsideration. PRMP/FEIS at 135. An indefinite withdrawal of the area is not within the Secretary of the Interior's authority. As a result, the BLM is abusing its limited authority under FLPMA by effectively withdrawing federal land for an indefinite period. Therefore, the BLM

should not adopt the preferred alternative in the proposed RMP and instead adopt an alternative that would allow the withdrawal to expire in 2017.

Issue Number: PP-MT-HILINE-GRSG-15-04-12

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: These illegal travel restrictions constitute a de facto withdrawal from mineral entry of more than 2.4 million acres of land in the planning area (see Table 2.13).

Issue Number: PP-MT-HILINE-GRSG-15-04-15

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The travel management restrictions violate the General Mining Law.

Issue Number: PP-MT-HILINE-GRSG-15-04-17

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads

and trails not designated in a travel management plan, BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands.

Issue Number: PP-MT-HILINE-GRSG-15-04-20

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act of 1970 ("MMPA") (30 USC §21(a)), and FLPMA (43 USC §1701(a)(12)) to recognize the Nation's need for domestic minerals. The PRMPA/FEIS omits reference to MMPA's declaration that it "is the continuing policy of the Federal government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, mineral, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs," 30 USC § 21a. The BLM has not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals (associated with buffers, disturbance cap, and travel restrictions) recommended in the PRMPA/FEIS comply with the mandate under § 21(a) to recognize the Nation's need for domestic sources of minerals.

Issue Number: PP-MT-HILINE-GRSG-15-04-3

Organization: American Exploration and

Mining Association

Protestor: Laura Skaer

Issue Excerpt Text:

The PLUPA is fatally defective due to unlawful land withdrawals under FLPMA. The proposed wholesale withdrawal of nearly one million acres of lands from mineral entry within SFAs is inconsistent with the General Mining Law. AEMA objects to the locatable mineral management described in Chapter 2 of the PRMPA at 27, 33, 36-38,54-55 withdrawals of the magnitude proposed under the Proposed Action 927,074 (Id.) conflict with § 22 of the General Mining Law, and the MMPA and cannot be implemented through the land use planning process. Withdrawals of this magnitude can only be made by an Act of Congress or by the Secretary of the Interior pursuant to the requirements and procedures of FLPMA § 204(c) for a period not to exceed 20 years, discussed in detail below. The maximum number of acres subject to disturbance within Notices and Plan of Operations boundaries in the entire state of Montana is only 16,984, some of which are not co-located within GRSG habitat.

Issue Number: PP-MT-HILINE-GRSG-15-04-5

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The BLM has not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and de facto withdrawals (associated with disturbance caps, buffers, ROW restrictions and travel management restrictions) recommended in the PRMPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PRMPA is illegal and does not "comply

with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7), which is one of the criteria needed to uphold a protest

Issue Number: PP-MT-HILINE-GRSG-15-04-6

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Ch. 2 at 27, 33, 38, 54-55), and surface use restrictions associated with buffers (Ch. 2 at 35, 39, 46), disturbance caps (Ch.2 at 41-42), travel and transportation restrictions (Ch.2 at 36-37), and ROW restrictions (Ch.

2 at 40), which create de facto withdrawals are not in compliance with the specific directive pertaining to minerals in FLPMA § 102(a)(12):

Issue Number: PP-MT-HILINE-GRSG-15-04-7

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The proposed restrictions, limitations, and withdrawals from mineral entry in the PRMPA/FEIS directly conflict with FLPMA’s requirement that the Secretary must manage public lands to respond to the Nation’s needs for minerals. Specifically, those described in Chapter 2 at 27, 33, 35-42, 46, 54-55.

Summary:

The HiLine PRMP/FEIS violates FLPMA, the MMPA and the Mining Law of 1872 by:

- Creating de facto withdrawals from mineral entry by imposing disturbance caps, buffers, and travel management restrictions;
- Proposing an indefinite withdrawal of the Sweet Grass Hills Area;
- Proposing to withdraw lands without proper authority to do so; and
- Failing to manage public lands in a manner that recognizes the nation’s need for domestic materials.

Response:

The Federal Land Policy Management Act 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-1610-1, 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 HiLine PRMP/FEIS includes targeted provisions specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, 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's responsibility to avoid "undue degradation" as required in FLPMA is not in conflict with the HiLine PRMP/FEIS's "net conservation gain" goals. The intent of the Proposed Plan is to provide a net conservation gain to the species. To do so, in undertaking BLM and Forest Service 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 and Forest Service 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. This is consistent with BLM Manual 6840 mentioned above.

Sweet Grass Withdrawal

Section 204 of the Federal Land Management and Policy Act details the process for the Secretary of the Interior to withdraw lands from mineral entry. This authority is reserved to the Secretary and can only be delegated to an individual in the Office of the Secretary, and appointed by the President with the advice and consent of the Senate.

The HiLine PRMP/FEIS details on page 56 the proposed action related to the existing Sweet Grass Hills mineral withdrawal. The document recommends to the Secretary extending the withdrawal for an additional 20-year term. The current withdrawal runs through 2017, at which time the Secretary will either act on the RMP's recommendation according to law, or the withdrawal will expire.

The HiLine PRMP/FEIS does not fail in demonstrating that the purposes for which the original withdrawal were made are still valid; further, that is a determination that will be made as part of the Secretary's decision whether or not to extend the withdrawal..

De Facto Withdrawal

The Federal Lands Policy and Management Act 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 HiLine PRMP/FEIS recommends the withdrawal of approximately 927,000 acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all requirements in law, regulation, and policy.

Additionally, 43 CFR 1610.6, which addresses the implementation of this requirement, states that the report from the Secretary to the Congress regarding decisions excluding major uses from over 100,000 acres of land, "shall not be required prior to approval of a resource management plan... . The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use." Based on this regulation, the Secretary is not required to provide this report till the RMP is signed and the BLM is ready to begin implementation.

Special Status Species

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

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For the foregoing reasons, protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as BLM's

responsibility to prevent undue degradation to 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.

Summary:

The BLM failed to uphold its responsibilities outlined in its Sensitive Species policy. The 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:

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 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).

As described and analyzed in the HiLine PRMP/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. 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. In Chapters 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis (HiLine PRMP/FEIS, p. 2 to p. 202).

The BLM’s Proposed Plan incorporates documents related to the conservation of GRSG that have been released since the publication of the draft RMP/EIS. For example, this Proposed Plan considers the USGS November 21, 2014, report “Conservation Buffer Distance Estimates for GRSG—A Review” (USGS 2014). Based on this document and the USFWS memorandum discussed below, the BLM is proposing to designate Sagebrush Focal Areas (SFAs) to further protect highly valuable habitat and is proposing to include lek-buffer distances when authorizing activities near leks. The BLM also updated the Proposed Plan to reflect new GRSG state conservation strategies, including recent State Executive Orders (HiLine PRMP/FEIS, p. 33).

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/FS identified Sagebrush Focal Areas (SFAs), which are PHMAs with the following additional management (Map 2.18):

- 1) Recommended for withdrawal from the Mining Law of 1872, subject to valid existing rights.
- 2) Managed as NSO, without waiver, exception, or modification, for fluid mineral leasing.
- 3) Prioritized for management and conservation actions in these areas, including, but not limited to review of livestock grazing permits/leases (see livestock grazing section for additional actions).

The BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat. Land use allocations in the Proposed Plan would limit or eliminate new surface disturbance in PHMA, while minimizing disturbance in GHMA. In addition to establishing protective land use allocations, the Proposed Plan for GRSG management would implement a suite of management tools such as disturbance limits (see Special Status Species–Disturbance), GRSG habitat objectives and monitoring (see Special Status Species–GRSG), mitigation approaches (see Appendix M.4), adaptive management triggers and responses (see Adaptive Management Strategy for GRSG Habitat Management, and lek buffer-distances (see Appendix M.5) throughout the range. These overlapping and reinforcing conservation measures will work in concert to improve GRSG habitat condition and provide clarity and consistency on how the BLM will manage activities in GRSG habitat (HiLine PRMP/FEIS, p. 33).

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 GRSG Key Habitat Areas and GRSG Priority Habitat 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 HiLine PRMP/FEIS, the management proposed in the HiLine 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-HILINE-GRSG-15-02-1

Organization: Lund Law obo: North Blaine County 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-HILINE-GRSG-15-02-2

Organization: Lund Law obo: North Blaine County 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-HILINE-GRSG-15-02-23

Organization: Lund Law obo: North Blaine County 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

Contrary to the protester's claims, 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. As indicated by the protestor, NEPA provides that 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 for the BLM the mandate to manage 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.

Through the required land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. 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 (see Chapter 3 of the HiLine PRMP/FEIS, pages 301 and 310-12). The BLM also considered the potential impacts to historic farming and ranching in the planning area (see pages 610-615). . Consultation under NHPA

The BLM also satisfied the procedural obligations, and general preservation policy, of the NHPA in developing the HiLine 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.

Chapter 5 of the HiLine PRMP/FEIS includes the federal, tribal, state, and local representatives that were invited to participate as cooperating agencies for the HiLine PRMP/FEIS, including the SHPO, Tribes, and local governments (beginning on page 791) . 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.

In short, the BLM has met its obligations under NEPA, NHPA, and FLPMA to consider management relating 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 HiLine PRMP/FEIS.

Travel Management

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

Organization: Mountain States Legal Foundation obo: North Central Mineral

Ventures

Protestor: Jeffrey McCoy

Issue Excerpt Text: The Proposed RMP

provides that motorized travel would be closed in the Sweet Grass Hills Area. PRMP/FEIS at 107. Even under Alternative A, the current management alternative, the Area would be closed to motorized off-highway vehicle use (“OI-IV”) Id. at 103. The BLM failed to respond to MRJV’s comments that the proposed RMP and subsequent Travel Management Plan would unlawfully restrict access to mining claims in the Sweet Grass Hills Area. MRJV Comments at 11; see also Mespelt & Almas Mining Co., 99 IDLA 25, 27 (1987) (“Assuming that there is a valid claim supported by discovery, a right of access impliedly granted by Congress under the general mining laws for mining purposes across public land is well recognized by both the Department and the courts.”) Although the BLM has some authority to minimize surface disturbances, 43 CFR Subpart 3809, it cannot prevent MRJV from accessing its claims. 30 USC § 612 (“That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.”). Furthermore, the Alaska National Interest Lands Conservation Act provides that “the Secretary [of the Interior] shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976.” 16 USC § 3210(b). In the Act, “land” is defined as “lands, waters, and interests therein.” 16 USC § 3102. Therefore, the BLM has an obligation to provide access to claimholders in the Sweet Grass Hills.

Issue Number: PP-MT-HILINE-GRSG-15-03-2

Organization: Friends of the Missouri Breaks Monument

Protestor: Beth Kampschorr

Issue Excerpt Text: This approach, where only certain areas of the planning area are deferred for 5 years and the rest of the planning area is completed when funding and staffing allows, is a misinterpretation of BLM policy. As stated above, BLM policy only allows for a deferment of travel planning for 5 years for the entire planning area. Further, the agency has committed to developing and implementing a travel management strategy, including timelines, addressing significant problems being caused by the lack of travel plans on many BLM lands. As part of its proposed “2020 Travel and Transportation Vision,” the BLM has also set an accelerated schedule for completing travel plans. The provisions in the Proposed RMP do not fulfill BLM’s obligations or policy. BLM must correct this and set priorities for travel planning for the entire planning area to be completed within the next five years per BLM Manual 1626.

Issue Number: PP-MT-HILINE-GRSG-15-04-16

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located.

Issue Number: PP-MT-HILINE-GRSG-15-04-19

Organization: American Exploration and Mining Association

Protestor: Laura Skaer

Issue Excerpt Text: Further, a primary objective of the travel and transportation management program is to ensure access

needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, BLM have not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

Summary:

The HiLine PRMP/FEIS travel and transportation restrictions violates the General Mining Law 30 USC 612(b), the Surface Resources Act, and the Alaska National Interest Lands Conservation Act (ANILCA) by closing routes, including primitive roads and trails which will prevent access to minerals.

The HiLine PRMP/FEIS violated NEPA by failing to analyze the effects of preventing access for exploration and development of mineral deposits on mining.

The HiLine PRMP/FEIS is inconsistent with BLM Manual 1626 because it fails to establish priorities for the completion of travel planning for the entire area within the next five years.

Response:

Route Closures

General Mining Act of 1872 (30 USC 22) states that:

“Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.”

Surfaces Resources Act of 1955 (30 USC 612) states that:

“(b) Reservations in the United States to use of the surface and surface resources Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto”.

Alaska National Interest Lands Conservation Act (ANILCA) provides that: “the Secretary [of the Interior] shall provide such access to non-federally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976.”

Per BLM H-3809-1 “Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent unnecessary or undue degradation (FLPMA, 43 CFR 3809.415). Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.”

The HiLine PRMP/FEIS is consistent with BLM direction to balance mining claimant’s right and requirement to access claims with FLPMA’s requirement to prevent unnecessary or undue degradation.

Effects on Mining

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 HiLine 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.

The HiLine PRMP/FEIS states on p. 640-641 that “With most of the current withdrawals renewed and the addition of the Mountain Plover ACEC and Sagebrush Focal Area recommended withdrawals, the three areas with the most development potential would be affected. Within Brazil Creek, the moderate and low areas of development potential that were under the restricted management category under current management would be closed. The majority of the high development potential areas within the Little Rocky Mountains and the Sweet Grass Hills would continue under the closed category (withdrawn). If the withdrawal in the Little Rocky Mountains is allowed to expire through review, the Zortman/Landusky Mine Reclamation ACEC (2,604 acres) would still remain. This would open the area up to mineral

entry, but special stipulations would apply for any operation, resulting in a more extensive environmental review and increased environmental mitigation costs”.

The NEPA analysis of the effects of the proposed action on mining is sufficient to support reasoned conclusions.

Manual 1626

BLM Manual 1626 states on p .06A2h that “If it is not practical to delineate a travel and transportation network (through the development of a travel management plan (TMP) during the land use planning process, then a map of the known network of transportation linear features must be developed and made available to the public and a process established to designate a final travel and transportation network within five (5) years.”

Direction that applies to all alternatives states that: “BLM guidelines state that this planning must be done within five years of the Record of Decision (Ch2, p. 101)” and that “Travel management areas are prioritized into high, moderate and low categories. Travel management planning for all areas would be completed in order of priority and as funding and staffing allow. Prioritization of travel management areas would be an ongoing process and priorities for travel planning can change through implementation and monitoring based on resource needs, special status species including GRSG, funding, and staffing” (p. 103). Additionally, the Proposed Alternative includes additional emphasis stating that “Site-specific travel planning within the Grassland Bird/GRSG Priority Habitat Management Areas and GRSG Protection Priority Habitat Management Area would be completed within a five (5) year period after the ROD is signed” (Ch2, P. 107). Neither the Proposed Alternative nor the direction that applies to all alternatives imply that any areas would defer travel management planning for 5 years, therefore the HiLine PRMP/FEIS travel management direction is consistent with BLM Manual 1626.

Environmental Justice

Issue Number: PP-MT-HILINE-GRSG-15-02-21

Organization: Lund Law

Protestor: Hertha Lund

Issue Excerpt Text: The BLM failed to provide an Environmental Justice Analysis. The rural counties in Montana impacted by the RMP have some of the oldest and poorest people per capita in Montana. The economy of this area is dependent upon harvesting natural resources and the meager

PILT payments that these counties receive. These communities are low-income and would suffer from disproportionate negative impacts due to the RMP. Executive Order 12898 requires the BLM to analyze the impact of the RMP on low-income citizens. As found in the RMP, many of those in the area impacted by the RMP are lower income citizens. The BLM has not done the necessary analysis on how the RMP negatively impacts those people, as required.

Summary:

The HiLine PRMP/FEIS failed to consider and analyze environmental justice for rural counties with some of the oldest and poorest people per capita in Montana.

Response:

Chapter 3 of the HiLine PRMP/FEIS succinctly addresses *Environmental Justice* (p. 377-378) and provides data detailing populations that require environmental justice considerations within Glacier County. As described in Chapter 4 (p. 611), the “Environmental Justice impact analysis consists of determining if the subject populations would experience disproportionately high and adverse environmental or human health effects – as defined by the CEQ and described in Chapter 3 – under one or more of the management alternatives. Environmental health effects may include cultural, economic, or social impacts when those impacts are interrelated to impacts on the natural or physical environment.” Impacts were discussed for the five alternatives (A through E) analyzed. In Chapter 4 (p. 611) it states, “None of the alternatives would create disproportionately high and adverse environmental or human health effects on the identified Environmental Justice populations. While some alternatives will reduce economic opportunities, for instance through reductions in oil and gas development, any reductions in opportunities would not fall disproportionately on these populations compared to other populations. The agency has considered all input from persons or groups regardless of age, race, income status, or other social or economic characteristic.”

The study and analysis of environmental justice as described and analyzed in the PRMP/FEIS is consistent with the guidance in Appendix D (p. 11) in the BLM’s Land Use Planning Handbook (H-1601-1).

Livestock Grazing-General

Issue Number: PP-MT-HILINE-GRSG-15-02-10

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 described 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.

If monitoring data demonstrate that livestock use on an allotment in a priority GRSG area is adversely affecting GRSG or their habitat, the terms and conditions of grazing permits may be modified, or changes in active use could be considered in order to meet the standards for

rangeland health as described in 43 CFR 4180 and the Standards for Rangeland Health and Guidelines for Livestock Grazing Management (Appendix H) or to otherwise manage, maintain, or improve GRSG habitat (HiLine PRMP/FEIS, p 36).

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 (HiLine PRMP/FEIS, p 36). Future changes to livestock grazing permits to meet resource objectives outlined in the PRMP would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA occurs.