



*Bureau of Land Management and
Forest Service
Protest Resolution Report*

**Northwest Colorado
Greater Sage-Grouse Land Use
Plan
Amendment / Final Environmental
Impact Statement**

September 15, 2015

Contents

Reader’s Guide..... 3
List of Commonly Used Acronyms 4
Protesting Party Index..... 5
Issue Topics and Responses..... 7
FLPMA-General 7
Valid Existing Rights 12
Multiple Use Mandate..... 25
Consistency with State and Local Plans (BLM)..... 27
Viability (Forest Service)..... 32
Coordination with State and Local Governments (Forest Service) 34
Range of Alternatives 35
Purpose and Need 43
Cumulative Effects..... 46
Public Comments 49
Cooperating, Joint, and Lead Agencies 52
Supplemental EIS..... 55
Best Available Science 61
Public Participation..... 72
Impacts – GRSG 78
Impacts – Noise..... 82
Impacts – Oil and Gas..... 85
Impacts – Socioeconomics..... 88
Impacts – Grazing 93
Impacts – Other..... 95
GRSG - General..... 97
GRSG - Density and Disturbance Cap..... 104
GRSG - Adaptive Management 106
GRSG - Data and Inventories 108
GRSG - Habitat Objectives..... 109
GRSG - Livestock Grazing..... 111
GRSG - Mitigation..... 115
Administrative Procedure Act..... 119
Energy Policy Act of 2005..... 121
ACECs 127
Fluid Minerals..... 129
Special Status Species..... 131
Travel Management 133

Reader's Guide

How do I read the Report?

The 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) and Forest Service's (FS) responses to the summary statement.

Report Snapshot

The diagram illustrates the structure of a Report Snapshot with callouts for various sections:

- Issue Topics and Responses**: Includes **NEPA** and **Topic heading**.
- Submission number**: A callout pointing to the submission number field.
- Issue Number**: **PP-NORTHWESTCO-GRSG-15-10-XX**, with a callout for **Protest issue number**.
- Organization**: **The Forest Initiative**, with a callout for **Protesting organization**.
- Protester**: **John Smith**, with a callout for **Protester's name**.
- Issue Excerpt Text**: A callout for **Direct quote taken from the submission**.
- Summary**: A callout for **General statement summarizing the issue excerpts (optional)**.
- Response**: A callout for **BLM's response to the summary statement or issue excerpt if there is no summary**.

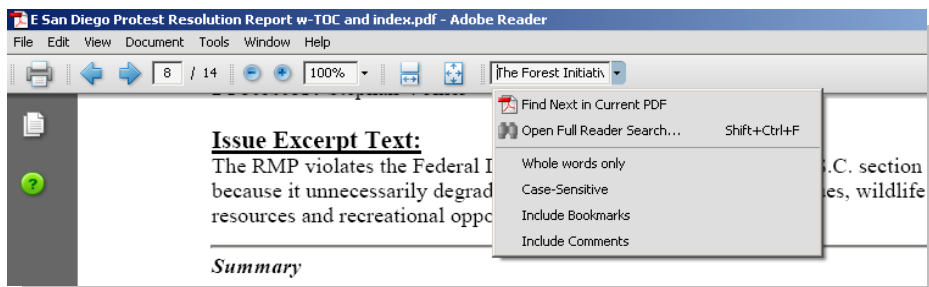
Issue Excerpt Text: Rather than analyze these potential impacts, as required by NEPA, the BLM and FS postpone analysis of renewable energy development projects to a future case-by-case analysis.

Summary: There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response: 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 | KOP | Key Observation Points |
| BA | Biological Assessment | LMP | Land Management Plan |
| BLM | Bureau of Land Management | MIC | Management Indicator Communities |
| BMP | Best Management Practice | MIS | Management Indicator Species |
| BE | Biological Evaluation | MOU | Memorandum of Understanding |
| BO | Biological Opinion | MUSY | Multiple Sustained Yield Act |
| CAA | Clean Air Act | NEPA | National Environmental Policy Act of 1969 |
| CEQ | Council on Environmental Quality | NFMA | National Forest Management Act Of 1976 |
| CFR | Code of Federal Regulations | NFS | National Forest System |
| COA | Condition of Approval | NHPA | National Historic Preservation Act of 1966, as amended |
| CSP | Concentrated Solar Power | NOA | Notice of Availability |
| CSU | Controlled Surface Use | NOI | Notice of Intent |
| CWA | Clean Water Act | NRHP | National Register of Historic Places |
| DEIS/DRMPA | Draft Environmental Impact Statement /Draft Resource Management Plan Amendment | NSO | No Surface Occupancy |
| DM | Departmental Manual (Department of the Interior) | OHV | Off-Highway Vehicle (also referred to as ORV, Off Road Vehicles) |
| DOI | Department of the Interior | PA | Preliminary Assessment |
| EA | Environmental Assessment | PAC | Priority Areas for Conservation |
| EIR | Environmental Impact Report | PHMA | Priority Habitat Management Area |
| EIS | Environmental Impact Statement | PPA | Power Purchase Agreement |
| EO | Executive Order | RDF | Required Design Features |
| EPA | Environmental Protection Agency | RFDS | Reasonably Foreseeable Development Scenario |
| ESA | Endangered Species Act | RMP | Resource Management Plan |
| FEIS | Final Environmental Impact Statement | ROD | Record of Decision |
| FEIS/PRMPA | Final Environmental Impact Statement /Proposed Resource Management Plan Amendment | ROW | Right-of-Way |
| FLPMA | Federal Land Policy and Management Act of 1976 | RPA | Forest and Rangeland Renewable Resources Planning Act |
| FO | Field Office (BLM) | SFA | Sagebrush Focal Area |
| FWS | U.S. Fish and Wildlife Service | SO | State Office (BLM) |
| FSH | Forest Service Handbook | SUA | Special Use Authorization |
| FSM | Forest Service Manual | SUP | Special Use Permit |
| GHMA | General Habitat Management Area | T&E | Threatened and Endangered |
| GIS | Geographic Information Systems | USC | United States Code |
| IB | Information Bulletin (BLM) | USDA | U.S. Department of Agriculture |
| IM | Instruction Memorandum | USFS | U.S. Forest Service |
| IRA | Inventoried Roadless Area | 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 Number | Determination |
|------------------|---|---------------------------|-------------------------|
| R. Jeff Richards | Rocky Mountain Power (PacifiCorp) | PP-NORTHWESTCO-GRSG-15-01 | Denied-Issues Comments |
| Jeffrey Eskelson | Rio Blanco County Commissioners | PP-NORTHWESTCO-GRSG-15-02 | Dismissed-Only Comments |
| Kent Holsinger | Holsinger Law, LLC obo: Garfield County | PP-NORTHWESTCO-GRSG-15-03 | Denied-Issues Comments |
| Jason Oates | Encana | PP-NORTHWESTCO-GRSG-15-04 | Denied-Issues Comments |
| Fred Wiley | Off-Road Business Association (ORBA) | PP-NORTHWESTCO-GRSG-15-05 | Denied-Issues Comments |
| Scott Jones | Esq obo COHVCO and Trails Preservation Alliance | PP-NORTHWESTCO-GRSG-15-06 | Denied-Issues Comments |
| Barbara Walz | Tri-State Generation & Transmission Assn | PP-NORTHWESTCO-GRSG-15-07 | Denied-Issues Comments |
| Steve Holmer | American Bird Conservancy | PP-NORTHWESTCO-GRSG-15-08 | Denied-Issues Comments |
| Neil Brennon | White River Conservation District | PP-NORTHWESTCO-GRSG-15-09 | Dismissed-Only Comments |
| Eric Molvar | WildEarth Guardians et al | PP-NORTHWESTCO-GRSG-15-10 | Denied-Issues Comments |
| Bret Sumner | Beatty & Wozniak obo Exxon/XTO Energy | PP-NORTHWESTCO-GRSG-15-11 | Denied-Issues Comments |
| Richard Ranger | American Petroleum Institue | PP-NORTHWESTCO-GRSG-15-12 | Denied-Issues Comments |
| Jeffrey Sherrick | SWN Production Company, LLC | PP-NORTHWESTCO-GRSG-15-13 | Denied-Issues Comments |
| Travis Bruner | Western Watersheds Project | PP-NORTHWESTCO-GRSG-15-14 | Denied-Issues Comments |
| Rose Pugliese | Mesa County Commisioners | PP-NORTHWESTCO-GRSG-15-15 | Denied-Issues Comments |
| No name | Public Lands Council / National Cattlemen's Beef Assn | PP-NORTHWESTCO-GRSG-15-16 | Denied-Issues Comments |
| Constance Brooks | CE Brooks & Associates obo Vermillion Ranch | PP-NORTHWESTCO-GRSG-15-17 | Denied-Issues Comments |
| Chuck Grobe | Moffat County Board of Commissioners | PP-NORTHWESTCO-GRSG-15-18 | Denied-Issues Comments |
| Mike King | Colorado Department of Natural Resources | PP-NORTHWESTCO-GRSG-15-19 | Denied-Issues Comments |

| | | | |
|--------------------|---------------------------------------|---------------------------|-------------------------|
| David Ludlam | COGA | PP-NORTHWESTCO-GRSG-15-20 | Denied-Issues Comments |
| Mike Best | Avian PowerLine Interaction Committee | PP-NORTHWESTCO-GRSG-15-21 | Denied-Issues Comments |
| Kathleen Zimmerman | National Wildlife Foundation | PP-NORTHWESTCO-GRSG-15-22 | Dismissed-Only Comments |
| Craig Kauffman | Safari Club International | PP-NORTHWESTCO-GRSG-15-23 | Dismissed-Only Comments |
| Frank Daley | Colorado Cattlemens' Association | PP-NORTHWESTCO-GRSG-15-24 | Dismissed-Only Comments |
| Mark Salvo | Defenders of Wildlife | PP-NORTHWESTCO-GRSG-15-25 | Denied-Issues Comments |
| Nada Culver | The Wilderness Society | PP-NORTHWESTCO-GRSG-15-26 | Denied-Issues Comments |

Issue Topics and Responses

FLPMA-General

Issue Number: PP-NORTHWESTCO-GRSG-15-04-1

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: CM's proposal to close 224,000 acres to mineral leasing within the planning area constitutes a withdrawal under the Federal Land Policy and Management Act (FLPMA).

Issue Number: PP-NORTHWESTCO-GRSG-15-04-15

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Proposed LUPA confirms that a “net conservation gain” is beyond BLM's authority under FLPMA. BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the “net conservation gain strategy is in response to the overall landscape goal to enhance, conserve, and restore [GRSG] and its habitat.” Proposed LUPA/Final EIS at 2-3. BLM's stated goal of “enhance, conserve, and restore” is beyond BLM's authority under FLPMA.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-10

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Neither agency proposes to seek withdrawal of important GRSG habitats from locatable mineral entry; indeed, the agencies fail even to apply any measurable protective measures beyond (maybe) timing limitations to protect GRSG and their habitats in the context of

development on mining claims. FEIS at 2-26, 2-41. Given that the agencies' 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 federal agencies failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-2

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The ability to adopt post-leasing mitigation measures, see 43 CFR § 3101.1-2, is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by BLM. This is particularly true given that BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation. 43 USC § 1732(b). Put simply, the failure of BLM to study and adopt these types of mitigation measures – especially when feasible and economic means that the agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-8

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

Protestor: Bret Sumner

Issue Excerpt Text: XTO protests the LUPA'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-NORTHWESTCO-GRSG-15-11-9

Organization: Beatty & Wozniak obo:
Beatty & Wozniak obo Exxon/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-NORTHWESTCO-GRSG-15-12-36

Organization: Western Energy Alliance /
American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-48

Organization: Western Energy Alliance /
American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades maintain that the Agencies' proposal to close 224,200 acres to mineral leasing within the planning area constitutes a 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). Additionally, the Trades maintain the Proposed LUPA's proposal to prioritize leasing outside of PHMA and to make PHMA open for leasing with NSO stipulations that cannot be waived or modified constitutes a de facto withdrawal under FLPMA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-6

Organization: Western Energy Alliance /
American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA confirms that a "net conservation gain" is beyond BLM's authority under FLPMA. BLM does not assert that a "net conservation gain" is needed to avoid unnecessary or undue degradation. Rather, BLM asserts that the "net conservation gain strategy is in response to the overall landscape goal to enhance, conserve, and restore [greater sage- GRSG] and its habitat." Proposed LUPA/Final EIS at 2-3. BLM's stated goal of "enhance, conserve, and restore" is beyond BLM's authority under FLPMA.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-10

Organization: SWN Production Company,
LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: SWNPC protests the Proposed LUPA's requirement that FWS find certain criteria met before BLM can grant an exception to an NSO stipulation in PHMA.¹⁶ This provision improperly cedes management authority over development of federal oil and gas leases to FWS.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-5

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: In certain circumstances the requirement that oil and gas lessees provide mitigation sufficient to achieve a “net conservation gain” could constitute a regulatory taking this standard is inconsistent with FLPMA.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-7

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: Although a “net conservation gain” is a laudable goal for the Proposed LUPA, this standard presents constitutional hurdles. BLM will create a compensable taking under the Fifth Amendment to the United States Constitution by requiring a lessee to offset the impacts of such lessee's exercise of his or her valid existing rights under the applicable oil and gas lease in order to achieve a “net conservation gain.” Oil and gas leases are real property rights.

Issue Number: PP-NORTHWESTCO-GRSG-15-19-1

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text: Proposed LUPA/FEIS, PHMA Fluid Minerals Management: Table 2.2, p. 2-21 and Appendix D at D-4. By delegating to the FWS the ability to prevent certain land use management decisions concerning a species that is not listed under the ESA BLM exceeded its authority under the Federal Land Policy and Management Act (FLPMA), 43 USC § 1701-1785.

Issue Number: PP-NORTHWESTCO-GRSG-15-19-2

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text: The Proposed LUPA provides for BLM to grant exceptions to NSO stipulations in PHMA under limited circumstances, but only after BLM, State, and FWS biologists make certain findings, with unanimous agreement: “Any exceptions to this [NSO] lease stipulation be may approved by the BLM Authorized Officer only with the concurrence of the BLM State Director. The BLM Authorized Officer may not grant an exception unless the applicable state wildlife agency, USFWS, and BLM unanimously find that the proposed action satisfies [one of two biological requirements]. Such finding shall initially be made by one field biologist or other GRSG expert from each respective agency. In the event the initial finding is not unanimous, the finding may be elevated to the appropriate BLM State Director, USFWS State Ecological Services Director, and state wildlife agency head for resolution. In the event their finding is not unanimous, the exception will not be granted.” App. D at D-4 (Management Action 46) (emphasis added). This provision exceeds BLM's authority under the Federal Land Policy and Management Act (FLPMA), 43 USC § 1701-84, because it improperly delegates authority to the FWS effectively to veto BLM land use management decisions concerning a species that is not listed under the ESA.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-18

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Proposed LUPA's requirement that impacts to GRSG be mitigated to achieve a “net conservation gain” is inconsistent with FLPMA. FLPMA does not authorize BLM to require land users to offset the impact of their activities to achieve a net conservation gain. Rather, BLM may only condition land uses to avoid “unnecessary or undue degradation” to the public lands.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-25

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The provision of the Proposed LUPA requiring FWS to find that criteria related to the GRSG are met before BLM may grant an exception to an NSO stipulation is inconsistent with congressional policy regarding management of unlisted

wildlife on the public and National Forest System lands.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-29

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA maintains that BLM's proposal to close 224,200 acres to mineral leasing within the Planning Area constitutes a withdrawal under FLPMA. See 43 USC § 17020 (defining “withdrawal”), 1714(1)(1) (referencing withdrawals resulting from closure of lands to leasing under the Mineral Leasing Act of 1920). Additionally, WSCOGA maintains the Proposed LUPA'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 id.

Summary:

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that:

- uses a non-legislated standard of “net conservation gain”;
- creates a de facto recovery plan that exceeds the “unnecessary or undue degradation” standard;
- delegates the BLM’s authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species; and
- abrogates the BLM’s authority over federal land and the state of Northwest Colorado’s authority over wildlife by instituting a three-party approval group (BLM, USFWS, Northwest Colorado) for exceptions to lease stipulations in PHMAs.

The BLM has failed to uphold its authority and legislated mandate under FLPMA to avoid unnecessary or 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 or unnecessary degradation of public lands.

The BLM’s closure to and restrictions on oil and gas leasing in GRSG habitat constitute a de facto withdrawal.

Response:

The Federal Land Policy and 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 Northwest Colorado GRSG PLUPA/FEIS is a targeted amendment 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 and the Forest Service developed the Northwest Colorado GRSG PLUPA/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.

Section 2.4.2 details how the goal to "maintain 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" is common to all action alternatives. The net conservation gain standard mitigation standard is fully consistent with the BLM's authority under FLPMA. The proposed plan provides that, 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. As described further in Section 5.10 of this protest report, this is consistent with BLM's authority as described in FLPMA (which is not, as the protestor claims, limited to preventing unnecessary or undue degradation). It is also consistent with BLM Manual 6840 mentioned above by reducing or eliminating threats to the GRSG and its habitat.

The proposed LUPA does not improperly delegate BLM authority. Management Action #46, included in Appendix D, details the process the BLM, State of Colorado, and USFWS will use to approve exceptions to lease stipulations such as No Surface Occupancy (NSO) for new leases in PHMAs. The lease stipulations outlined in Management Action #46 (and the process for getting exemptions from them, if any) will be incorporated into any new lease at the time the leases are issued. Section XI of Onshore Order #1 details the process for seeking exceptions, modifications, and waivers from stipulations included in a Federal oil and gas lease management of state and private lands. Rather than a delegation, BLM will appropriately seek input from the state wildlife agency and USFWS in an area of their expertise (biological impacts on a sensitive species). There is a reasonable connection between BLM's determination as to whether to grant a waiver and the biological input of those agencies.

The proposed plan does not allow unnecessary or undue degradation. 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 Northwest Colorado GRSG PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Northwest Colorado GRSG PLUPA/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 Northwest Colorado GRSG PLUPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that, among other things, prevent the unnecessary or undue degradation of public lands.

In Section 2.4.2, the Northwest Colorado GRSG PLUPA/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would recommend the withdrawal of as much as 1.5 million acres from mineral entry. Appendix I details guidance 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 Northwest Colorado GRSG PLUPA/FEIS details a Leased Mineral Objective on pages 2-22 to 2-23 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.” Pages 2.23 and 2.24, as well as Appendix D, contain more information on the BLM’s approach for managing existing fluid mineral leases in GRSG habitats, including unitization, mitigation, master development plans, conditions of approval, and other tools that the agency can use to minimize impacts while respecting valid, existing rights. 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.

Finally, 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.

[Valid Existing Rights](#)

Issue Number: PP-NORTHWESTCO-GRSG-15-01-2

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: Jeff Richards

Issue Excerpt Text: The LUPA identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management

responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Rocky Mountain Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights. In the LUPAs, pipeline restrictions and how they would pertain to operation and maintenance of existing facilities is vague. It is unclear what activities may take place during the seasonal buffers. The seasonal buffers outlined would not provide sufficient time during the year to appropriately maintain a natural gas pipeline. Additionally, what constitutes “ground disturbance” is not clearly identified and could hinder regular pipeline maintenance. Maintenance for all types of existing infrastructure must still be allowed as an excepted activity from proposed triggers.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-47

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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

to produce the leased substance. 43 CFR § 3101.1-2 (2006).

Issue Number: PP-NORTHWESTCO-GRSG-15-03-19

Organization: Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: While the FEIS provides for exceptions to regulatory restrictions so long as, among other things, there is a “net conservation gain,” BLM requires compensatory mitigation to develop within lek buffers in GHMA and to develop existing leases in PHMA when the density and disturbance caps have been exceeded.²⁸ Lek buffers, disturbance caps, and NSOs within one mile of leks apply in all PHMA and GHMA. For all of these reasons, BLM is not adequately protecting valid existing rights.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-10

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Proposed LUPA/Final EIS attempts to impermissibly alter the contractual rights granted under oil and gas leases by imposing a variety of measures on existing leases. See Proposed LUPA/Final EIS at 2-22 - 2-23, 2-40 - 2-41, Apps. B and I. First, the requirement to provide compensatory mitigation is a fundamental change to lease terms that improperly alters the contract between the United States and lessors. Second, BLM cannot defer or deny development on leases issued prior to adoption of the Proposed LUPA because the density or disturbance caps have been reached. Finally, the Proposed LUPA's attempt to alter stipulations to protect the GRSG on existing

leases is inconsistent with the rights granted under these leases

Issue Number: PP-NORTHWESTCO-GRSG-15-04-12

Organization: Encana Oil & Gas

Protestor: Jason Oates

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-NORTHWESTCO-GRSG-15-04-14

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: BLM lacks authority to impose the new lek buffer distance requirement, one-mile NSO stipulation, the timing limitation, and disturbance cap requirements on leases with stipulations that impose buffer distances, NSO restrictions, and timing limitations under 43 CFR § 3101.I -2. Furthermore, these provisions are inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO, CSU, and timing limitation stipulations and disturbance caps.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-6

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: As development operations are proposed in the future, BLM

cannot attempt to impose stipulations or Conditions of Approval (COAs) on existing leases that are inconsistent with the contractual rights they grant. 43 CFR § 3101.1-2. Additionally, because of BLM's obligations to recognize valid existing rights, BLM cannot directly or indirectly deprive lessees of their valid and existing lease rights. Once BLM has issued a federal oil and gas lease without NSO stipulations, BLM cannot completely deny development on the leasehold (absent a nondiscretionary statutory prohibition against development).

Issue Number: PP-NORTHWESTCO-GRSG-15-04-7

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Encana protests BLM's imposition of new restrictions that are inconsistent with existing leases for several reasons. First, BLM does not have the authority to impose new restrictions on valid existing leases under the Federal Land Policy and Management Act (FLPMA). Second, the Proposed LUPA does not expressly allow BLM to approve development when necessary to accommodate valid existing rights. Third, BLM cannot unilaterally modify federal leases, which are valid existing contracts. Finally, BLM lacks site-specific information to justify imposition of these leases. BLM must revise the Proposed LUPA to recognize that it may not impose new development restrictions on existing leases.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-8

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Proposed LUPA will prohibit disturbance, disruptive activities, and occupancy within one mile of

active leks on BLM lands except when the restriction would render the recovery of fluid minerals infeasible or uneconomic. Proposed LUPA Final EIS at 2-22, D-7. The BLM will also prohibit construction, drilling, and completion activities in PHMA within four miles of active leks between March 1 and July 15 “based on site-specific conditions.” (At 2-22, D-7). Finally, BLM will deter development in PHMA and within four miles of lek by setting forth “criteria” that BLM must apply to “guide development,” even though these criteria do not appear in lease terms. at 2-22, D-7 - D-8. None of these measures were included in stipulations on existing leases. BLM lacks authority under FLPMA to alter existing leases to impose these measures.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-9

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Proposed LUPA/Final EIS's failure to allow development when necessary to accommodate valid existing rights can lead to a taking under the Fifth Amendment of the U.S. Constitution. A lessee who can demonstrate a taking of an oil and gas lease is entitled to damages in the fair market rental value of the leasehold.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-2

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Here, the Colorado LUPA 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 LUPA proposes requiring NSO

requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a net conservation gain standard; and imposing disturbance and density caps on development. These management prescriptions would unduly and unreasonably restrict XTO’s right and ability to develop its leases.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-3

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The Colorado LUPA’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-NORTHWESTCO-GRSG-15-11-4

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: With the Colorado LUPA, however, the Agencies are, 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 LUPA since release of the draft document.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-24

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the Agencies' decisions to impose new restrictions on existing federal oil and gas leases.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-25

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-26

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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-NORTHWESTCO-GRSG-15-12-27

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-28

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: With respect to the Proposed LUPA, BLM's attempt to impose new conditions and measures on existing leases is inconsistent with valid existing rights. In particular, the Proposed LUPA's provisions requiring application of lek buffer distances and evaluation of impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances "only if" a lek buffer distance other than the distance identified in the Proposed LUPA offers the same or greater level of conservation. Proposed LUPA/Final EIS at B-2 – B-3. In GHMA, BLM may approve actions within the lek

buffer distances under a broader set of circumstances—but “only if” those circumstances apply. See *id.* at B-2. The Proposed LUPA does not leave BLM room to consider valid existing rights granted under a lease if development cannot occur under the circumstances identified in the Proposed LUPA. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection to GRSG and its habitat than the distance identified in the Proposed LUPA, the Proposed LUPA does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-29

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the Proposed LUPA will prohibit disturbance, disruptive activities, and occupancy within one mile of active leks on BLM lands except when the restriction would render the recovery of fluid minerals infeasible or uneconomic. Proposed LUPA/Final EIS at 2- 22, D-7. BLM will also prohibit construction, drilling, and completion activities in PHMA within four miles of active leks between March 1 and July 15 “based on site-specific conditions.” *Id.* at 2-22, D-7. Finally, BLM will deter development in PHMA and within four miles of lek by setting forth “criteria” that BLM must apply to “guide development,” even though these criteria do not appear in lease terms. *Id.* at 2-22, D and D-8. None of these measures were included in stipulations on existing leases.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-30

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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-NORTHWESTCO-GRSG-15-12-31

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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.” BLM, however, has expressly recognized that this regulation does not allow it to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 CFR § 3101.1-2, BLM unequivocally stated that this regulation “will not be used to increase the level of protection of resource values that are addressed in lease stipulations.” 53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988). BLM further explained that “the intent of the proposed rulemaking” was not to impose

measures that, for example, “might result in an unstipulated additional buffer around an area already stipulated to have a buffer.” Id. (emphasis added). Any attempts by the Agencies to impose measures that expand express stipulations attached to leases are inconsistent with the leases’ contractual terms.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-33

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

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-NORTHWESTCO-GRSG-15-12-35

Organization: Western Energy Alliance / American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: BLM lacks authority to impose the new lek buffer distance requirement, one-mile NSO stipulation, the timing limitation, and disturbance cap requirements on leases with stipulations that impose buffer distances, NSO restrictions, and timing limitations under 43 CFR § 3101.1-2. Furthermore, these provisions are inconsistent with the contractual rights granted under existing oil and gas leases that already contain NSO,

CSU, and timing limitation stipulations and disturbance caps.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-1

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: Federal oil and gas leases constitute valid existing rights. *Sierra Club v. Peterson*, 717 F 2d 1409,1411 (D.C. Cir. 1983); Solicitor 's Opinion M-36910, 88 J.D. 909, 912 (1981). As development operations are proposed in the future, BLM cannot attempt to impose stipulations or Conditions of Approval (“COAs”) on existing federal leases that are inconsistent with the contractual rights they grant. 43 CFR § 3101.1-2.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-11

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: The requirement that federal oil and gas lessees provide compensatory mitigation alters the rights and obligations of existing oil and gas lessees and imposes new duties on them. Federal oil and gas leases vest lessees with the exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas (except helium) [subject to the lease].

Issue Number: PP-NORTHWESTCO-GRSG-15-13-2

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: BLM's attempt to impose new conditions and measures on existing federal leases is inconsistent with

valid existing rights. In particular, the Proposed LUPA's provisions requiring application of lek buffer distances and evaluation of impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances "only if" a lek buffer distance other than the distance identified in the Proposed LUPA offers the same or greater level of conservation. Proposed LUPA/Final EIS at B-2- B-3. In GHMA, BLM may approve actions within the lek buffer distances under a broader set of circumstances-but "only if" those circumstances apply. See id. at B-2. The Proposed LUPA does not leave BLM room to consider valid existing rights granted under a federal lease if development cannot occur with the circumstances identified in the Proposed LUPA. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection to GRSG and its habitat than the distance identified in the Proposed LUPA, the Proposed LUPA does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-3

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: BLM regulations and Planning for Fluid Minerals Handbook do not allow BLM to categorically impose COAs such as the lek buffer distances, prohibition on occupancy within one mile of leks and disturbance and density caps through the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-7

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: The BLM cannot use the RMP amendment process under FLPMA to revise or restrict valid existing lease rights through creation and imposition of new lease stipulations in the form of conditions of approval ("COAs") for drilling permits on valid existing leases. See Colorado Environmental Coalition, 165 IBLA 221, 228 (2005). Specifically, the BLM cannot impose new NSO stipulations or COAs on existing leases that differ from those entered under the original contractual terms. The BLM's proposed restrictions include terms that vastly exceed terms included in valid existing lease rights. However, the BLM has not provided proper scientific, justifiable, rational, or a valid legal basis to support this excessively harsh surface disturbance limitation. The BLM cannot unilaterally impose its proposed oil and gas restrictions on valid existing leases, nor can it impose new, unduly burdensome, restrictions in the form of COAs on permits to drill where there are valid existing leases. The BLM cannot breach its contractual agreements with the lessees. The BLM must revise its proposed restrictive measures to recognize valid existing lease rights, and expressly vacate and not adopt undue and unnecessary management prescriptions in the ROD for the RMPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-5

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: According to the LUPA, existing leases within "1 mile of active leks, disturbance, disruptive activities, and occupancy are precluded" even when

this restriction would render the recovery of fluid minerals infeasible or uneconomic if there is: (1) significant direct disturbance; (2) displacement; or (3) mortality of GRSG. LUPA at 2-22-23. Thus, contrary to the MLA, the terms of existing leases, and the long-standing recognition that such leases are property rights, the LUPA will prevent any oil and gas development if any of those four conditions occur within one mile of a lek. As Moffat County detailed in its comments, oil and gas leases are legally protected valid existing rights and denial of the right to develop that significantly impair the economy, custom, and culture of Moffat County.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-6

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: A RMP prepared pursuant to FLPMA, after lease execution, is likewise subject to existing rights and cannot modify or amend existing leases

Issue Number: PP-NORTHWESTCO-GRSG-15-18-7

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: All PHMA would be managed as a, right of way avoidance area that would compound the effects of existing ROW exclusion areas. LUPA at 4-183. Even in ROW avoidance areas, limits would be placed on the authorization of ROWs including the 3 percent disturbance cap. Id. This will reduce access to existing leases directly contrary to the MLA and common law.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-10

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: BLM's Land Use Planning Manual reinforces that RMPs must respect existing federal 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 lease... See BLM Manual 1601 Land Use Planning, 1601.06.G (Rel. 1-1666 11122/00). 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 BLM's own policies.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-11

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: With respect to the Proposed LUPA, BLM's attempt to impose new conditions and measures on existing federal leases is inconsistent with valid existing rights. In particular, the Proposed LUPA's provisions requiring application of lek buffer distances and evaluation of impacts on leks in PHMA and GHMA leave no room for consideration of valid existing rights. In PHMA, BLM may approve actions within the lek buffer distances "only if ' a lek buffer distance other than the distance identified in the Proposed LUPA offers the same or greater level of conservation. Proposed LUPA/Final EIS at B-2 -B-3. In GHMA, BLM may approve actions within the lek buffer distances under a broader set of circumstances-but "only if ' those circumstances apply. See id. at B-2. The

Proposed LUPA does not leave BLM room to consider valid existing rights granted under a federal lease if development cannot occur under the circumstances identified in the Proposed LUPA. For example, if BLM cannot identify a buffer distance in PHMA that offers the same or greater level of protection to GRSG and its habitat than the distance identified in the Proposed LUPA, the Proposed LUPA does not expressly allow BLM to authorize development when necessary to accommodate valid existing rights. See Proposed LUPA/Final EIS at B-2 -B-3

Issue Number: PP-NORTHWESTCO-GRSG-15-20-12

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: Similarly, the Proposed LUPA will prohibit disturbance, disruptive activities, and occupancy within one mile of active leks on BLM lands except when the restriction would render the recovery of fluid minerals infeasible or uneconomic. Proposed LUPA/Final EIS at 2- 22, D-7. Although this restriction is subject to exception when it would “render the recovery of fluid minerals infeasible or uneconomic,” WSCOGA questions its utility and the likelihood that BLM would grant such an exception. Indeed, BLM offers no information regarding how it will apply this standard or what information it will evaluate. BLM will also prohibit construction, drilling, and completion activities in PHMA within four miles of active leks between March 1 and July 15 “based on site-specific conditions.” Id. at 2- 22, D-7. Finally, BLM will deter development in PHMA and within four miles of lek by setting forth “criteria” that BLM must apply to “guide development,” even though these criteria do not appear in

lease terms. Id. at 2- 22, D-7 - D-8. None of these measures were included in stipulations on existing federal leases. BLM lacks authority under FLPMA to alter existing federal leases to impose these measures.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-13

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: BLM Instruction Memorandum 92-67 reinforces the contractual rights conferred by a federal 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-NORTHWESTCO-GRSG-15-20-14

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

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.” BLM, however, has expressly recognized that this regulation does not allow it to expand the

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

Issue Number: PP-NORTHWESTCO-GRSG-15-20-28

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA protests BLM's proposal to close off the leasing of lands within one mile of leks for the reasons explained above. See Proposed LUPA/Final EIS at 2-21. This directive is significant because it closes off roughly 224,000 acres to future oil and gas leasing. *Id.* at 4-249. Additionally, WSCOGA protests BLM's proposal to prioritize oil and gas leasing outside of PHMAs and, if leasing occurs, only lease PHMA areas with NSO stipulations without the possibility of waiver or modification. See Proposed LUPA/Final EIS at 2-21. Although BLM has not provided acreage breakdowns for the various PHMAs, maps of the PHMAs indicate that some may be thousands of contiguous acres in size. The significant size of the PHMAs renders much of the oil and gas estate beneath them inaccessible with modern technology. Although horizontal

wells general can extend as far as two miles, this distance is inadequate to access much of the mineral estate. Even if an oil and gas operator were able to site a horizontal well on non-federal lands within PHMA, it may be unable to obtain a right-of-way across federal lands to access the well locations because the PHMA is designated a right-of-way avoidance area. By prohibiting surface occupancy across such large swaths of land, BLM effectively removes the PHMAs from future leasing for oil and gas exploration and development.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-4

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: BLM should not designate all of PI-IMA right-of-way avoidance areas. BLM does not explain or justify this proposal. Operators' ability to develop both its federal and non-federal leases could be significantly impacted if BLM inappropriately limits access across PHMA. BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. BLM's right-of-way manual recognizes BLM's obligation and directs the agency to “[a]llow owners of non-Federal lands surrounded by public land managed under the FLPMA, a degree of access which will provide for the reasonable use and enjoyment of the non-Federal land.” BLM Manual 2801, Rights of Way Generally § 2801.8F Obviously, if a lessee is not allowed access to its lease parcel, or is prohibited from installing pipelines necessary to transport the produced resource to market, such lessee is deprived of all economic benefit of the lease, which could create a compensable taking under the Fifth

Amendment to the United States Constitution.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-5

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: At a minimum, the designation as right-of-way avoidance areas should not limit BLM's ability to authorize access across existing leases and units. 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 (2014). With respect to approved Federal Exploratory Units, the IBLA has noted that “[w]hen a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and access roads within the unit area.” Southern Utah Wilderness Society, et al., 127 IBLA 331, 372 (1993). Therefore, BLM should include a statement in the LUPA that it may continue to authorize access across existing leases and units even if PHMA is designated a right-of-way avoidance area.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-7

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA protests BLM's proposal to impose new restrictions on existing federal oil and gas leases

Issue Number: PP-NORTHWESTCO-GRSG-15-20-8

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA protests BLM's imposition of new restrictions that are inconsistent with existing federal leases for several reasons. First, BLM lacks authority to impose new restrictions on valid existing federal leases under FLPMA. Second, BLM cannot unilaterally modify federal leases, which are valid existing contracts. Finally, BLM cannot impose new restrictions on existing federal leases that render development uneconomic or impossible. WSCOGA encourages BLM to revise the Proposed LUPA to recognize that it may not impose new development restrictions on existing federal leases.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-9

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The proposed addition of new restrictions to existing federal leases exceeds BLM's legal authority under FLPMA. BLM may not modify existing federal 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 federal lease rights). Thus, pursuant to federal law, BLM cannot terminate, modify, or alter any valid or existing rights through its land use planning process.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS violates valid, existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

Response:

The Northwest Colorado GRSG PLUPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)), (LUPA, p. 1-31).

For example, p. 2-16 includes the following language: “(PHMA) Only issue ROWs/SUAs after documenting that the ROWs/SUAs will not adversely affect GRSG populations due to habitat loss or disruptive activities (independent of disturbance cap), except where such limitation would make accessing valid existing rights impracticable.”

And on p. 2-48, the Objective for Fluid Minerals Management states: “Manage fluid minerals to avoid, minimize, and compensate for:

- direct disturbance, displacement, or mortality of GRSG;
- direct loss of habitat or loss of effective habitat through fragmentation; and
- cumulative landscape-level impacts

Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights”.

Additionally, in the Disturbance Cap Guidance Appendix the following direction would be applied: “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 PHMA in any given Biologically Significant Unit until the disturbance has been reduced to less than the cap” (Disturbance Cap Guidance p. E-1).

With respect to oil and gas leasing specifically, the BLM and FS may restrict development of an existing oil and gas lease through Conditions of Approval (COA) consistent with the rights granted in the lease. When making a decision regarding discrete surface-disturbing activities (e.g. Application for Permit to Drill) following site-specific environmental review, BLM and FS have 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 as noted in 43 CFR 3100, 43 CFR 3160, IBLA 2006-213, 2006-226, IBLA 2008-197, 2008-200 and 36 CFR 228. 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). Statutory rights of access are discussed in FSM 2734.5 and 2734.6. Appropriate access to non-Federal land to use and manage that land constitutes entry for a lawful and proper purpose and must be allowed. (See FSM 2703) The standard for appropriate and reasonable access is determined by the present or future use of the non-Federal land. Undue restrictions to access

may affect the purpose for seeking access and violate the right established. Location, type and method of access can be reasonably limited considering the purposes for which the National Forest System was established and is administered.

Access rights to non-Federal land are not affected by Forest Service land management planning considerations or procedures. However, exercising the right may involve land management planning. Statutory rights of access attach to the land, therefore application for access must be made by the landowner, and access authorization shall be issued only to the landowner. Application for access across National Forest System land will be evaluated through the NEPA process. The analysis will address such points as the type, location, and conditions of the access sought; whether other adequate access exists; and requirements of any grant.

While the Northwest Colorado GRSG PLUPA/FEIS provides management direction for conditions of approval on valid leases it does so only consistent with lessees' valid existing rights.

One protester suggests that the proposed restrictions would limit the possibility of leasing and development of oil and gas resources on an excessively large number of acres - this point is addressed under the fluid minerals section of this report.

Multiple Use Mandate

Issue Number: PP-NORTHWESTCO-GRSG-15-11-12

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: In contrast, here, the Colorado LUPA could be interpreted as imposing a “no significant impact” standard for oil and gas operations. This de facto insignificance standard violates BLM’s statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a “major use” of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

Issue Number: PP-NORTHWESTCO-GRSG-15-16-2

Organization: Public Lands Council/
National Cattlemen's Beef Assn

Issue Excerpt Text: Reducing grazing for the sole benefit of the GRSG is inconsistent with the multi-use mandate of NFMA, FLPMA and the balanced grazing program outlined in the Taylor Grazing Act, as it prioritizes wildlife use over other productive uses.

Issue Number: PP-NORTHWESTCO-GRSG-15-17-3

Organization: CE Brooks & Associates obo Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: Vermillion specifically protests the following restrictions that sterilize large areas of public land in Moffat County to multiple use and natural resource development by prohibiting new mineral leases within one mile of GRSG leks in PHMA, precluding disturbance, disruptive activities, and occupancy on existing mineral leases within one mile of leks in PHMA, requiring No

Surface Occupancy (NSO) in PHMA, prohibiting construction, drilling and other activities within four miles of an active lek in All Designated Habitat (ADH) from March 1 to July 15, and requiring NSO within 2 miles of a lek in General Habitat Management Areas (GHMA).

Issue Number: PP-NORTHWESTCO-GRSG-15-17-4

Organization: CE Brooks & Associates
obo: Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: Vermillion also protests the LUPA because it manages public rangeland for a single species notwithstanding the Northwest Colorado Standards and Guidelines for Livestock Grazing Management.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-2

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The LUPA is also arbitrary and capricious because the BLM has prioritized GRSG populations and habitat over all other multiple uses and sterilized large portions of Moffat County in violation of FLPMA, the 1872 Mining Law, Energy Policy Act of 2005, and NEPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-4

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: Under the LUPA, there will be “no new leasing 1 mile from active leks in [All Designated Habitat].” LUPA at 2-23; see also Attach. 7, Cooperating Agency Proposed Plan Clarifications Powerpoint (May 26, 2015). By this prescription, at least 224,200 acres within one mile of active leks would be closed to leasing in the study area. LUPA at 4-33. Moffat County protests this prescription as being contrary to FLPMA.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS violates the multiple use provisions of FLPMA and NFMA by:

- imposing a “no significant impact” standard for oil and gas operations;
- prioritizing wildlife over other uses (e.g., livestock grazing, mineral development); and
- proposing restrictions on new and existing new mineral leases.

Response:

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

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. Similarly, the TGA does not require the BLM to allow grazing or particular levels of grazing on all public lands and provides wide discretion to protect other resource values.

Consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA; 16 USC 528–531), the Forest Service manages National Forest System lands to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas. The Forest Service is required by statute to have a national planning rule: the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, requires the Secretary of Agriculture to issue regulations under the principles of the MUSYA for the development and revision of land management plans.

The Northwest Colorado GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of it being listed (Section 1.2, Purpose of and Need for the Land Use Plan Amendments [page 6]). Both the BLM and Forest Service planning processes allow for analysis and consideration of a range of alternatives in the Northwest Colorado GRSG PRMP/FEIS that identified and incorporated appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was recommended. The Northwest Colorado GRSG PLUPA/FEIS includes alternatives that provide a greater and lesser degree of restrictions in various use programs, but would not eliminate or invalidate any valid existing development rights.

All alternatives considered in the Northwest Colorado GRSG PLUPA/FEIS, as described in Chapter 2 (Vol.1, p. 2-1 through 2-225), provide an appropriate balance of uses on the public lands. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

The Northwest Colorado GRSG PLUPA/FEIS is consistent with FLPMA's and MUSYA's multiple use mandates.

Consistency with State and Local Plans (BLM)

Issue Number: PP-NORTHWESTCO-GRSG-15-03-13

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Furthermore, the three percent disturbance threshold does not take into account the spatial distribution of the surface disturbance (i.e., concentrated vs. dispersed), or what effect these different patterns would have on the population trends

as a whole. This problem is compounded for Garfield County because of the low level of resolution of the habitat mapping utilized by the BLM (compared to the high-resolution habitat mapping developed by Garfield County). Habitat disturbance calculations based on the BLM's mapping would include surface disturbances in areas of non-habitat for GRSG, resulting in restrictions that would provide no net benefit to GRSG because they are outside of the habitat utilized by the species.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-3

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: The BLM failed to coordinate the planning criteria with the County as required at 43 CFR § 1640.4-2(b). Although the FEIS states that this was accomplished through the cooperating agency process, there is no evidence in the FEIS that this occurred. Since the planning criteria serves as the lens through which all decisions are to be made, it is critical that the agency work to seek agreement with local entities early in the process. This is also a violation of NEPA, specifically at 40 CFR § 1501.2. The conflicts were continually raised by the County from beginning to end of this process. The agencies had many opportunities to resolve these issues early, but failed to do so.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-2

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: There is no discussion in the FEIS as to how BLM considered the County Plan, how they worked to resolve

inconsistencies with the County Plan, and why they did not incorporate the County Plans into the FEIS since there is no evidence that the County Plan fails to comply with federal law. Additionally, the agencies failed to fulfill the second part of the Chapter 1.8 statement. There is no discussion in the FEIS as to what inconsistencies exist, how these would be resolved or why they couldn't be resolved as required at 40 CFR §§ 1506.2(d) and 1502.16(c). 3. The County identified in writing numerous inconsistencies between the County Plan and the land use plan amendment through letters, official County comments and meeting transcripts during the Environmental Impact Statement ("EIS") process. BLM is accountable for reaching consistency as required at 43 CFR § 1610.3-2(c). Again, there is no discussion as to why they agencies were prevented from reaching consistency.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-1

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA diverges from the Colorado Package in many important respects, including: The COGCC rules prohibit surface occupancy within 0.6 miles of a lek, with specified exceptions, rather than one mile of a lek as provided by the Proposed LUPA. See 2 Colorado Code of Regs. 404-1-1205. In Production Habitat Areas, consultation between CPW and operators frequently results in conditions that prohibit activities within four miles of leks between March 1 and June 30 or limited activities throughout Production Habitat Areas between March 1 and May 15. See Colorado Package, App. E. This measure is inconsistent with the timing limitation in the Proposed LUPA, which

limits activities between March 1 and July 15 in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) for new leases and in PHMA for existing leases. Proposed LUPA/Final EIS at 2-22. The Proposed LUPA contains a host of additive requirements that are not found in the COGCC rules or voluntarily adopted through consultation or in Wildlife Mitigation Plans, including noise limitations, phased development requirements, and the extensive RDFs. Compare Proposed LUPA at 2-22 – 23, 2-40 – 2-41 with id. App. C, The Colorado Package App. F.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-2

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: In addition to the Colorado Package, the Proposed LUPA is also inconsistent with the conservation plan developed by Garfield County, Colorado. Garfield County submitted this plan to BLM for consideration in March 2013. The Proposed LUPA/Final EIS identified this plan but eliminated it from detailed analysis. See Proposed LUPA/Final EIS at 2-224 – 2-225. The Proposed LUPA, however, is inconsistent with Garfield County’s plan because the Proposed LUPA adopts different habitat maps, buffers, disturbance caps, threats, and regulatory assurances.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-13

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: The BoCC also understands that the PRPMA is at odds with the Colorado Department of Natural

Resources’ “Colorado Package,” which relies on local and state conservation plans. The PRMPA should be reconciled accordingly before a ROD is issued. Therefore, Mesa County encouraged the Colorado Governor’s consistency review to find the PRMPA/FEIS inconsistent with state plans, programs and policies.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-17

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The BLM has failed to even discuss the inconsistencies between the LUPA and local land use plans and the NWC Plan and has therefore made no attempt to resolve the inconsistencies. On page 2-51 of the FEIS, local governments have no formal means to participate in adaptive management other than as stakeholders in the GRSG Conservation Team, comprised of BLM/USFS, FWS, CPW and tribal staff. BLM’s failure to address or resolve the inconsistencies does not conform to its obligations under FLMPA or NEPA. 43 USC §1712(c)(9); 43 CFR §1610.3-2(a); 40 CFR §§1502.16(c), 1506.2(d). VI. Conclusion and Remedy Requested inconsistencies do not conform to its obligations under FLMPA or NEPA. 43 USC §1712(c)(9); 43 CFR §1610.3-2(a); 40 CFR §§1502.16(c), 1506.2(d)

Issue Number: PP-NORTHWESTCO-GRSG-15-18-18

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The LUPA, as discussed earlier, is inconsistent with Moffat County’s local land use plans as it places restrictions on oil and gas development, right-of-way construction and maintenance. Similarly, one mile no-leasing areas, wide

scale NSO stipulations, disturbance caps, buffer distances, and other prescriptions identified in the NTT Report all interfere with oil and gas development, County Plan at 48 and severely impact the County's tax base, Id. at 10, 24. The LUPA is also inconsistent with the timing limitations, buffer distances and density requirements in the NWC Plan. See NWC Plan at 122-124.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-3

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The BLM also failed to comply with the FLPMA coordination and consistency mandate 43 USC §§1712(a) 1712(c)(9), with Moffat County and the Associated Governments of Northwest Colorado by adopting management prescriptions handed down from Washington that conflict with local plans and policies in Moffat County as well as the NWC Plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-19-6

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text: Colorado has a GRSG Conservation Plan, which provides state specific data and structural habitat guidelines. See Statewide Conservation Plan at Appendix A. The Proposed LUPA does not use these guidelines, however. See Proposed LUPA/FEIS at Tables 2.3 and H.I. CPW has recommended that both these tables be modified to substitute Colorado-specific desired habitat conditions as reported in the Statewide Conservation Plan, but neither table has been modified to reflect the recommendations in the State's Conservation Plan. Until BLM resolves this

discrepancy, the Proposed LUPA violates the regulator requirement that a land use plan comprise a set of “rational consistently applied set of rules and procedures.” 43 CFR § 1601.0-2. To achieve internal consistency, the LUPA must follow its own advice and modify the habitat restoration objectives with Colorado specific standards.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-1

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Proposed LUPA does not adhere to these requirements because its GRSG habitat conservation program is inconsistent with the Colorado GRSG Conservation Plan and the GRSG conservation program established by Governor Hickenlooper in Executive Order D 2015-004 (collectively the “Colorado Program”). Through the Colorado Program, the State has developed a comprehensive, proactive strategy for addressing risks to and conserving the GRSG that includes specific goals, measures and actions to achieve those objectives, similar to a federal land use plan. The above-referenced Executive Order strengthens the state-led conservation efforts that have occurred over the last decade by, among other things, facilitating better coordination among state agencies and more detailed record keeping, developing a tracking system for oil and gas development in habitat and creating a market-driven habitat exchange program will further strengthen the protection of Colorado’s GRSG.

Issue Number: PP-NORTHWESTCO-GRSG-15-21-1

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Utah, Idaho, Colorado and Oregon LUPAs have incorporated a 3 percent disturbance cap, applicable only within GRSG priority habitat management areas (PHMA). However, it is unclear how this will be

implemented in conjunction with the state plans. The BLM should address how the disturbance cap and exemption process will work in sync with the various states' GRSG Management Plans.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS is inconsistent with several state and county plans and orders, including the Colorado GRSG Conservation Plan, the GRSG conservation program established by Governor Hickenlooper in Executive Order D 2015-004 (collectively the "Colorado Program"), and the Utah, Idaho, and Oregon state plans. Additionally, the BLM has inadequately considered the counties' land use plans or acknowledged the inconsistencies in the Northwest Colorado GRSG PLUPA/FEIS, in violation of 40 CFR Sections 1506.2(d) and 1502.16(c) and the FLPMA coordination and consistency mandate 43 USC Sections 1712(a) 1712(c)(9).

Response:

40 CFR 1506.2 states "to better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

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 Northwest Colorado GRSG PLUPA/FEIS, including the Colorado GRSG Conservation Plan and other related state and county plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Northwest Colorado GRSG PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Northwest Colorado PRMPA/FEIS. A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.8. The BLM conducted internal reviews of its plan compared to local, state, and Tribal plans to determine if there were inconsistencies. The agency will discuss why any remaining inconsistencies between the Northwest Colorado GRSG PLUPA/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).

Please reference the response for NFMA Coordination with State and Local Governments for Forest Service requirements.

Viability (Forest Service)

Issue Number: PP-NORTHWESTCO-GRSG-15-10-11

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In effect, BLM and the Forest service fail to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA, NFMA, and BLM and Forest Service Sensitive Species policy.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-17

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the violations of the National Forest Management Act's regulations on species viability. NFMA and its regulations require

the Forest Service to “provide for a diversity of plant and animal communities based on suitability and capability of the specific land area in order to meet overall multiple-use objectives.” 16 USC § 1604(g)(3)(B). And FSM 2672.1 requires that: “There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significant reduce sensitive species numbers.” To the extent that the aforementioned conservation measures of the plan fail to impose the level of protection necessary to maintain viable GRSG populations in PHMA and GHMA, the PLUPA/FEIS has failed to conform to NFMA.

Summary:

The Northwest Colorado GRSG RMP Amendment/EIS did not adequately address viability requirements of the 1982 Planning Rule (implementing NFMA) and the Forest Service sensitive species policy because it did not impose the level of protection necessary to maintain viable GRSG populations in PHMA and GHMA. This is exemplified in the lack of withdrawal from locatable mineral entry in important GRSG habitats.

Response:

The 1982 National Forest Management Act Regulations at 219.19 state that, “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” Sensitive species are identified by Regional Foresters as one of several approaches for species conservation (Forest Service Manual 2670). Forest Service Manual 2672.1 provides the following direction on sensitive species management: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. “

The Forest Service documents the analysis of viability of sensitive species, including the GRSG, in a biological evaluation. According to the Forest Service Manual at 2672.4, “The objectives of the biological evaluation are:

- To ensure that Forest Service actions do not contribute to loss of viability of any native or desired non-native plant or contribute to animal species or trends toward Federal listing of any species;
- To comply with the requirements of the Endangered Species Act that actions of Federal agencies not jeopardize or adversely modify critical habitat of Federally listed species; and
- To provide a process and standard by which to ensure that threatened, endangered, proposed, and sensitive species receive full consideration in the decision-making process.”

The biological evaluation completed for the FEIS is included in Appendix M. It evaluates the effects of implementing the proposed management direction for the proposed plan alternative as described in Chapter 2 pages 2-32 thru 2-42 of the FEIS. The biological evaluation concludes that existing conservation measures limit many, but not all impacts on GRSG. The determination for GRSG for the proposed plan is that it “may adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend toward federal listing”. The biological evaluation reached the same conclusion for all terrestrial and aquatic sensitive species that were analyzed.

The biological evaluation and associated FEIS together provide the ecological rationale for this determination based on a careful consideration of the direct, indirect, and cumulative effects of the proposed plan, in light of existing understanding of the GRSG biology and ecology, threats to that species, and its current population trends.

Specifically in regard to effects of minerals development, the Biological Evaluation concluded that, under the proposed plan amendment, no new leasing in all designated habitat would be allowed within 1 mile of an active lek. There would be No Surface Occupancy stipulations in PHMA and within 2 miles of active leks in GHMA. A no activity buffer of 4 miles in active leks from March 1 to July 15 would be enforced. For wind and solar projects PHMA would be excluded and GHMA would be avoidance areas. PHMAs would be closed to new mineral materials sales and new nonenergy mineral leasing. NSO would be precluded on existing nonenergy leasable mineral leases within 2 miles of active leks in PHMAs. Direct impacts on GRSG habitat from constructing and operating energy or mineral facilities would be similar to the impact for Special Use Authorizations and could include direct loss, fragmentation, or degradation of habitat. Though currently there are no known active GRSG leks and very little PHMA in the Routt NF, this alternative would provide protection now and into the future for the most important GRSG habitats, thereby improving conditions for GRSG. This alternative would minimize or eliminate the likelihood for impacts to GRSG on the 1,968 acres within the PHMA.

As explained in the Biological Evaluation, the Routt NF currently has not known active leks, and very little PHMA, so the capability of NFS lands to support self-sustaining populations of GRSG is limited. The Routt NF contains relatively small areas of GRSG habitat, and habitat on NFS

land only contributes to particular life cycle requisites. Even so, the plan amendments include an extensive array of constraints designed to ensure that habitat would contribute to a viable population of GRSG even should minerals and energy projects occur.

The plan amendment provides direction to improve habitat conditions for GRSG, contributing to habitat conditions suitable to support a viable population. The FEIS, particularly the biological evaluation of GRSG in Appendix M, with its consideration of the scientific analysis of population trends and evaluation of the effects of proposed management direction, adequately demonstrate that the proposed plan amendment met the requirements of the 1982 planning regulation regarding managing habitat to maintain viable populations of vertebrate species and the Forest Service policy on sensitive species.

Coordination with State and Local Governments (Forest Service)

Issue Number: PP-NORTHWESTCO-GRSG-15-12-3

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the disregard for the provisions of the Colorado Package and Garfield County plan evidenced in the Proposed LUPA is inconsistent with NFMA and Forest Service regulations.

Summary:

The Northwest Colorado GRSG Proposed RMP Amendment/FEIS violates NFMA and Forest Service regulations because it is inconsistent with the Colorado package and Garfield County plan.

Response:

NFMA requires the Forest Service to coordinate land management planning for the National Forest System with land management planning conducted by state and local governments and other Federal agencies (16 USC 1604(a)). The applicable 1982 planning rule echoes these coordination requirements (36 CFR 219.7(a)). However, the Forest Service is not required to adopt recommendations made by state and local governmental entities. In particular, the Forest Service is not required to incorporate specific provisions of county ordinances or resolutions into land management plans or to comply with procedural requirements, such as a requirement to obtain county approval before amending or revising a land management plan. The statutes governing Forest Service land management planning and their implementing regulations provide for an advisory role for state and local governments.

In accordance with these requirements, the BLM and Forest Service have given consideration to state, local and Tribal plans that are germane to the development of the Northwest Colorado PRMPA/FEIS. The BLM and Forest Service have worked closely with state, local, and Tribal governments during preparation of the Northwest Colorado PRMPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Northwest Colorado PRMPA/FEIS. A list of the local, state, and Tribal plans that the BLM and Forest Service considered can be found in Chapter 1, Section 1.8.

Therefore, the Forest Service has satisfied the coordination requirements under NFMA and Forest Service regulations in preparation of the Northwest Colorado PRMPA/FEIS.

Range of Alternatives

Issue Number: PP-NORTHWESTCO-GRSG-15-03-18

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: BLM now asserts that the “net conservation gain strategy is in response to the overall landscape goal to enhance, conserve, and restore [GRSG] and its habitat.” Again, this dramatic departure from scoping and the Draft EIS is improper and unlawful. Further, BLM did not analyze any alternative to managing for net conservation gains.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-4

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Although the County Plan and the agency's plans for GRSG conservation differ greatly, the agencies failed to carry forward the County's Plan as an alternative to be rigorously studied and to allow the public and decision-makers the opportunity to compare the impacts in order to reach the most informed decision. When the conflicts could not be resolved, the agency had the obligation to advance for analysis an alternative that resolved the County's concerns.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-5

Organization: Holsinger Law LLC obo: Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: IM 2012-044 directs the agency to include an alternative in the GRSG planning process that incorporates the conservation measures developed by the NTT. It also directs that “The BLM must consider all applicable conservation measures...” and “it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability.” It continues, “Regardless, these conservation measures must be subjected to a hard look analysis as part of the planning and NEPA processes. This means that a reasonable range of conservation measures must be considered in the land use planning alternatives.” The Garfield County Plan was written from a local conservation perspective and therefore contained different conservation measures than the NTT. By failing to coordinate with Garfield County, the agencies failed to fully consider these measures and further failed to appropriately discuss these in the FEIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-6

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: The FEIS completely omits the County Plan. BLM has failed to adequately consider the County's Plan and their land use regulations in any alternative, including in the No Action alternative, and has failed to consider the unique geography and naturally fragmented habitat in Garfield County. As a result, BLM has failed in its duties to coordinate with Garfield County

and their local land use plan, as required under NEPA and FLPMA. It has also failed to take the “hard look” at alternatives required by NEPA, including the Garfield County Plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-16

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Final EIS does not analyze an alternative to the Proposed LUPA's mitigation standard, which is a net conservation gain. Proposed LUPA/Final EIS at 2-3. The Final EIS should have considered alternative, lesser mitigation standards, such as no net loss of GRSG habitat. 16 Because the Proposed LUPA defines its purpose and need as “incorporat[ing] measures that will help conserve, enhance and/or restore [GRSG] habitat by reducing enhancing, or minimizing threats to that habitat,” lesser mitigation standards that simply maintained current amounts of GRSG habitat would also achieve the purpose and need of the Proposed Action.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-2

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Encana protest the lek buffer distances outlined in Appendix because BLM did not analyze alternatives to the lek buffer distances as required by the National Environmental Policy Act of 1969 (NEPA).

Issue Number: PP-NORTHWESTCO-GRSG-15-04-3

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed LUPA because it does not analyze alternatives to the 3.1 mile lek buffer distance for energy infrastructure. See Proposed LUPA/Final EIS at B-1. This buffer was adopted in response to the U.S. Geological Survey report, Conservation Buffer Distance Estimates for GRSG- A Review: USGS Open File Report 201 4-1239 (Mainer et al. 2014) (“USGS Report”). Proposed LUPA Final EIS at 2-2, BLM maintains that it analyzed a range of alternatives because the range of alternatives is “qualitatively within the spectrum of alternatives analyzed.” Id. BLM ignores, however, that the USGS Report identified a range of distances at which energy infrastructure is believed to impact the GRSG. See Buffer Report at 7-8. Although Encana disagrees with these distances, they nonetheless reflect a range of alternative buffer distances BLM should have considered. Furthermore, BLM should have analyzed an alternative of buffer distances tailored to site-specific conditions. The USGS Report acknowledged that “variability between GRSG populations and their responses to different types of infrastructure can be substantial across the species' range....” Buffer Report at 2. The USGS Report also noted that are important potential modifiers of the effect of human infrastructure and activities.” Id. at 2-3., although BLM may approve infrastructure within a buffer when, due to “landscape features,” an alternative distance would offer comparable” protection. the USGS Rep. recognized-that a broader-set of factors earn modify-the-effect infrastructure on the GRSG. Specifically, the USGS explained that “(h)abitat condition, composition, structure, and distribution” all can modify the effect of infrastructure. Id. at 2-3. Accordingly, BLM should analyze alternatives to the 3.1 mile buffer in the EIS,

including buffers tailored to site-specific conditions.

Issue Number: PP-NORTHWESTCO-GRSG-15-08-5

Organization: American Bird Conservancy

Protestor: Steve Holmer

Issue Excerpt Text: Similarly, there is a need to develop additional management options for grazing allotments that include the voluntary relinquishment and retirement of grazing allotments as was proposed on Alternatives B and C. The claim that additional NEPA analysis is needed to close allotments does not address the need to analyze how retirement as a management strategy may benefit GRSG conservation. By ignoring this recommendation, the public has not been offered a complete range of management options to consider.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Guardians also submitted our GRSG Recovery Alternative earlier in this NEPA process; the issues raised in this alternative are also part of our expectations for the final plan amendments and revisions. We requested that agencies should designate as Priority Habitat and General Habitat all lands identified as PPMAs and PGMAs, and in addition should expand Priority Habitat to include all 75% population areas, but this alternative does not appear to have been considered in detail in violation of NEPA.

Issue Number: PP-NVNORTHEASTCA-GRSG-15-15-26

Organization: David, Graham & Stubbs for Nevada Mineral Resources Alliance

Protestor: Laura Granier

Issue Excerpt Text: The FEIS does not evaluate a reasonable range of alternatives because it omits analysis of Manual 6840 as an alternative which is both reasonable and that would meet the Purpose and Need statement to provide for GRSG habitat conservation while at the same time comply with statutory mandates to achieve multiple use. The BLM must prepare a Supplemental EIS to include a Manual 6840 alternative.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-13

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS fails to analyze a reasonable range of alternatives to the Proposed LUPA. First, the Final EIS does not analyze an alternative to the Proposed LUPA's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed LUPA's monitoring framework, including alternatives that BLM has the resources to implement. Third, the Final EIS does not analyze alternatives to the adaptive management triggers and responses. Fourth, the Final EIS does not analyze alternatives to the lek buffer distances. Fifth, the Final EIS did not analyze the alternative of the Colorado Package and Executive Order. Finally, the Agencies should have analyzed an alternative adopting the Garfield County conservation plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-23

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Second, BLM cannot implement the “responses” to the hard triggers because it did not consider any alternatives to the responses, or analyze the impacts of the responses, in the EIS accompanying the Proposed LUPA. See Proposed LUPA/Final EIS at 4-231 – 4-266. FLPMA, NFMA and NEPA require BLM and Forest Service to consider management alternatives and analyze the impacts of these alternatives in the accompanying EIS. See 36 CFR § 219.14(b)(2); 40 CFR § 1502.14, 1502.16; 43 CFR § 1610.4-5, 1610.4-6. Therefore, BLM must consider alternatives to the hard trigger responses and analyze their potential environmental impacts before it may implement them. Because BLM has neither analyzed alternatives to the trigger responses nor analyzed their potential impacts, BLM may not implement the hard trigger responses without amending the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-65

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The only rationale and justification given for this broad-scale exemption for the TransWest and similar transmission projects is that the projects have been identified by the President as being high priority renewable projects for jobs and for electric transmission infrastructure. Yet, other than this single conclusory statement, the LUPA and FEIS do not provide any supporting documentation, data, or analysis to justify this disparate treatment or the allowance of these large-scale significant impacts within GRSG habitat. The LUPA/FEIS does not identify, let alone analyze, the number of jobs that would be created for construction of these projects, or the number of long-term

jobs that would result after construction of the transmission line. The LUPA/FEIS fails to identify, let alone analyze, whether there are alternatives to providing this exemption in the LUPA. The LUPA/FEIS fails entirely to analyze an alternative that explains or otherwise justifies counting the significant landscape level surface disturbance of these projects against the cap calculation applicable to the oil and gas industry and all other industries operating on public lands where the cap is applicable against their operations and activities. The LUPA/FEIS fails to explain why such disparate treatment between industries and public land developers is warranted.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-6

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: BLM did not analyze alternatives to this standard, such as “no net loss,” as required by NEPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-9

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: BLM did not analyze a reasonable range of alternatives to the 3.1 mile lek buffer distance for energy infrastructure, which creates a buffer area of approximately 30 square miles. See Proposed LUPA/Final at B-1. BLM maintains that it analyzed a range of alternatives because the range of alternatives is “qualitatively within the spectrum of alternatives analyzed”. BLM overlooks, however, that the USGS report identified a range of distances at which energy infrastructure is believed to impact the

GRSG. See Buffer Report at 7-8. For example, USGS explained that scientific literature supported a minimum buffer distance of two miles for energy infrastructure. See USGS Report, Table 1. Although SWNPC would not necessarily endorse this buffer, which would create a buffer area of approximately 12.6 miles, it nonetheless reflects an alternative buffer distance that BLM should have analyzed in the Proposed LUPA/Final EIS. The USGS Report explains that negative population trends occurred when eight active wells occurred within 3.1 miles of leks. Because the Proposed LUPA would limit disturbance to one facility per square mile in PHMA, a buffer distance based on more dense development is unnecessary. Accordingly, BLM should analyze alternatives to the 3.1 mile buffer in the EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-5

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 percent of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1).” WWP v. Salazar, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012). The

absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve, protect, and enhance GRSG habitats.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-17

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Final EIS does not analyze an alternative to the Proposed LUPA's mitigation standard, which is a net conservation gain. Proposed LUPA/Final EIS at 2-3. The Final EIS should have considered alternative, lesser mitigation standards, such as no net loss of GRSG habitat. Because the Proposed LUPA defines its purpose and need as “incorporating measures that will help conserve, enhance and/or restore [GRSG] habitat by reducing, eliminating, or minimizing threats to that habitat,” lesser mitigation standards that simply maintained current amounts of GRSG habitat would also achieve the purpose and need of the Proposed Action.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-21

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: BLM did not analyze a reasonable range of alternatives to the 3.1 mile lek buffer distance for energy infrastructure, which creates a buffer area of approximately 30 square miles. See Proposed LUPA/Final EIS at B-1. BLM maintains that it analyzed a range of alternatives because the range of alternatives

is “qualitatively within the spectrum of alternatives analyzed.” Id. BLM overlooks, however, that the USGS report identified a range of distances at which energy infrastructure is believed to impact the GRSG. See Buffer Report at 7-8. For example, USGS explained that scientific literature supported a minimum buffer distance of two miles for energy infrastructure. See USGS Report, Table I. Although WSCOGA would not necessarily endorse this buffer, which would create a buffer area of approximately 12.6 miles, it

nonetheless reflects an alternative buffer distance that BLM should have analyzed in the Proposed LUPA/Final EIS. The USGS Report explains that negative population trends occurred when eight active wells occurred within 3.1 miles of leks. Id. at 7. Because the Proposed LUPA would limit disturbance to one facility per square mile in PHMA, a buffer distance based on more dense development is unnecessary. Accordingly, BLM should analyze alternatives to the 3.1 mile buffer in the EIS

Summary:

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

- alternatives to a “net conservation gain” of GRSG habitat or monitoring framework;
- alternatives to lek buffer distances, including the 3.1-mile buffer distance for energy infrastructure;
- seasonal restrictions on livestock grazing;
- adaptive management triggers and responses; and
- recommended alternatives or management actions:
 - Garfield County Plan;
 - GRSG Recovery Alternative; and
 - State of Colorado Package and Executive Order.

The LUPA/FEIS also failed to adequately explain exemptions for certain transmission projects, including TransWest.

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)). 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 (Northwest Colorado PLUPA/FEIS Section 1.2, Purpose and Need for the Land Use Plan Amendments, (p.1-10) and that address resource issues identified during the scoping period. The PLUPA/FEIS analyzed four distinct alternatives in detail, which are described in section 2.8 Draft LUPA/EIS Alternatives (p.2-52). 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 Northwest Colorado PLUPA/FEIS Glossary (Glossary-22) 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 (2.2 Changes Between the Draft Land Use Plan Amendment, p. 2-2). 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 2.9, Summary Comparison of Alternatives, p. 2-55). In addition, net conservation gain is derived from the purpose and need which calls for the BLM to incorporate measures to “conserve, enhance and/or restore GRSG habitat”; and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework for GRSG habitat management is described in the section 2.7.2 Monitoring of the GRSG Planning Strategy (p. 2-49) Monitoring Framework for GRSG Habitat Management (p. 47) of the Northwest Colorado PLUPA/FEIS and describes a methodology to ensure the BLM is able to make consistent assessments about GRSG habitats 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. A methodology for monitoring implementation of the PLUPA does not require it to be varied between the action alternatives.

Lek Buffer Distances

A variety of approaches to managing disturbances near leks, including varying buffer distances, were evaluated in the Northwest Colorado PLUPA/FEIS. Lek buffers addressed in the Draft EIS are within the spectrum of alternatives analyzed and the analysis of lek buffers for development within certain habitat types is within the range of alternatives analyzed (p. 2-2).

Livestock Seasonal Restrictions

As identified in 2.8 Draft LUPA/EIS Alternatives each alternative 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. For Alternative B, the BLM and Forest Service used GRSG conservation measures in A Report on National GRSG Conservation Measures (GRSG National Technical Team 2011, also referred as to the NTT Report) to form management direction.

For alternative C individuals and conservation groups submitted management direction recommendations for protecting and conserving GRSG and habitat range-wide. The recommendations, in conjunction with resource allocation opportunities and internal sub-regional BLM and Forest Service input, were reviewed in order to develop management direction for GRSG.

Alternative D describes conservation measures to conserve, enhance, and restore GRSG habitat while balancing resources and resource use among competing human interests, land uses, and the

conservation of natural and cultural resource values. This alternative incorporates the NTT strategy and includes local adjustments and habitat boundaries to provide a balanced level of protection, restoration, enhancement, and use of resources and services to meet ongoing programs and land uses.

Table 2.5 Grazing Guidelines for GRSG Seasonal Habitat describes grazing guidelines that would be applied in each of the identified seasonal habitats. If guidelines cannot be achieved based upon a site-specific analysis using Ecological Site Descriptions, long-term ecological site capability analysis, or other similar analysis, grazing management would be adjusted to move towards desired habitat conditions consistent with the ecological site capability thus conserving, protecting, and enhancing GRSG habitat.

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 (Northwest Colorado PLUPA/FEIS, Adaptive Management Triggers p. 43). These adaptive management strategies would be developed in partnership with the State of Colorado, project proponents, partners, and stakeholders, incorporating the best available science. The adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed LUPA, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternative C in the Draft EIS.

Recommended Alternatives/Management Actions

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, Alternative C of the PLUPA/FEIS was derived and developed from recommendations made by conservation groups and individuals for protection and conservation of GRSG and its habitat (p. 2-54). Alternative D is the Northwest Colorado Sub-region's adjustments alternative, which emphasizes balancing resources and resource use among competing human interests, land uses, and the conservation of natural and cultural resource values (p. 2-54 to 2-55). Garfield County's alternative was not analyzed as a separate alternative because the management direction presented is contained within the existing range of alternatives and is not significantly distinguishable from those alternatives.

Transmission Line Exemptions

The exemptions identified in the Northwest Colorado PLUPA/FEIS (Table 2.2 Description of BLM Proposed Land Use Plan Amendment, p. 2-16) are for two individual projects (i.e., Gateway South, and TransWest). As BLM explains in the PLUPA/EIS, the processing of applications for the individual projects is well under way and through the respective NEPA project review process; GRSG mitigation measures are being considered and analyzed in a range of alternatives specific to the individual projects. Therefore, these individual projects are not being addressed in this PLUPA/FEIS. The BLM, working with the proponents, will seek to achieve net conservation gain by analyzing and including appropriate mitigation measures that

aim to avoid, minimize, and provide compensatory mitigation for impacts to GRSG in the project specific NEPA document for these two lines. The BLM will clarify this intention in the Record of Decision for the LUPA.

The BLM and Forest Service considered a range of reasonable alternatives in full compliance with NEPA.

Purpose and Need

Issue Number: PP-NORTHWESTCO-GRSG-15-10-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of BLM’s own experts regarding necessary measures to protect GRSG habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and/or restore GRSG Habitat.”

Issue Number: PP-NORTHWESTCO-GRSG-15-10-23

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM proposes to exempt the Gateway South and TransWest Express transmission line projects from the plan amendments. FEIS at 2-16. This loophole violates the purpose and need for the FEIS and renders FEIS management for large transmission projects essentially meaningless, as these lines are the only lines of this size likely to be constructed in the planning area over the 20-year time horizon of the plan amendments. BLM must instead subject these transmission lines to protection measures adequate to prevent major impacts to GRSG habitats and populations.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-5

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In order to remedy the inadequacy of regulatory mechanisms identified by USFWS, BLM must address the two-pronged test under the Policy on the Effectiveness of Conservation Efforts (“PECE Policy”), which requires that conservation measures be effective according to the best available science and have certainty of implementation. 68 Fed. Reg. 15115. BLM observes, “Regulatory certainty will be an important factor in the USFWS’s decision on whether to list the GRSG under the ESA; however, regulatory certainty alone would not be enough for USFWS to not list the species.” Oregon GRSG RMP Amendment DEIS at 2-15. The BLM’s National GRSG Planning Strategy further underscores the need to provide adequate regulatory mechanisms in these plan amendments, which the agencies have not done in this case.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: One of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are

likely to undermine the intent of the protective measure in question.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-3

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: By deferring the incorporation of grazing management criteria to future planning processes, the current planning process is rendered toothless for changing anything on the ground in the near term.

Issue Number: PP-NORTHWESTCO-GRSG-15-16-1

Organization: Public Lands Council/National Cattlemen's Beef Association

Issue Excerpt Text: As addressed in our comments, we reiterate that the purpose and need of the Proposed LUPA/FEIS is misleading and arbitrary and capricious in the context of livestock grazing and range management. The purpose and need given to augment grazing regulation is "Loss of habitat components due to improper livestock, wild horse and burro, and large wildlife use." FEIS at ES.2 (emphasis added). However, neither the U.S. Fish and Wildlife Service (FWS) nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations. Therefore, imposing regulatory change on the grazing livestock industry is arbitrary and capricious and without factual basis.

Issue Number: PP-NORTHWESTCO-GRSG-15-19-3

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text: Notwithstanding the fact that the TWE and Gateway South routes cross through PHMAs in northwest Colorado, BLM has decided to exclude the projects from the GRSG conservation measures in the Proposed LUPA. Proposed LUPA at 5-46. As a consequence, the projects will not be required to comply with the LUPA's provisions. Based on BLM's own discussion of the significant adverse impacts of high-voltage transmission lines, and specifically of these two projects, this decision fails to satisfy the purpose and need for the plan amendments. Allowing these projects to proceed will contribute to, rather than ameliorate, threats to GRSG in this area. Because it does not satisfy the purpose and need, the Proposed LUPA violates NEPA

Issue Number: PP-NORTHWESTCO-GRSG-15-19-4

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text:

Nowhere in the FEIS, however, does BLM explain how exempting these two projects fulfills the purpose and need of the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-19-5

Organization: Colorado Dept of Natural Resources

Protestor: Madeleine West

Issue Excerpt Text: Exempting these projects, and the impacts they will impose on GRSG in northwest Colorado, is not necessary and any alternative that does so will increase threats to GRSG and therefore fail to fit the purpose and need for the LUPA.

Summary:

The Purpose and Need to conserve, enhance, and restore GRSG habitat for the PLUPA/FEIS is narrowly defined or has not been met because:

- the best available science has not been used;
- protecting GRSG habitat from the effects of livestock grazing is without factual basis because neither FWS nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations and deferring incorporation of grazing management criteria to future planning processes, the current process is rendered toothless for changing anything on the ground in the near term; and
- the Gateway South and Trans West Express transmission line projects are exempt from conservation measures.

Response:

CEQ regulations direct that an EIS "...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR 1502.13). Also, under the CEQ regulations, the BLM and the Forest Service are required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act [NEPA]" (40 CFR 1501.2(c)). The range of alternatives developed are intended to meet the purpose and need and address the issue; thereby, providing a basis for eventual selection of an alternative in a decision (BLM NEPA handbook and Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook Chapter 10 – Environmental Analysis).

For detailed discussion related to the need to use the Best Available Science and use of the COT and NTT reports, please refer to the Best Available Science section located in this report. The management actions developed and analyzed in the alternatives for this Proposed RMP Amendment included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need. 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."

Substantive changes to livestock grazing are not made in the PLUPA. Changes that are necessary to conserve, enhance, and restore GRSG habitats would be made during the permit renewal process. Grazing permit renewals and land health assessments would be prioritized consistent with management area prioritization, unless other higher priority considerations exist or other factors.

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Proposed LUPA that address these impacts. The livestock grazing measures are supported by the NTT and COT reports, utilize the best available science, are within the range of alternatives, and meet the Purpose and Need for this PRMP Amendment. In addition, the Range of Alternatives section in this report addresses livestock grazing restrictions.

Regarding the exemptions for certain transmission line rights-of-way (ROWs) in this plan, these ROW applications are currently being analyzed with similar provisions and stipulations as are those that were considered for this plan.

The BLM and Forest Service applied the best information available when it developed the proposed LUPA and alternatives as they include recommendations from the NTT and COT reports. Therefore these management actions do meet the purpose and need and are within the range of alternatives that addresses such.

Cumulative Effects

Issue Number: PP-NORTHWESTCO-GRSG-15-08-2

Organization: American Bird Conservancy

Protestor: Steve Holmer

Issue Excerpt Text: The stated intention to meet all valid existing rights will have further detrimental impacts on GRSG populations already impacted by the cumulative impacts of this history of past development. As a result, the Final EIS anticipates significant additional cumulative impacts that are not adequately quantified or addressed through mitigation and the designation of protected areas.

Issue Number: PP-NORTHWESTCO-GRSG-15-08-3

Organization: American Bird Conservancy

Protestor: Steve Holmer

Issue Excerpt Text: In addition, there are 2,100 miles of road in priority habitat managed by BLM, impacting another 21,000 acres along with 1,400 miles of road in general habitat impacting 13,800 acres. While the Final EIS does state that new

routes would need to be constructed for oil and gas development, no mileage or acreage impacted estimates are included.

Issue Number: PP-NORTHWESTCO-GRSG-15-08-4

Organization: American Bird Conservancy

Protestor: Steve Holmer

Issue Excerpt Text: Because GRSG need at least a 4-mile buffer between leks and such tall structures, the effective habitat loss will be immense; approximately (2 sides x 4 mile buffer x 700 mile line x 640 acres per square mile) = 3,584,000 acres to be impacted by the TransWest Express and another 2,048,000 acres by Gateway South. Given this extensive habitat loss that can be anticipated, and that should have been quantified in the FEIS

Issue Number: PP-NORTHWESTCO-GRSG-15-12-11

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the release of the Executive Order constitutes significant new information that the Agencies must consider in a Draft LUPA because it affects the analysis of the cumulative impacts of the Agencies' management strategy on GRSG habitat and populations.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-18

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Proposed LUPA/FEIS does not adequately analyze the cumulative impacts of the Proposed LUPA because it does not consider the impacts of the Proposed LUPA together with the impacts of the at least 13 other GRSG LUPAs. 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, the Agencies should have analyzed the cumulative impacts of the Proposed LUPA with the other 13 LUPAs. Clearly, development of the EISs was a coordinated national effort by the Agencies. The Agencies announced the LUPAs 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 LUPA contain consistent—if not standardized—provisions, such as the monitoring framework, mitigation framework, and lek buffer distances. All of the LUPAs propose to impose NSO stipulations with limited waiver and modification on new leases in PHMA. All of them require that compensatory mitigation yield a “net conservation gain.”

Issue Number: PP-NORTHWESTCO-GRSG-15-12-19

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Agencies 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 LUPA alone, more than one million acres are designated for leasing subject to NSO and 224,200 acres are closed to mineral leasing entirely. See Proposed LUPA/Final EIS at 2-56. Nationwide, BLM and the Forest Service propose to designate an additional 31 million mineral acres as subject to NSO stipulations and close an additional 2.8 million to future leasing.⁹ Throughout GRSG range, the cumulative amount of land leased with NSO (and therefore effectively rendered inaccessible) and closed to leasing could have significant impacts on the development of federal oil and natural gas resources. The Agencies have not, however, examined the cumulative impacts of their management actions on federal oil and natural gas leasing and development. See Proposed LUPA/Final EIS at Chapter 5.

Summary:

The BLM and USFS violate NEPA because they fail to adequately analyze cumulative impacts related to:

- New information from the state Executive Order;
- Proposed RMP amendments and revisions nationwide;
- Mineral leasing and development;
- Recognizing valid and existing rights; and
- Additive loss of habitat from transmission projects and roads for oil and gas development.

Response:

The BLM and Forest Service 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 and Forest Service identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts.

The BLM and Forest Service have complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. With regard to the Executive Order, the cumulative impact analysis used the best available information, taking into consideration that the planning effort has been ongoing for several years. The cumulative impacts section (Chapter 5) 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 Chapter discusses cumulative impacts to minerals, GRSG, and vegetation.

As described on page 5-2 of the Northwest Colorado PLUPA/FEIS, because the analysis tends to be broad and generalized, the cumulative effects assessment is primarily qualitative for most resources because of lack of detailed information that would result from project-level decisions and other activities or projects. Quantitative information is used whenever available and as appropriate to portray the magnitude of an impact. The analysis assesses the magnitude of cumulative impacts by comparing the environment in its baseline condition with the expected impacts of the alternatives and other actions in the same geographic area.

Existing rights could be extensive in many areas but the development of these rights would be speculative. On pages 5-28 and 5-29 the Northwest Colorado PLUPA/FEIS identifies those projects with the greatest likelihood of occurring that could affect GRSG habitat.

The list of reasonably foreseeable projects on pages 5-28 and 5-29 includes the TransWest and Gateway South Express transmission lines and the effects of these are included in the analysis.

Page 5-2 of the Northwest Colorado PLUPA/FEIS describes that the geographic scope for the cumulative impact analysis varies by resource and is described within each resource section. Page 5-82 of the Northwest Colorado PLUPA/FEIS states that the cumulative impact analysis area for leasable, locatable, salable, and non-energy leasable minerals is the planning area, the Moab and Vernal Field Offices in eastern Utah, and the Rawlins and Rock Springs Field Offices in southwest Wyoming, regardless of land ownership. This delineation of the impact area is the reason why the other GRSG plan amendments were not included in this analysis. The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Northwest Colorado PLUPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM and Forest Service adequately analyzed cumulative effects in the Northwest Colorado PLUPA/FEIS.

Public Comments

Issue Number: PP-NORTHWESTCO-GRSG-15-01-1

Organization: Rocky Mountain Power (PacifiCorp)

Protestor: R. Jeff Richards

Issue Excerpt Text: Rocky Mountain Power submits the following protest on the Colorado LUPA FEIS as it adversely affects our ability to serve our customers and did not adequately address comments that were submitted previously on the DEIS/LUPA on December 2, 2013.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-19

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: With respect to the Proposed LUPA, Encana submitted extensive and detailed comments on the RDFs listed in Appendix I of the Draft LUPA/DEIS. See Encana Comments at 120-27. BLM, however, did not make any substantive changes to the RDFs between the draft and proposed LUPAs. Compare Proposed LUPA/Final EIS, App. I with

Draft LUPA/Draft EIS, App. I. Additionally, BLM did not acknowledge Encana's comments on the RDFs in the response to comments in Appendix P and did not "[e]xplain[] why the comments do not warrant further response." See 40 CFR § 1503.4(a). Therefore, BLM has not provided the response to comments as required by the CEQ regulation.

Issue Number: PP-NORTHWESTCO-GRSG-15-07-2

Organization: Tri-State Generation and Transmission Association

Protestor: Barbara Walz

Issue Excerpt Text: Tri-State previously submitted a comment regarding the 3% and 5% disturbance limits, requesting further information be made available to the public that outlines the scientific justification and data used to identify this threshold. The FEIS did not provide any additional information on how these thresholds were determined or how they protect GRSG. Other mitigation requirements and land use restrictions are similarly flawed.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-14

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: With respect to the Proposed LUPA, the Trades submitted extensive and detailed comments on the RDFs listed in Appendix I of the Draft LUPA/Draft EIS. See Trade Comments at 49-57. The Agencies, however, did not make any substantive changes to the RDFs between the draft and proposed LUPAs. Compare Proposed LUPA/Final EIS, App. I with Draft LUPA/Draft EIS, App. I. Additionally, the Agencies did not acknowledge the Trades' comments on the RDFs in the response to comments in Appendix P and did not "[e]xplain[] why the comments do not warrant further response." See 40 CFR § 1503.4(a). Therefore, the Agencies have not provided the response to comments as required by the CEQ regulation.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-21

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Similarly, the inclusion of new components in the Proposed LUPA is a violation of the Forest Service's regulations. The Forest Service regulations require the public to be provided an opportunity to meaningfully participate in and comment upon preparation of land use plans. 36 CFR § 219.4(a); 219.5(a)(2)(i); 219.7(c)(1). Because the requirement that mitigation produce a net conservation gain, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses were either not included in or substantially changed from the Draft LUPA,

the Agencies should have prepared and released for comment a supplement to the Draft LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-46

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text:

The Trades protest the RDFs listed in Appendix I of the Proposed LUPA. Although the Trades extensively commented on the RDFs in the Draft LUPA, the Agencies did not adjust any of the RDFs in response to the Trades' comments. Furthermore, as explained in section IV(C), supra, the Agencies did not respond to the Trades' comments as required by 40 CFR § 1503.4(a).

Issue Number: PP-NORTHWESTCO-GRSG-15-20-20

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: None of the alternatives presented in the Draft LUPA included the lek buffer distances. BLM first presented the public with these components when it released the Proposed LUPA. Most troubling is the fact that the lek buffer distances were not incorporated into the Proposed LUPA and Final EIS in response to public comment on the Draft LUPA/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, the lek buffer distances appear to have been added to make the Proposed LUPA consistent with the GRSG provisions in other land use plans.

Summary:

The BLM and Forest Service did not adequately address comments that were received on the Northwest Colorado GRSG PLUPA/FEIS. The BLM received comments on the Required Design Features (RDF, called BMPs in the Draft) but did not make any substantive changes to the RDFs between draft and final and did not explain why the comments do not warrant further response.

The agencies did not respond to comments submitted regarding the disturbance caps and the request for information be made available that explains the justification for these caps. Also, public comments did not result in changes to lek buffer distances in the Proposed LUPA and FEIS.

Response:

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

40 CFR 1503.4: Response to Comments

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (40 CFR 1502.19). The entire document with a new cover sheet shall be filed as the final statement (40 CFR 1506.9).

The LUPA/FEIS addressed public comments, complying with NEPA and other applicable BLM and Forest Service mandates and policies. See Chapter 6, Section 6.5.4 for a detailed description of the comments received during the public comment period, as well as the comment analysis methodology used. The BLM and Forest Service developed a systematic process for responding to comments to ensure all substantive comments were tracked and considered. Upon receipt, each comment letter was assigned an identification number that allowed the BLM and Forest Service to organize, categorize, and respond to comments. Opinions, feelings, and preferences

for one element or one alternative over another, and comments of a personal and/or philosophical nature were all read, analyzed, and considered, but because such comments are not substantive in nature, the BLM and Forest Service did not respond to them. It is also important to note that while all comments were reviewed and considered, comments were not counted as “votes.” The NEPA public comment period is neither considered an election nor does it result in a representative sampling of the population. Therefore, public comments are not appropriate to be used as a democratic decision-making tool or as a scientific sampling mechanism. Chapter 6, Section 6.5.4

Complete responses, including rationale and any associated changes made in the Northwest Colorado GRSG PLUPA/FEIS, can be found in Appendix P, Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement. A brief overview of changes to the document is provided in Chapter 1, Introduction, Section 1.10, Changes between the Draft Land Use Plan Amendment/Environmental Impact Statement and Proposed Land Use Plan Amendment/Final Environmental Impact Statement. Please see Appendix E, Methodology for Calculating Disturbance Caps, for additional details about how the disturbance caps would be calculated.

The BLM and Forest Service have provided adequate opportunity for comments, have considered all comments and responded adequately comments received for the Northwest Colorado GRSG PLUPA/FEIS.

Cooperating, Joint, and Lead Agencies

Issue Number: PP-NORTHWESTCO-GRSG-15-15-11

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: The BLM has failed to adequately consider the Garfield County's Plan in any alternative, including in the “No Action” alternative, and has failed to consider the unique geography and naturally fragmented habitat in Garfield County.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-12

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: The PRMPA clearly imposes duplicative regulatory mechanisms above and beyond state and local regulation and oversight, is inconsistent with local government land use plans and local GRSG

working group plans, all in violation of NEPA and FLPMA. The FEIS fails to resolve these inconsistencies.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-2

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: Mesa County concurs with Garfield County's assertion that coordination has not occurred with local governments per the requirements of NEPA and FLPMA. On page 2-44 of the FEIS, the BLM states that, “During implementation of this LUPA, population trends would be monitored by the Northwest Colorado GRSG Statewide Implementation Team, which would be made up of existing local population GRSG working groups (e.g., Northwest Colorado, Parachute-Piceance-Roan, Middle Park, and North Park),

BLM/Forest Service biologists, and Colorado Parks and wildlife (“CPW”) biologists. This group would meet annually and would evaluate the health of each population and make recommendations to BLM/Forest Service on any changes to fine site management.” This evidences a complete lack of coordination with local governments as is required by NEPA and FLPMA. NEPA: 42 USC 4331(a). FLPMA: 43 USC 1712; see 43 CFR 1610.3-1. Similarly, on page 2-51 of the FEIS, local governments have no formal means to participate in adaptive management other than as stakeholders in the GRSG Conservation Team, comprised of BLM/USFS, FWS, CPW and tribal staff.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-4

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: The BoCC shares the concerns and frustration of our neighboring counties and fellow cooperating agencies with the numerous changes and additions by the BLM to the DRMPA that are present in the PRMPA. Although many areas of the DRMPA were developed with close coordination with local cooperating agencies, the May 4, 2014, cooperator's meeting was the first opportunity to review these new changes, since Mesa County's submittal of comments on the DRMPA in November 2013. The two-week (ten working days) review period Mesa County and other cooperating agencies were afforded was entirely insufficient, unacceptable and unworkable for the cooperating agencies to provide meaningful input. In short, the BLM's changes from the DRMPA that appear in the PRMPA, and the abbreviated review period afforded the

Summary:

cooperating agencies, raises serious questions concerning the integrity of the cooperating agency review process, it violates the trust between the cooperating agencies and the BLM, and it violates the requirements of NEPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-5

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: Federal agencies must consider and rely upon state, regional, and local plans in their consideration of environmental impacts under NEPA. 40 CFR § 1502.21. In this case, the BLM and the USFS should have considered local plans including, Garfield County's Conservation Plan, as its preferred alternative instead of relegating it to simply a reference. Reference to the efforts alone is insufficient under NEPA. 43 CFR § 1610

Issue Number: PP-NORTHWESTCO-GRSG-15-15-6

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: The State of Colorado, through the Department of Natural Resources has also not been properly recognized in its capacity as a cooperating agency. In October of 2013, Governor Hickenlooper called upon the BLM to recognize and rely upon the meaningful local and state conservation measures already in place. Also, the Governor's letter to NW Colorado BLM District Manager, Jim Cagney, dated January 14, 2014, reiterated concerns over provisions being proposed in the EIS, including a lack of sound science to support some of the BLM conclusions.

BLM and the USFS violated NEPA and FLPMA because they did not properly coordinate with local governments. The LUPA fails to achieve consistency with state and local plans and, in places, imposes regulatory mechanisms that duplicate those of state and local plans.

Response:

Coordination and Cooperating Agency Status

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, as Lead Agency, worked 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)).

Federal agencies are directed by the CEQ regulations (40 CFR 1501.2) to consult early “with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.” Under NEPA, the BLM as Lead Agency is encouraged to consider granting cooperating agency status to local governments, resulting in the local government having a more hands on working relationship by contributing their expertise and local knowledge to either the NEPA and/or planning process. As a Cooperating Agency, the Forest Service has worked directly with the BLM to meet coordination and cooperating agency obligations for both agencies.

All cooperating agencies, including local governments, 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 Northwest Colorado LUPA/EIS, and identification of issues and data during scoping and during the Draft Northwest Colorado LUPA/EIS public comment period. The Northwest Colorado GRS/PLUPA/FEIS further describes the participation of cooperating agencies in Chapter 6 (Consultation and Coordination). Review times were developed in order to meet the overall schedule, and notice of upcoming review times were provided when possible. The BLM and USFS properly involved all cooperating agencies in the development of the Northwest Colorado PLUPA/FEIS. BLM appreciates the involvement of local government in the planning effort and will continue to coordinate as appropriate.

Consistency with State and Local Plans

40 CFR 1506.2 states “to better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

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)). Refer to the NFMA

Coordination with State and Local Governments response for a discussion of comparable Forest Service requirements.

Supplemental EIS

Issue Number: PP-NORTHWESTCO-GRSG-15-03-10

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Throughout the coordination and comment process the County has repeatedly brought up issues of scientific methodologies not being transparent, reproducible, and applicable to the unique ecological circumstances of GRSG habitat in Garfield County. The same issues apply here, with the use of hard and soft triggers in the FEIS that are wholly inappropriate to Garfield County. The public has had absolutely no opportunity to comment on these issues until now. Nor has BLM properly considered these concepts in its range of alternatives or analysis. Again, this is a clear violation of NEPA and we urge BLM to either drop the concepts or properly analyze them in a new or supplemental EIS consistent with NEPA and BLM's statutory authority.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-7

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: However, BLM has unlawfully introduced several new issues in the FEIS that were never noticed nor analyzed in the Draft EIS, including but not limited to: 1) hard and soft triggers; 2) focal areas for enhanced protections; 3) the treatment of general habitat as priority habitat; and 4) CPW and FWS veto authority over

waivers or modifications in certain no surface occupancy (“NSO”) areas. Garfield County includes these issues in the scope of its protest. While Garfield County, as a cooperating agency, had a limited opportunity to review and comment on these new issues, the public has had absolutely no opportunity to comment on them until now. Nor has BLM properly considered these concepts in its range of alternatives or analysis. Garfield County believes this is a clear violation of NEPA and urges BLM to either drop the concepts or properly analyze them in a new or supplemental EIS consistent with NEPA and the agencies' statutory authority.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-20

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: BLM's adoption of the Proposed LUPA is a new alternative that requires a supplemental EIS under NEPA. Furthermore, the Proposed LUPA 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, and lek buffer distances, as well as extensive revisions to the monitoring plan and adaptive management discussion. These proposed changes violate both NEPA and FLPMA because they were not included in the Draft LUPA and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-21

Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: The net conservation gain requirement, lek buffer distances, and adaptive anagement triggers and responses were not presented in the Draft LUPA. Although the Draft LUPA acknowl edged that the Proposed LUPA/Final EIS would include more details about the monitoring plan, see Proposed LUPA/Final EIS at J-8, this “placeholder” did not allow the public a meaningful opportunity to comment on the substance of the monitoring pl an. The inclusion of the net conservation gain requirement, 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-NORTHWESTCO-GRSG-15-07-6

Organization: Tri-State Generation and Transmission Association

Protestor: Barbara Walz

Issue Excerpt Text: The LUPA states that, “the BLM will apply the lek buffer distances identified in the U.S. Geological Survey (USGS) Report, Conservation Buffer Distance Estimates for GRSG- A Review (Open File Report 2014-1239) (Manier et al. 2014)”. This report was not included in the DEIS released in November 2013 and was not released to the public until November 2014. The agencies determined this change was within the scope of the EIS and would not require further public comment. Buffer distances will result in impacts to utility operations and maintenance and, therefore,

should have been included in the DEIS for public review and comment.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-10

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The net conservation gain requirement, lek buffer distances, adaptive management triggers and responses, and the expanded mitigation framework were not presented in the Draft LUPA. Although the Draft LUPA acknowledged that the Proposed LUPA/Final EIS would include more details about the monitoring plan, see Proposed LUPA/Final EIS at J-8, this “placeholder” did not allow the public a meaningful opportunity to comment on the substance of the monitoring plan. The inclusion of the net conservation gain requirement, revised monitoring plan, revised mitigation 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-NORTHWESTCO-GRSG-15-12-12

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the management proposed under the Executive Order, together with the Colorado Package, presents another management alternative that the Agencies should consider adopting. Because the Executive Order constitutes

“significant new circumstances,” the Agencies must prepare a Supplemental Draft EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-20

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: BLM’s own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information and 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 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 LUPA, BLM should have prepared and released for comment a supplement to the Draft.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-8

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: None of the alternatives presented in the Draft LUPA included the requirements that mitigation produce a net conservation gain, the revised mitigation strategy, the revised monitoring plan, the lek buffer distances, and the adaptive management triggers and responses. BLM first presented the public with these components when it released the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-9

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Most troubling is the fact that the net conservation gain requirement, the revised monitoring plan, revised mitigation strategy, lek buffer distances, and adaptive management triggers and responses were not incorporated into the Proposed LUPA and Final EIS in response to public comment on the Draft LUPA/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, the Agencies appear to have incorporated the net conservation gain requirement, the revised monitoring plan, and the revised mitigation strategy to respond to national policies by BLM and FWS that were released after the Draft LUPA/Draft EIS was published and that were never formally offered for public comment. See BLM, The GRSG Monitoring Framework (2014); FWS, GRSG Range-Wide Mitigation Framework (2014). Similarly, the lek buffer distances and adaptive management triggers and responses appear to have been added to make the Proposed LUPA 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-NORTHWESTCO-GRSG-15-13-8

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: SWNPC protests substantial changes made between the Draft LUPA and Proposed LUPA without notice and an opportunity for public comment. In particular, SWNPC protests the inclusion of the buffer distances and goal of “net conservation gain” in the Proposed LUPA because they were not included in any of the alternatives analyzed in the Draft EIS. 15 Release of a supplemental Draft EIS would allow both SWNPC and the general public the opportunity to comment on the substantial changes made to the Draft EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-8

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: The BLM has unlawfully introduced several new issues in the FEIS that were never noticed nor analyzed in the DEIS, including but not limited to: 1) hard and soft triggers; 2) focal areas for enhanced protections; 3) the treatment of general habitat as priority habitat; and 4) CPW and FWS veto authority over waivers or modifications in certain no surface occupancy (“NSO”) areas. Cooperating agencies had a very limited opportunity to review and comment on these new issues, and the public has not had any opportunity to comment on these new issues until the current protest period. These concepts are not properly considered in the FEIS range of alternatives or analysis. This is a clear violation of NEPA and the BLM should either drop the concepts or properly analyze them in a new or supplemental EIS consistent with NEPA and the agencies' statutory authority.

Issue Number: PP-NORTHWESTCO-GRSG-15-17-5

Organization: CE Brooks & Associates obo Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: The significant changes in the preferred alternative from the DEIS fall outside the scope of the alternatives considered in the DEIS and require a supplemental EIS with public comment. Vermillion protests the decision of the BLM not to issue a supplement given the major changes and inclusion of information, recommendations, and decisions that were never in the DEIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-10

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The BLM introduced a new management scheme in the 11th hour without review by cooperators or the public. The LUPA admits as much when it states that “the BLM and Forest Service, in cooperation with USFWS and the State of Colorado, have identified appropriate triggers. Triggers would be based on the two key metrics that would be monitored: habitat loss and/or population declines.” LUPA Ch. 2 at pp. 2-44. These “triggers” were never part of the alternatives in the DEIS and their appearance in the FEIS preferred alternative violates NEPA for lack of a supplement that would fully analyze the direct, indirect and cumulative effects of these measures.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-15

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The 2014 USGS Report is, therefore, new information, that

does not support the generic one-size fits all approach in LUPA and the impacts of this information should have been analyzed in a

Supplemental EIS or is otherwise arbitrary and capricious under the APA.

Summary:

BLM and Forest Service must provide a supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations.

- The BLM and Forest Service introduced elements in the FEIS that were not analyzed in the DEIS. Hard and soft triggers, treatment of general habitat as priority habitat, as well as modifications to no surface occupancy waivers are elements introduced in the FEIS which were not analyzed or made available to the public.
- None of the alternatives presented in the Draft LUPA/EIS included the requirements that mitigation produce a net conservation gain, the lek buffer distances identified in the USGS Report, the revised mitigation and monitoring plans, and the adaptive management triggers and responses.

Response:

The agency 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:

- the agency makes substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- the agency adds 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)).

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.

Section 1.10 Changes Between the Draft LUPA/EIS and the PLUPA/FEIS, Pages 1-38-1-41

The NEPA requires agencies to prepare a supplement to the Draft LUPA/EIS if: 1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or 2) if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. A supplement is not necessary if a newly formulated alternative is a minor variation of one of the alternatives and is qualitatively within the spectrum of alternatives analyzed in the Draft LUPA/EIS.

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

Allocations for PHMA and GHMA—Allocations in the Proposed LUPA/Final EIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat (see Appendix H, Guidelines for Implementation).

USGS Buffer Study

The Proposed LUPA includes a management action to incorporate the lek buffer distances identified in the USGS report, 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 EIS, applying these buffers was addressed in the Draft EIS and is qualitatively within the spectrum of alternatives analyzed. Accordingly, the management decision to require analysis of lek buffers for development within certain habitat types is within the range of alternatives analyzed.

The BLM and Forest Service have determined that the Northwest Colorado GRSG PLUPA/FEIS is a variation of Alternative D and that its impacts would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Northwest Colorado GRSG PLUPA/FEIS are similar or identical to those described in the Draft LUPA/EIS.

Allocations for PHMA and GHMA

Allocations in the Northwest Colorado GRSG PLUPA/FEIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat (see Appendix H, Guidelines for Implementation).

The Northwest Colorado GRSG PLUPA/FEIS includes a management action to incorporate the lek buffer distances identified in the USGS report, 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 EIS, applying these buffers was addressed in the Draft EIS and is qualitatively within the spectrum of alternatives analyzed. Accordingly, the management decision to require analysis of lek buffers for development within certain habitat types is within the range of alternatives analyzed. Please see Appendix B for how buffers were calculated and the effects on leks.

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

The Draft EIS outlined the major components of the monitoring strategy and provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A

BLM and Forest Service disturbance and monitoring sub-team further enhanced the two appendices (Appendix E and F) in the Northwest Colorado GRSG PLUPA/FEIS.

The Northwest Colorado GRSG PLUPA/FEIS provides for a net conservation gain standard of mitigation when the BLM and Forest Service authorize activities in PHMA. The net conservation gain strategy is in response to the overall landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal and thereby meeting the Purpose of the LUPA. The BLM and Forest Service will consider such measures in the context of their multiple-use missions and propose to incorporate measures that will help conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. Section 1.2 Purpose and Need, page 1-10.

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-NORTHWESTCO-GRSG-15-03-1

Organization: Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: The FEIS critically relies upon a selective presentation of studies and analyses which are inaccurate, erroneous and based on data that is not available to the public. The FEIS also relies heavily on the unsubstantiated opinions of a few researchers while ignoring other peer-reviewed documents and the best available scientific and commercial data. Garfield County and a large coalition of other interests challenged key BLM, U.S. Fish and Wildlife Service (“FWS”) and U.S. Geological Survey reports relied upon in the FEIS under the DQA. In addition, the FEIS now relies upon Mainer et al. 2014 to justify buffers. But this study, among others cited in the FEIS, fails to meet applicable standards for utility, quality, objectivity, and integrity under the DQA nor the best available scientific or commercial data mandate in the ESA. Mainer et al. 2014 is a selective compilation and interpretation of

other studies. Half of the citations therein were authored by the study's own authors or were edited by them, or authored by other U.S. Geological Survey colleagues. Two of the Manier (et al. 2014) authors were also authors of BLM's flawed National Technical Team (“NTT”) Report. The Manier (et al. 2014) authors recycle much of the same bias as the DQA and ESA issues with Blickely et al. 2012.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-11

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

Protestor: Bret Sumner

Issue Excerpt Text: XTO also protests the Agencies’ failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Colorado LUPA. The Colorado LUPA 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-NORTHWESTCO-GRSG-15-12-49

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The stipulations, restrictions, and conservation measures in the Proposed LUPA are largely based on FWS’s 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-NORTHWESTCO-GRSG-15-12-50

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-51

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report also cites authority misleadingly in a number of cases. NWMA Review at 14. For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15 percent. NTT Report at 26. However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion. NWMA Review at 14. Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. NWMA

Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15 percent canopy cover standard.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-52

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the 3 percent disturbance cap, which has been proposed in the Proposed LUPA. 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 greater 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. Moreover, the Proposed LUPA’s noise restrictions, also recommended by the NTT report, are based upon flawed studies that relied on

unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions. NTT DQA Challenge at 42 –46. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-53

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

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

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-54

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. Applegate & Owens at 287 – 89. In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone. Id. at 289. All pre-2014

literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. The Agencies should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed LUPA, because the NTT Report does not represent the best available science.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-55

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to utilize the best available science, and the Agencies inappropriately relied upon it in the Proposed LUPA. 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., *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 the Agencies should not rely upon any conservation measures derived from them.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-56

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, *Harvest Mgmt. for GRSG: A Changing Paradigm for Game Bird Mgmt.*, in *GRSG: Ecology & Conservation of a Landscape Species & Its Habitats* 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese &

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

Issue Number: PP-NORTHWESTCO-GRSG-15-12-57

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

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-NORTHWESTCO-GRSG-15-12-58

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

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-NORTHWESTCO-GRSG-15-15-1

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: FEIS's lack of scientific evidence and reliance on unproven policy for managing GRSG on federal lands is obvious and glaring. As part of a coalition comprised of counties, and agricultural, mining and energy interests, Mesa County is a signatory to Data Quality Act ("DOA") challenges of the National Technical Team Report, Conservation Objectives Team report, and the USGS Monograph related to GRSG. These challenges document significant discrepancies and the integrity of the science used in the DRMPA and PRMPA. Introduction of new concepts added at the eleventh hour to the RMPA only exacerbates the situation.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-10

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: Further, NEPA requires that the agency take a hard look at the environmental consequences of its actions, which must be based on "accurate scientific information" of "high quality." 40 CFR § 1500.1 (b). NEPA requires the use of high quality data and the disclosure of the methodology underlying proposed decisions, and explicitly requires that an EIS be presented in a way that "the public can readily understand." 40 CFR § 1502.8. Thus, the BLM must rely on relevant scientific studies and data to make its land use plan decisions.

Issue Number: PP-NORTHWESTCO-GRSG-15-17-2

Organization: CE Brooks & Associates
obo Vermillion Ranch
Protestor: Constance Brooks

Issue Excerpt Text: Vermillion protests the LUPA reliance on the National Technical Team Report (NTT) (2011) recommendations for management when the recommendations do not find support in the cited research or are contradicted by other credible data and research. The NTT recommendations also lack sufficient National Environmental Policy Act (NEPA) analysis and suffer from flawed science with regards to several issues of scientific controversy including, but not limited to, 3 percent disturbance cap, LUPA at 2-21, buffer limits, Id. at 2-21, 22, 23, 26, density requirements, Id. at 2-21, 22, 24, 26, habitat restoration/cover objectives, Id. at 2-27-29, and adaptive management triggers. Id. at 2-34. See generally, Table ES-2 at ES-12-14.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-12

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: This restriction goes beyond the research and would include, range re-vegetation, wildlife, haying, as well as road expansion and improvement. None of the studies considered gradations in surface disturbance or the application of a cap. Clearly, the scope of the 3 percent cap is unsupported and over broad.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-59

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding GRSG leks. A recent review of this data showed that regional climatic variations, rather than

anthropogenic threats such as oil and gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014), Attachment 12. Because current data demonstrates that the impacts of anthropogenic disturbances on GRSG populations are lower than previously thought, the buffer restrictions are not supported by current science.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-60

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by GRSG to industrial development contains serious flaws. D.E. Naugle, et al., Energy Development & GRSG, in GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38 (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, A Comprehensive Review of GRSG: Ecology & Conservation of a Landscape Species & its Habitat at 115 (Feb. 2012), Attachment 13. Naugle et al. 2011 also misrepresented the results of

another study to support their claim that GRSG abandon leks due to noise and human activity. Id. at 116. Further, of the seven studies reviewed, four focused on impacts to GRSG in the Pinedale/Jonah Field development area and two focused on coal bed natural gas (CBNG) development in the Powder River Basin. Id. Historical development in these areas is far more intensive and impactful than current development patterns and technologies, and these studies' results cannot serve as a basis for imposing management restrictions on different forms of development. See Applegate & Owens at 287 – 88 (noting that modern forms of development cause fewer impacts than older, more intensive forms of development). Naugle et al. 2011 overall is an inappropriate basis for the lek buffers.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-61

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, Spatial Heterogeneity in Response of Male GRSG Lek Attendance to Energy Development, PLoS One, June 2014). This study, like many similar studies, was based on peak male lek count data. Id. at 2; see also D.H. Johnson, et al., Influences of Env't'l & Anthropogenic Features on GRSG Populations, 1997 – 2007, in Greater Sage-GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011). Peak male lek count data tends to bias lek attendance estimates and therefore leads to inaccurate population trend estimates. Rob R. Ramey, et al.,

Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997 – 2012, at 2 – 3 (Dec. 2014). Mean average lek counts provide a more accurate picture of population trends. See, e.g., id.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-62

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: Further, the Gregory and Beck study results are based on data that do not reflect current development realities. The study's conclusions are based on well density data and lek counts from 1991 through 2011. Gregory & Beck at 4. The period in which GRSG reacted most strongly to increasing well densities, according to the authors, was from 2007 – 2011. Id. However, the authors note that the trend in male lek attendance from 2007 – 2011 was a response to well-pad densities in 2004. Id. at 7. Despite significant changes in oil and gas development patterns and technologies since 2004, the authors extrapolate from these results a prediction that oil and gas development will lead to even greater decreases in lek attendance in the coming years. Id. This prediction assumes that oil and gas development in the future will mirror oil and gas development in the past, an unlikely outcome. In 2004, intensive development was the norm in the Powder River Basin, the Pinedale/Jonah Field, and in most oil and gas developments across the country. See, e.g., Applegate & Owens at 287. As noted earlier in this protest, horizontal and directional drilling permits increased 40-fold in the ten years following 2004, and more intensive, conventional development permits decreased by about half over the same time

period. Applegate & Owens at 287. As Applegate and Owens note, “[a] single horizontal well now takes the place of 8 to 16 vertical wells,” leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity. *Id.* at 288. Gregory and Beck’s study does not account for these changes in oil and gas technology and is an inappropriate basis for imposing buffers on all oil and gas development across GRSG range.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-63

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Other papers important to the USGS Buffer Report’s energy buffers, see USGS Buffer Report at 7, also relied on well density data from the height of Wyoming’s CBNG boom. See, e.g., B.C. Fedy et al., *Habitat Prioritization Across Large Landscapes, Multiple Seasons, & Novel Areas: An Example Using GRSG in Wyoming*, 190 *Wildlife Monographs* 1, 12 (Mar. 2014) (relying on Wyoming well data from 1998 through 2008 to determine effects of various well densities on GRSG); D.H. Johnson, et al., *Influences of Env’tl & Anthropogenic Features on GRSG Populations, 1997 – 2007*, in *Greater Sage-GRSG: Ecology of a Landscape Species & its Habitats*, *Studies in Avian Biology* No. 38, at 407 (S.T. Knick & J.W. Connelly eds., 2011) (relying on data from 1997 through 2007); Kevin E. Doherty, *GRSG Winter Habitat Selection & Energy Development*, 72 *J. of Wildlife Mgmt.* 187, 187 (relying on data from CBNG development in the Powder River Basin). Current development is less intensive than the CBNG development that took place from 1998 through 2008. In effect, the USGS Buffer Report reviewed data from some of

the most intensive developments in the country and extrapolated from these results range wide buffers applicable to future development with significantly different impacts. This data is a weak basis from which to regulate current and future oil and gas development. See Applegate & Owens at 287; Ramey, Brown & Blackgoat at 70.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-3

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: Additionally, the FEIS now relies upon a report from the U.S. Geological Survey (“USGS”) to impose uniform buffer distances for anthropogenic disturbance across the planning area. See USGS Repmt, *Conservation Buffer Distance Estimates for GRSG-A Review: USGS Open File Report 2014-1239* (Mainer et al. 2014), to justify buffers. But this USGS report, among others cited in the FEIS, fails to meet applicable standards for utility, quality, objectivity and integrity under the DQA, nor does it meet the best available scientific or commercial data mandate in the Endangered Species Act. 16 USC § 1533(b)(1).

Issue Number: PP-NORTHWESTCO-GRSG-15-20-2

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA is not aware of any scientific literature suggesting that a prohibition on leasing is more effective than NSO stipulations. In fact, in the Proposed LUPA/FEIS, BLM appears to concede that this measure offers no additional protections beyond a NSO stipulation stating: “One mile around active leks would be managed as closed to

leasing...under the Proposed LUPA; nevertheless, compared with all PHMA... all PHMA would be managed as NSO with very rare exceptions, making the impacts on GRSG or GRSG habitat similar.”

Issue Number: PP-NORTHWESTCO-GRSG-15-10-12

Organization: Mesa County Commission

Protestor: Rose Pugliese

Issue Excerpt Text: However, expansion of existing leases would apparently be permitted by BLM (FEIS at 2-24), to the detriment of GRSG habitat conservation. In addition, new underground coal leasing would also be permitted, with inadequate GRSG protections that allow surface facilities as near as 2 miles from leks. FEIS at 2-24. This contradicts the best available science regarding lek buffers and also is outside the range of acceptable lek buffers outlined by Manier et al. (2014). To provide the requisite certainty of implementation, the federal agencies need to clear up any ambiguity by stating in the final plan that Core Area/Priority Habitats on federal lands and/or minerals, Winter Concentration Areas, and Connectivity Areas are unsuitable for future coal leasing.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-21

Organization: Mesa County Commission

Protestor: Rose Pugliese

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.

Issue Number: PP-NORTHWESTCO-GRSG-15-25-1

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 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 Northwest Colorado PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM Land Use Planning Handbook’s guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and Baseline

Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Northwest Colorado PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances.

Response:

Before beginning the Northwest Colorado PLUPA/FEIS, the BLM and Forest Service considered 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 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 Forest Service work 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 draw from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangewide Conservation of GRSG (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) provides complementary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM and Forest Service 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 and Forest Service consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service, Colorado Department of Natural Resources, and the Colorado Department of Parks and Wildlife, and relied on numerous data sources and scientific literature to support its description of baseline conditions (PLUPA/FEIS, Chapter 3) and impact analysis (PLUPA/FEIS, Chapters 4 and 5). A list of information and literature used is contained in Chapter 7.

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PLUPA/FEIS, Chapters 4 and 5). As a result, the BLM and Forest Service have taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/FEIS to enable the decision maker to make an informed decision. Finally, the BLM and Forest Service have made a reasonable effort to collect and analyze all available data.

On November 21, 2014 the US Geological Survey (USGS) published “Conservation Buffer Distance Estimates for GRS—A Review” (Manier et. al. 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRS populations. The Northeastern Colorado PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the report during NEPA analysis at the implementation stage (PLUPA/FEIS, Appendix B). As stated in this appendix:

Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) may be appropriate for determining activity impacts. The USGS report recognized “that because of variation in populations, habitats, development patterns, social context, and other factors, for a particular disturbance type, there is no single distance that is an appropriate buffer for all populations and habitats across the GRS 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. B-1).

As such, the BLM and Forest Service have 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-NORTHWESTCO-GRSG-15-03-14

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: BLM has unilaterally added the new concept of “focal areas” or “strongholds” where enhanced protections for GRSG may be implemented following top-down direction from agency leadership that purportedly occurred in the fall of 2014. FWS Director Dan Ashe issued his edict to BLM Director and Chief of the USFS to include this new direction in land use plans on October 27, 2014---well after scoping and well after the Draft EIS. The public has had no notice of this new direction nor an opportunity to comment thereon. To the extent focal areas or strongholds could affect the action area, Garfield County urges BLM to properly analyze the issue in a new or supplemental EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-16

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Again, this issue [NSO Exception] was not addressed in the analysis of alternatives in the DEIS and the public has had no opportunity to review or comment on significant departure from existing federal law. Garfield County urges BLM to either drop the concept or properly analyze it in a new or supplemental EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-03-17

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: BLM has made a fundamental shift from the Draft EIS from habitat management to species management and the County and the public have had no opportunity to assess or comment on this new development in contravention of federal law. Contrary to scoping, the FEIS has now incorporated management for a single species rather than land management that benefits habitat. The purpose and need provides for, “incorporat[ing] measures that will help conserve, enhance and/or restore [GRSG] habitat by reducing, eliminating, or minimizing threats to that habitat.”

Issue Number: PP-NORTHWESTCO-GRSG-15-03-8

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Neither Garfield County, nor the public, have had a role in the consideration of hard and soft triggers developed by the BLM in collaboration with CPW. As the FEIS provides, “[T]he BLM and Forest Service, in cooperation with USFWS and the State of Colorado, have identified appropriate triggers. Triggers would be based on the two key metrics that would be monitored: habitat loss and/or population declines.”

Issue Number: PP-NORTHWESTCO-GRSG-15-11-5

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: The LUPA 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 LUPA

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.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-6

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

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

Issue Number: PP-NORTHWESTCO-GRSG-15-11-7

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation,

competitiveness and job creation." BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different LUPA which reflects a management structure substantively and substantially different from the draft released for public review and comment.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-7

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest substantial changes made between the Draft LUPA and Proposed LUPA without notice and an opportunity for public comment. In particular, the Trades protest the unexpected adoption of the wholly new Proposed LUPA rather than one of the alternatives analyzed in the Draft EIS. Although the Agencies maintain that components of the Proposed LUPA were analyzed in other alternatives, the combination of these components in the Proposed LUPA creates a dramatically different alternative that requires notice and public comment. Furthermore, the Proposed LUPA 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, lek buffer distances, and 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 LUPA and because the Agencies did not allow the public an opportunity to meaningfully comment on these provisions.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-14

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: Because BLM introduced many rules in the Proposed LUPA (rather than the Draft LUPA), including the lek buffer distances 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.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-16

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: BLM has not offered the public a meaningful opportunity to review and comment on the mitigation strategy as required by NEPA and FLPMA. See 40 CFR § 150.6.6; 43 CFR § 46.435, 1610.2. Implementation of the mitigation strategy depends on BLM's Regional Mitigation Manual, MS-1794. See Proposed LUPA/Final EIS at G-1. BLM released a draft of the Regional Mitigation Manual in late 2013; however, SWNPC understands BLM has substantially revised its draft yet has not released a revised draft or final manual to the public. Accordingly, SWNPC cannot meaningfully assess the mitigation strategy described in Appendix G, or evaluate the impacts of the strategy on its operations, until BLM also releases its Mitigation Manual.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-1

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The FEIS features a significantly changed and new alternative that adopts a host of new management

prescriptions not seen before, or commented upon and created a whole new alternative not fully analyzed by the cooperators for the public.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-19

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: WSCOGA protests substantial changes made between the Draft LUPA and Proposed LUPA without notice and an opportunity for public comment. In particular, WSCOGA protests the inclusion of the buffer distances and goal of “net conservation gain” in the Proposed LUPA because they were not included in any of the alternatives analyzed in the Draft EIS. Release of a supplemental Draft EIS would allow both WSCOGA and the general public the opportunity to comment on the substantial changes made to the Draft EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-30

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The BLM has not offered the public a meaningful opportunity to review and comment on the mitigation strategy as required by NEPA and FLPMA. See 40 CFR § 150.6.6; 43 CFR § 46.435, 1610.2. Implementation of the mitigation strategy depends on BLM's Regional Mitigation Manual, MS-1794. See Proposed LUPA/Final EIS at G-1. BLM released a draft of the Regional Mitigation Manual in late 2013; however, WSCOGA understands BLM has substantially revised its draft yet has not released a revised draft or final manual to the public. Accordingly, WSCOGA cannot meaningfully assess the

mitigation strategy described in Appendix G, or evaluate the impacts of the strategy on its operations, until BLM also releases its Mitigation Manual.

Issue Number: PP-NORTHWESTCO-GRSG-15-21-3

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The Colorado LUPA states, “the BLM will apply the lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for GRSG- A Review (Open File Report 2014-

1239) (Manier et al. 2014).” This report was not included in the DEIS released on November 2013 and was not release to the public until November 2014. The agencies determined this change was within the scope of the EIS and would not require further public comment. Buffer distances will result in impacts to utility operations and maintenance and the use of the USGS report is a significant change from the DEIS which has not be properly analyzed. In accordance with NEPA, this change from the DEIS should be analyzed and open for public review and comments.

Summary:

The BLM did not sufficiently provide public participation opportunities between the Draft and Final EIS.

- BLM has made changes from the Draft EIS from habitat management to species management and the County and the public have had no opportunity to assess or comment on this new development.
- The BLM has not complied with Executive Order of 1/18/2011 directing agencies toward an open exchange of information with the public.
- The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.
- The NSO exception was not found in the DEIS and the public has not had a chance to see this.
- 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.
- The BLM has not offered the public a meaningful opportunity to review and comment on the mitigation strategy.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings...or advisory mechanisms, or other such procedures as may be necessary to provide

public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

NEPA Handbook H-1790-1, page 101

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

The Northwest Colorado GRSG PLUPA/FEIS includes components of the alternatives analyzed in the Draft LUPA/EIS. Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft LUPA/EIS and are qualitatively within the spectrum of alternatives analyzed. The BLM and Forest Service have determined that the Northwest Colorado GRSG PLUPA/FEIS is a minor variation and that its impacts would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Northwest Colorado GRSG PLUPA/FEIS are similar or identical to those described in the Draft LUPA/EIS. Section 1.10 Changes Between the Draft LUPA/EIS and the PLUPA/FEIS, Pages 1-38-1-41, provides a summary of the changes in the Proposed LUPA. This summary explains where new provisions found in the Northwest Colorado GRSG PLUPA/FEIS 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.

Allocations for PHMA and GHMA—Allocations in the Proposed LUPA/Final EIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat (see Appendix H, Guidelines for Implementation).

The Proposed LUPA includes a management action to incorporate the lek buffer distances identified in the USGS report, 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 EIS, applying these buffers was addressed in the Draft EIS and is qualitatively within the spectrum of alternatives analyzed. Accordingly, the management decision to require analysis of lek buffers for development within certain habitat types is within the range of alternatives analyzed.

The Northwest Colorado GRSG PLUPA/FEIS identifies hard and soft adaptive management triggers for population and habitat and identifies appropriate management responses. Chapter 2 of the Draft EIS identified that the BLM/Forest Service would further develop the adaptive

management approach by identifying hard and soft triggers and responses. All of the adaptive management hard trigger responses were analyzed within the range of alternatives. For example, if a hard trigger is reached in GHMA, and GHMA would be managed as open to saleable minerals in the Proposed LUPA, the response would be to manage it as closed to saleable minerals. This closure was analyzed under Alternative C in the Draft EIS.

The Draft EIS outlined the major components of the monitoring strategy and provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM and Forest Service disturbance and monitoring sub-team further enhanced the two appendices (Appendix E and F) in the Final EIS.

The Northwest Colorado GRSG PLUPA/FEIS provides for a net conservation gain standard of mitigation when the BLM and Forest Service authorize activities in PHMA. The net conservation gain strategy is in response to the overall landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal and thereby meeting the Purpose of the LUPA, The BLM and Forest Service will consider such measures in the context of their multiple-use missions and propose to incorporate measures that will help conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. Section 1.2 Purpose and Need, page 1-10.

As guided by the NEPA Handbook, page 101, changes to the draft EIS directed the need for a full text final EIS to communicate the changes made between Draft and Final. 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.

See Chapter 6, Section 6.5 for a detailed description of the public involvement process followed by the agencies and analysis of the comments received during the public comment period as well as the analysis methodology used.

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

Impacts – GRSG

Issue Number: PP-NORTHWESTCO-GRSG-15-07-3

Organization: Tri-State Generation and Transmission Association

Protestor: Barbara Walz

Issue Excerpt Text: The Final EIS asserts in Table 2.4- Forest Service Proposed LUPA- GRSG-LR-SUA-GL-020 that “In PHMA, outside of existing designated

corridors and ROWs, new transmission lines and pipelines should be buried to limit disturbance to the smallest footprint...” The Forest Service LUPA incorrectly states that burying a high voltage transmission line would result in fewer disturbances to habitat. The EIS and LUPA fail to address the short and long-term habitat and noxious weed related effects of constructing high voltage transmission lines below ground,

and the long-term maintenance impacts that are tied to underground operation. The actual habitat disturbance and potential spread of noxious weeds from undergrounding transmission lines is substantially higher than overhead construction. Reclamation of an underground transmission line will take significantly longer compared to reclaiming impacts from overhead construction.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-25

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-NORTHWESTCO-GRSG-15-14-14

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to analyze whether the GRSG populations in the planning area will be conserved, enhanced, or recovered by the management actions within the plan.

For example, there is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or whether the Colorado GRSG can actually withstand the 3 percent disturbance cap and exemptions proposed in the plan. See e.g. PLUPA/FEIS at 2-15. There is also no finding GRSG will be conserved or recovered while subject to

continued status quo grazing under the delayed implementation scheme for grazing provisions that is inherent in the plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-15

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

Issue Number: PP-NORTHWESTCO-GRSG-15-14-8

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The Forest Service provision addressing potential closure of allotments as opportunities arise alternatively encourages the establishment of forage reserves, GRSG-LG-GL-036-Guideline, and the BLM plan permits the creation of “reserve common allotments,” PLUPA/FEIS at 2-20, but the plan amendment neither provides management direction for these nor does the FEIS analyze the impacts of designating and using forage reserves on GRSG and their habitats. If forage reserves are established within GRSG habitat, the recovery from the absence of perennial livestock grazing can quickly be undone by a single-season of active grazing use. The PLUPA/FEIS should rather have specified that forage reserves will be created for GRSG forage (e.g. allotments closed to domestic livestock), thus actually helping to conserve, protect, and recover the species.

Issue Number: PP-NORTHWESTCO-GRSG-15-25-5

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: The plan fails to address in any detail how climate change will interact with other factors to affect GRSG. It generally describes how climate change will impact habitat: “[c]limate change could cause an increase or decrease in temperatures and precipitation, which

would affect soil conditions, vegetative health, and water flows and temperature. Such changes would alter habitat conditions, potentially creating conditions that could favor certain species or communities, weeds, or pests” (5-12); and acknowledges that “[s]ensitive species such as [sage-grass], which are already stressed by declining habitat, increased development, and other factors, could experience additional pressures as a result of climate change” (5-29).

Summary:

The Northwest Colorado GRSG PLUPA/FEIS fails to adequately analyze impacts to GRSG because:

- the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;
- the plan fails to analyze whether GRSG populations will be conserved, enhanced, or recovered with current grazing or delayed implementation scheme for grazing. There is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions;
- the Forest Service Proposed LUPA and EIS fail to address the short and long-term habitat and noxious weed related effects of burying high voltage transmission lines;
- the plan amendment does not provide direction for forage reserves nor analyze the impact of designing forage reserves on GRSG and their habitats; and
- the plan fails to address in any detail how climate change will interact with other factors to affect GRSG.

Response:

A land planning-level decision is broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The effectiveness of these decisions on changes GRSG populations will be evaluated based on criteria in the monitoring plan see Appendix F of the Northwest Colorado GRSG PLUPA/FEIS.

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling) This analysis focuses on the direct, indirect, and cumulative impacts that could potentially result for the on-the ground changes.

In Chapter 4 of the of the Northwest Colorado GRSG PLUPA/FEIS 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.

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.

The complete text of GRSG-LR-SUA-GL-020 states, “In PHMA, outside of existing designated corridors and ROWs, new transmission lines and pipelines should be buried to limit disturbance to the smallest footprint unless explicit rationale is provided that the biological impacts to GRSG are being avoided. If new transmission lines and pipelines are not buried, locate them adjacent to existing transmission lines and pipelines. New communication tower sites may be authorized for public safety.” In addition, standard GRSG-LR-SUA-ST-018 states, “In PHMA and GHMA, only allow new authorized land uses if the residual impacts to greater sage-grouse or their habitats are fully offset by compensatory mitigation projects that provide a net conservation gain to the species, subject to valid existing rights, which will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Any compensatory mitigation will be durable, timely, and in addition to what would have resulted without the compensatory mitigation as addressed in the Mitigation Framework (Appendix B).” These standards and guidelines recognize that the site specific impacts of the mitigation measures must be addressed when projects are proposed and analyzed and that they may need to be modified.

The Northwest Colorado GRSG PLUPA/FEIS (Chapter 4) discusses address general impacts as well as noxious weeds impacts that could result from surface disturbing activities such as land clearing, grading, and construction of roads, well pads, and other facilities. The PRMP/FEIS includes analysis of livestock grazing (which includes reserve allotments) on GRSG and their habitats. The designation and management criteria for future Reserve allotments are implementation planning level decisions to be made based on needs and resource objectives. Grazing use guidelines would be applied in each of the seasonal GRSG habitats, and other grazing guidelines would focus on protecting areas within 1.2 miles of active leks (regardless of which type of habitat the lek is in).

The FEIS in conjunction with the Biological Evaluation disclose the effects on GRSG of the various alternatives on Forest Service lands. As indicated in the Biological Evaluation (Appendix M, page 51), under the Proposed Plan, implementation of conservation measures would likely reduce but not eliminate direct and indirect effects on GRSG or their habitats. Therefore the determination for the Proposed Plan Amendments “may adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend toward federal listing” for GRSG.

The Biological Evaluation supporting this determination is based on the scientific understanding of threats and conservation measures (e.g. the COT report and NTT), long- and short-term

population trends (Garton 2011 and Garton 2015) along with local information for each National Forest, and the direction in the proposed plan amendments.

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 Forest Service also has internal guidance (Climate Change Considerations in Land Management Plan Revisions January 20, 2010) to use the best available science on climate change that is relevant to the planning unit and the issues being considered in planning. Forest Service guidance goes on to state, “The affected environment section of the EIS is a good place for a basic description of the influence of climate change on the planning unit. This discussion establishes the current climatic baseline, describes predicted changes, and the uncertainty associated with the predicted changes.” The BLM and Forest Service applied this direction to the preparation of RMP revisions and amendments, as indicated in Chapter 3, Section 3.18 (Climate Change), as well as in Chapter 4, Section 4.19 (Climate Change) of the Northwest Colorado GRSG PLUPA/FEIS.

As indicated in the Chapter 4 discussion of environmental consequences (page 4-469), “The Colorado Plateau Rapid Ecological Assessment Report (Bryce et al. 2012) indicated that under climate change scenarios, intermountain basins big sagebrush plant communities were at a relatively high risk of being impacted. A loss of sagebrush communities due to climate change would directly impact GRSG. Compounding this issue is that the planning area is at the southern edge of the range for GRSG, and species at the edge of their range are typically at a higher risk. If plant communities shift north in latitude, it is possible that local populations of GRSG could be extirpated by the end of the century due to habitat loss attributed to climate change.”

The BLM and Forest Service complied with Secretarial Order 3289 and Forest Service guidance in developing the Northwest Colorado GRSG PLUPA/FEIS.

Impacts – Noise

Issue Number: PP-NORTHWESTCO-GRSG-15-10-18

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This failing has been incorporated by the BLM in its plan revision by specifying that noise limits will be measured at the periphery 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 Required Design Features provide, “Limit noise to less than 10 decibels above ambient measures (20-24 dBA) at sunrise at the perimeter of a lek during active lek season.” FEIS at I-9. BLM proposes this limit of 10 dBA above ambient as measured at perimeter of the lek, with no ambient noise level defined as 20-24 dBA in the plan. Id. 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 perimeter, BLM fails to adequately protect nesting habitats,

wintering habitats, and brood-rearing habitats from significant noise impacts. This must be rectified. The Forest Service specifies a slightly different noise standard, restricting “noise at 10dB above ambient (not to exceed 20-24 dB) measured at the perimeter of an occupied lek, to lekking birds from 6 pm to 9 am within a buffer distance of 3.1 miles.” FEIS at 2-33. This direction appears stronger than BLM

direction, but still requires further adjustments to clarify the language and/or tighten the standard. First off, the noise restriction should apply round-the-clock during sensitive seasons, not just in early morning, as the best available science indicates that noise can disturb GRSG and disrupt behavior and habitat use at all times of day.

Summary:

The Northwest Colorado GRSG PLUPA/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.

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 and Forest Service 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 and Forest Service are required to take a “hard look” at potential environmental impacts of adopting the Northwest Colorado GRSG Amendment/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 and Forest Service are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the agencies are not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Northwest Colorado GRSG PLUPA/FEIS used the best available research information for setting the noise limits and buffer distance from leks. The FEIS discusses impacts from noise throughout Chapter 4 for each resource. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the FEIS, coupled with the mitigation of those activities and the goal of a net conservation gain. (FEIS Chapter 4). Many studies assessing impacts of energy development on GRSG have found negative effects on populations and habitats (Blickley et al. 2012, Holloran 2005, Manier et al. 2013). Walker et al. (2007) found that up to one mile buffers result in an estimated lek persistence of approximately 30 percent, while lek persistence in areas without oil and gas development averaged 85 percent. Holloran (2005) found impacts on abundance at between 3 and 4 miles. Coates et al. (2013) recommended a minimum buffer of 3 miles to protect GRSG from energy development impacts. The USGS recently published a scientific review of conservation buffer distances for GRSG protection from different types of human disturbance (USGS 2014a).

In Chapter 4, beginning on page 4-90, Section 4.5.2, the FEIS discusses impacts to special status species, specifically noise impacts to GRSG. The section lists several references used in the analysis for the section and refers to Appendix B for more information. In Appendix B, Buffer Distances and Evaluation of Impacts on Lek are discussed. In addition to any other relevant information determined to be appropriate (e.g., state wildlife agency plans), the BLM will assess and address impacts from the activities identified in Appendix B, using the lek buffer distances as identified in the United States Geological Survey's (USGS) report, Conservation buffer distance estimates for GRSG—A review (Open File Report 2014-1239) (Manier et al. 2014). The BLM will apply the lek buffer distances specified as the lower end of the interpreted range in the report unless justifiable departures are determined to be appropriate. (FEIS, Appendix B). In Chapter 4, Section 4.9, page 4-256, noise limits are also discussed and analyzed under Minerals.

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 Northwest Colorado GRSG Amendment/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Northwest Colorado GRSG PLUPA/FEIS planning effort.

The Northwest Colorado GRSG PLUPA/FEIS includes a bibliography and reference section located in Chapter 7, page 7-1 of the FEIS, which lists information considered by the BLM in preparation of the Northwest Colorado GRSG PLUPA/FEIS planning effort.

The BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences/impacts to noise limits and buffers to leks in the Northwest Colorado GRSG PLUPA/FEIS.

Impacts – Oil and Gas

Issue Number: PP-NORTHWESTCO-GRSG-15-12-15

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed LUPA's leasing and development restrictions on oil and gas development. The Proposed LUPA discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 1.57 million acres of lands, prohibits occupancy within one mile of leks on existing leases, limits activities within four miles of leks for more than a third of a year, and limits disturbance and density with PHMA. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA that cannot be waived or modified, and limits on activities within four miles of leks for more than a third of a year 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-NORTHWESTCO-GRSG-15-12-16

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the Final EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a "net conservation gain." Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework. The Agencies must examine whether adequate mitigation opportunities exist in the planning area, such as through conservation easements or restoration activities. This analysis is particularly important because the Service 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. The Agencies cannot condition permits on a requirement that land users cannot fulfill due to lack of mitigation. Accordingly, the Agencies must analyze the availability of compensatory mitigation in the Final EIS.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-17

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the Agencies have not adequately analyzed the impacts

right-of-way avoidance and exclusion areas will have upon existing oil and gas leases. The Proposed LUPA would designate 1.57 million acres as right-of-way avoidance areas and 24,200 acres as right-of-way exclusion areas. At the same time, the Proposed LUPA states that more than a million acres of public and National Forest System lands in the planning area are currently under lease for oil and gas. Proposed LUPA/Final at 3-125. 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.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-22

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Final EIS also does not adequately analyze the aggregated impacts of the Proposed LUPA's leasing and development restrictions on oil and gas development. Rather, the Final EIS takes a piecemeal approach, separately examining the impacts of travel management, reduced leasing, reduced access to new or existing leases, and decreased efficiency of oil and gas development. 4-234 - 4-266. It does not, however, analyze the cumulative or aggregated effect of these measures on oil and gas development. At best, the Final EIS qualitatively compares the impacts of the

Summary:

The Northwest Colorado GRSG PLUPA/FEIS does not adequately analyze the impacts of the Proposed LUPA on oil and gas development. Additionally, the Northwest Colorado GRSG Proposed LUPA/FEIS does not analyze the availability of compensatory mitigation within the planning area.

Response:

Impacts Analysis

alternatives to one another; for example, BLM concluded that the Proposed LUPA would have greater impacts to oil and gas development than under Alternatives A and D but less impacts than Alternatives B and C. This comparison does little to inform the public of the aggregated impacts of BLM's management on leasing and development in the Planning Area.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-23

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Proposed LUPA discourages development on existing leases within buffer distances, discourages issuance of rights-of-way across 1.57 million acres of lands, prohibits occupancy within one mile of leks on existing leases, limits activities within four miles of leks for more than a third of a year, and limits disturbance and density with PHMA. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in PHMA that cannot be waived or modified, and limits on activities within four miles of leks for more than a third of a year 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.

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 and FS 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 Northwest Colorado GRSG Proposed LUPA/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 Northwest Colorado GRSG Proposed LUPA/FEIS.

Section 4.9.1 of the FEIS provides baseline, general impacts on fluid leasable minerals. A detailed impacts analysis of the Proposed LUPA on fluid minerals begins on p. 4-234 and is organized by the nature of management action (e.g. land and realty management) and its particular impact on oil and gas development (e.g. reduced access to new or existing oil and gas leases) . For example, in regards to impacts from travel management on fluid minerals, impacts of the proposed plan are anticipated to be similar to those of Alternative D. “This alternative is less restrictive than Alternatives B and C in that no consideration would be given to permanent closures, and road realignments and upgrades would be less severely constrained; therefore, it is unlikely that travel management would result in a de facto closure to future leasing under Alternative D,” (p. 4-237).

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

Net Conservation Gain – Compensatory Mitigation

Post-ROD procedures and timeframes for establishing a Regional Mitigation Strategy are described in Chapter 2 and Appendix G of the Proposed LUPA/FEIS. As stated, a Regional Mitigation Strategy will be developed “to inform the mitigation components of NEPA analyses for BLM/Forest Service management actions and third-party actions that result in habitat loss and degradation. The Regional Mitigation Strategy will be developed within one year of the issuance of the Record of Decision on this EIS. The BLM’s Regional Mitigation Manual MS-1794 will serve as a framework for developing the Regional Mitigation Strategy,” (p. 2-51). The Regional Mitigation Strategy should provide further mitigation guidance on avoidance, minimization, and compensation, and include, as part of compensation, “discussion of impact/project valuation, compensatory mitigation options, siting, compensatory project types and costs, monitoring, reporting, and funds administration,” (Appendix G, p. G-2).

Impacts – Socioeconomics

Issue Number: PP-NORTHWESTCO-GRSG-15-05-2

Organization: Off-Road Business Association

Protestor: Scott Jones

Issue Excerpt Text: Dispersed motorized recreation contributes almost \$1 billion a year to the Colorado economy. Recreational usage of public lands is a significant portion of the Colorado economy, especially in the smaller mountain communities which have already lost more traditional sources of revenue, such as timber, farming and mining. In 2012, COHVCO commissioned an economic impact study to determine the economic impacts of OHV recreation on the Colorado economy. A copy of this economic impact study is attached for your reference. This study found that almost 1,000,000,000 dollars of positive economic contribution and 10,000 jobs resulted from OHV recreation to the State economy. Over \$827,000,000 of this economic impact and almost 4,887 jobs result from motorized recreation in the Colorado areas proposed to be designated as habitat. In addition to this direct positive economic impact to Colorado communities, OHV recreation accounted for over \$22 million in tax revenue to state and local municipalities.³⁰ These are tax revenues that motorized recreational users of the forest pay with little objection to obtain the benefits of their sport, and are used to address a wide range of needs for the local municipal government. Given current economic conditions, our Organizations believe these positive economic impact numbers must be meaningfully addressed in all government activities.

Issue Number: PP-NORTHWESTCO-GRSG-15-05-3

Organization: Off-Road Business Association

Protestor: Scott Jones

Issue Excerpt Text: Colorado Parks and Wildlife identifies the significant positive impacts to the Colorado economy from hunting and fishing in GRSG habitat areas. In 2008, Colorado Parks and Wildlife commissioned a study to determine the economic contributions to the Colorado economy from hunting and fishing. A discussion of these impacts is provided as a part of these comments in order to allow for full understanding and analysis of the significant impacts that are associated with the dispersed trail network in the areas to be designated as habitat. Closures of dispersed trail networks are frequently of significant concern to those who use the dispersed trail networks for hunting and fishing activities. The CPW report identified that hunting and fishing provided over \$1.8 billion to the Colorado economy in 2008. For many hunters and fisherman, motorized access on the dispersed trail network is a key component of their hunting and fishing experience as the average hunter does not have access to teams of horses to remove elk from inaccessible areas or days to hike into their local fishing area. These access related expenditures are encompassed in the CPW economic impact calculation as analysis includes expenditures for trucks, campers, recreational vehicles, boats and other motorized equipment. Access related expenditures that can only be fully utilized for hunting and fishing with the existence of a dispersed trail network. The CPW analysis also identified spending on hunting and fishing in the Colorado counties that are impacted by designations of habitat as follows: ORBA believe that economic impacts from possible reductions in hunting

and fishing activity in areas to be designated as habitat must also be accounted for in the development of management standards for the habitat. As clearly identified by CPW, these economic contributions are significant and access is a key component of the hunting and fishing experience for most users. Management clarity and consistency of analysis of impacts is a critical portion of any analysis of management alternatives. These simply have not been discussed in the Plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-06-2

Organization: COHVCO / Trails Preservation Alliance

Protestor: Scott Jones

Issue Excerpt Text: Dispersed motorized recreation contributes almost \$1 billion a year to the Colorado economy. Recreational usage of public lands is a significant portion of the Colorado economy, especially in the smaller mountain communities which have already lost more traditional sources of revenue, such as timber, farming and mining. In 2012, COHVCO commissioned an economic impact study to determine the economic impacts of OHV recreation on the Colorado economy. A copy of this economic impact study is attached for your reference. This study found that almost 1,000,000,000 dollars of positive economic contribution and 10,000 jobs resulted from OHV recreation to the State economy. Direct Impact NWCO SWCO Cntrl CO NCCO East CO: Direct sales \$28,290,700 \$77,828,161 \$101,974,816 \$49,225,045 \$14,458,423 Jobs 332 1,100 1,297 639 184 labor Income \$13,579,699 \$30,274,949 \$45,595,139 \$21,241,172 \$6,445,483 Value added or \$17,062,037 \$40,246,751 \$57,673,570 \$27,495,641 \$8,264,186

GRP

State and Local tax \$1,422,904 \$4,515,047 \$5,417,621 \$2,679,690 \$803,708

Federal tax \$274,985 \$781,945 \$837,600 \$528,728 \$112,494

Other Activity

Indirect Sales 15,029,394 \$51,820,687

\$55,614,367 \$18,889,621 \$13,935,630

Jobs 128 463 463 181 100 labor Income

\$4,623,048 \$15,453,087 \$17,559,193

\$4,725,241 \$4,865,225

Other Prop \$9,190,579 \$30,021,789

\$33,618,200 \$10,555,900 \$8,337,045

Income

State and Local tax \$757,059 \$2,523,671

\$2,539,796 \$873,167 \$592,312

Federal Tax \$146,306 \$401,852 \$392,669

\$172,284 \$82,905

Total Activity

Sales \$43,320,094 \$129,648,848

\$157,589,184 \$68,114,666 \$28,394,053

Jobs 460 1,564 1,760 819 284 27 COHVCO

Economic Contribution Study of Off Highway Vehicle Use in Colorado - 2012;

Lewis Burger Group; pg 15. Over

\$827,000,000 of this economic impact and

almost 4,887 jobs result from motorized

recreation in the Colorado areas proposed to

be designated as habitat. In addition to this

direct positive economic impact to Colorado

communities, OHV recreation accounted for

over \$22 million in tax revenue to state and

local municipalities. These are tax revenues

that motorized recreational users of the

forest pay with little objection to obtain the

benefits of their sport, and are used to

address a wide range of needs for the local

municipal government. Given current

economic conditions, our Organizations

believe these positive economic impact

numbers must be meaningfully addressed in

all government activities.

Issue Number: PP-NORTHWESTCO-GRSG-15-06-3

Organization: COHVCO / Trails Preservation Alliance
Protestor: Scott Jones

Issue Excerpt Text: Colorado Parks and Wildlife identifies the significant positive impacts to the Colorado economy from hunting and fishing in GRSG habitat areas. In 2008, Colorado Parks and Wildlife commissioned a study to determine the economic contributions to the Colorado economy from hunting and fishing. A discussion of these impacts is provided as a part of these comments in order to allow for full understanding and analysis of the significant impacts that are associated with the dispersed trail network in the areas to be designated as habitat. Closures of dispersed trail networks are frequently of significant concern to those who use the dispersed trail networks for hunting and fishing activities. The CPW report identified that hunting and fishing provided over \$1.8 billion to the Colorado economy in 2008. For many hunters and fisherman, motorized access on the dispersed trail network is a key component of their hunting and fishing experience as the average hunter does not have access to teams of horses to remove elk from inaccessible areas or days to hike into their local fishing area. These access related expenditures are encompassed in the CPW economic impact calculation as analysis includes expenditures for trucks, campers, recreational vehicles, boats and other motorized equipment. Access related expenditures that can only be fully utilized for hunting and fishing with the existence of a dispersed trail network. The CPW analysis also identified spending on hunting and fishing in the Colorado counties that are impacted by designations of habitat as follows: The Organizations believe that economic impacts from possible reductions in hunting and fishing activity in areas to be designated as habitat must also be accounted

for in the development of management standards for the habitat. As clearly identified by CPW, these economic contributions are significant and access is a key component of the hunting and fishing experience for most users. Management clarity and consistency of analysis of impacts is a critical portion of any analysis of management alternatives. These simply have not been discussed in the Plan.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-64

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: The only rationale and justification given for this broad-scale exemption for the TransWest and similar transmission projects is that the projects have been identified by the President as being high priority renewable projects for jobs and for electric transmission infrastructure. Yet, other than this single conclusory statement, the LUPA and FEIS do not provide any supporting documentation, data, or analysis to justify this disparate treatment or the allowance of these large-scale significant impacts within GRSG habitat. The LUPA/FEIS does not identify, let alone analyze, the number of jobs that would be created for construction of these projects, or the number of long-term jobs that would result after construction of the transmission line

Issue Number: PP-NORTHWESTCO-GRSG-15-18-9

Organization: Moffat County Commission
Protestor: Chuck Grobe

Issue Excerpt Text: In 2011 dollars, the BLM estimates that the LUPA would have decreased economic output by at least \$240,508,051 and at most, \$584,026,546.

LUPA at 4-599, Table 4.22. Moffat County disagreed with this economic analysis since GRSG habitat north of Craig is estimated to contain 72,600 Billion Cubic Feet (BCF) of natural gas which would yield an estimated \$254 billion and \$22 billion in tax revenue. Attach. 3 at 6.6 Put simply, under the LUPA, one GRSG, of the estimated 7,000 birds in Moffat County would “cost” approximately \$41,400,000. Id. In the face

of these massive economic figures, the BLM should have analyzed the value of allowing, at the least, an NSO stipulation instead of a blanket prohibition against leasing. The BLM's analysis, therefore, requires Moffat County and the public to guess BLM's logic in choosing the preferred alternative.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS failed to consider and analyze positive economic impact numbers and available studies documenting the economic benefits of recreational usage (hunting, fishing, motorized, etc.) including dispersed recreation of public lands in Colorado which contributes billions of dollars a year to the Colorado economy. This includes increased jobs from motorized recreation. The Northwest Colorado GRSG PLUPA/FEIS fails to analyze the number of jobs that would be created for construction of large scale high priority renewable energy projects, or the number of long-term jobs that would result after construction of the transmission line. The LUPA/FEIS failed to rely on accurate figures for the economic impact of restrictions on natural gas leasing, and to analyze a NSO stipulation verse a prohibition against leasing.

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 agencies are required to take a “hard look” at potential environmental impacts of adopting the Northwest Colorado GRSG PLUPA/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 and Forest Service Handbook 1909.15 Chapters 10 and 20). 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.

The Northwest Colorado GRSG PLUPA/FEIS discusses the affected environment of the planning area in Volume I, Chapter 3, Section 3.241, pages 3-247 to 3-283. The Northwest Colorado GRSG PLUPA/FEIS analyzes the socioeconomics of the planning area in Volume II, Chapter 4, Section 4.25, pages 4-585 to 4-619 and Volume III, Chapter 5, Section 5.22 pages 5-97 to 5-103. The Northwest Colorado GRSG PLUPA/FEIS describes the methods, tools, and assumptions used to evaluate the socioeconomic resources for the planning area. Socioeconomics Data and Methodology is located in Volume IV, Appendix N of the EIS. Appendix N describes the methods and data that underlie the economic impact modeling analysis. The Impact Analysis for Planning (IMPLAN) model, an economic impact analysis model, provides a quantitative representation of the production relationships between individual economic sectors. The economic modeling analysis uses information about physical production quantities and the prices and costs for goods and services. The IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region's economy. The inputs required to run the IMPLAN model are described in narratives and tables in the appendix. The resulting estimates from the IMPLAN model, by alternative, are in Chapter 4, Environmental Consequences, Section 4.24, Social and Economic Conditions. On pages N-14 to N-18 of Appendix N, there is a detail discussion of public land recreation values and how the information was used for analysis in the FEIS. (FEIS, Appendix N).

The TransWest Project is specifically addressed in the FEIS on page 4-184, where it states, "The BLM is processing the applications for the TransWest and Energy Gateway South high-voltage transmission lines, which include alternatives through this avoidance area/GRSG habitat. The BLM is analyzing conservation measures for GRSG as part of the review process." The TransWest and Energy Gateway South Transmission Lines are analyzed in detail in Chapter 5 (Cumulative Effects) (Section 5.4.5). Chapter 4, Section 4.6.2, Lands and Realty, Methodology and Assumptions, it states, "Renewable energy would continue to be a possible interest in the area and could increase in the future, based on site suitability; applications for development would be considered as they are proposed, on a case-by-case basis" (FEIS, Chapter 4, page 4-180.).

No surface occupancy (NSO) stipulations were considered in the alternatives and are specifically discussed under Alternative D, Chapter 4, Section 4.3 of the FEIS.

By using IMPLAN, the Northwest Colorado GRSG PLUPA/FEIS complied with NEPA by considering and including the economic impacts resulting from recreational activities in the planning area, potential jobs from renewable energy projects, and used the best available references and resources regarding the value of natural gas leasing to support conclusions in the FEIS. References for the Northwest Colorado GRSG PLUPA/FEIS are found in Volume III, Chapter 7, References.

The agencies complied with NEPA's requirement to consider and analyze the environmental consequences/impacts to socioeconomics in the Northwest Colorado GRSG PLUPA/FEIS.

Impacts – Grazing

Issue Number: PP-NORTHWESTCO-GRSG-15-10-26

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This method fails NEPA’s scientific integrity and ‘hard look’ requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-16

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: We protest the failure to examine the role of grazing in causing and contributing to establishment and spread of invasive plant species and perpetuating altered fire cycles in sagebrush steppe. According to a recent WAFWA report on invasive plants in GRSG habitat, livestock grazing has played a significant role in the establishment and spread of cheatgrass and

other non- native species, confirming other studies that came to the same conclusions (e.g. Reisner et al. 2013). The lack of actions that address the role of grazing in this process reflects the failure by BLM to consider an important aspect of the problem. It is well documented in the scientific literature that grazing depletes soil crusts, allowing establishment of invasive annual grasses like cheatgrass, which lead to more frequent fires.

Issue Number: PP-NORTHWESTCO-GRSG-15-17-1

Organization: CE Brooks & Associates
obo Vermillion Ranch

Protestor: Constance Brooks

Issue Excerpt Text: Vermillion protests the LUPA provisions that will require livestock grazing reductions by virtue of the habitat management objectives, restrictions on range improvements, while failing to address the documented adverse impacts of wild horses.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS failed to take a “hard look” and examine the role of grazing in causing and contributing to establishment and spread of invasive plant species and perpetuating altered fire cycles in sagebrush steppe.

The Northwest Colorado GRSG PLUPA/FEIS failed to analyze the adverse impact of wild horses.

Response:

- 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 Northwest Colorado GRSG PLUPA/FEIS fully considered and disclosed the environmental consequences of livestock grazing on upland plant communities and cheatgrass (and other invasive species) in Section 4.7 Vegetation (Forest, Rangelands, Riparian and Wetlands, and Noxious Weeds) (p. 4-188 to 4-210), Section 4.8 Wildland Fire and Fire Ecology (p. 4-211 to 4-231) and Section 4.27 Unavoidable Adverse Impacts (p. 4-621 to 4-623), in the Cumulative Effects Analysis in Section 5.7 Vegetation (Forest, Rangelands, Riparian and Wetlands and Noxious Weeds) and Section 5.8 Wildland Fire and Fire Ecology (p. 5-80 to 5-82).

The Northwest Colorado GRSG PLUPA/FEIS presented the decision makers 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 Northwest Colorado GRSG PLUPA/FEIS has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

- 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 Northwest Colorado GRSG PLUPA/FEIS fully considered and disclosed the environmental consequences of wild horses in Section 4.7 Vegetation (Forest, Rangelands, Riparian and Wetlands, and Noxious Weeds) (p. 4-188 to 4-210), specifically in 4.7.3 Direct and Indirect Impacts on Vegetation - Impacts of Wild Horse Management on Vegetation (p. 4-199 to 4-200), Section 4.15 Wild Horse Management (p. 4-354 to 4-375) and Section 4.27 Unavoidable Adverse Impacts (p. 4-621 to 4-623).

The Northwest Colorado GRSG PLUPA/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 Northwest Colorado GRSG PLUPA/FEIS has adequately analyzed and disclosed the

impacts of wild horses.

Impacts – Other

Issue Number: PP-NORTHWESTCO-GRSG-15-10-24

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

Issue Number: PP-NORTHWESTCO-GRSG-15-21-2

Summary:

The FEIS violated NEPA by failing to take a ‘hard look’ at the effectiveness of proposed mitigation measures; the impact analysis of cheatgrass invasion in determining patterns of rangeland fire; and the impacts of removing guy wires.

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 Northwest Colorado Amendment/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 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

Organization: Avian Power Line Interaction Committee

Protestor: Mike Best

Issue Excerpt Text: The impacts of removing guy wires have not been analyzed in the LUPA FEIS. Guy wires cannot simply be removed without altering the stability, integrity, and safety of the line. The removal of guy wires would result in the need for taller, more robust self-supporting structures, and potentially more surface disturbance.

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground, site specific planning decision or actions, 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 FEIS discusses impacts from cheatgrass on patterns of rangeland fire under each of the alternatives and specifically under the Proposed Plan under Wildland Fire Management. The plan discusses the interconnected nature of grazing, cheatgrass, and wildfire on p. 4-198:

“Livestock grazing affects the various components of a plant community differently. The timing, intensity, and duration and the class of livestock can result in different changes. The control of these variables is important in ensuring that vegetation management goals are met. As an example, heavy, repeated cattle grazing during the growing season can reduce the abundance and cover of native bunchgrasses, which can increase undesirable annual grasses. Cheatgrass, in particular, can become very abundant, inhibiting the recruitment of native herbaceous species. Eventually it would alter fire intervals in sagebrush communities, resulting in a completely new, self-sustaining community. Vital to maintaining healthy and diverse plant communities is ensuring that the variables governing grazing practices favor minimal adverse changes in frequency and abundance of the herbaceous component of sagebrush communities”. And evaluates the effects of Grazing, Vegetation and Fuel Management, and Wildfire Suppression on vegetation and concludes, in general, that “A greater acreage of sagebrush may be burned [under the no Action Alternative]...since it is the least restrictive on wildland fire management. As a result, a greater loss of vegetation could occur under Alternative A, which could increase sediment loads, water temperatures in riparian areas, and algae levels in areas that have been burned and experienced heavy vegetation loss” (FEIS, p. 4-206).

Section 4.5.2 of the Northwest Colorado GRSG PLUPA/FEIS discusses impacts to GRSG. Specifically pages 4-79 through 4-84 discuss how ROWs and energy infrastructure impact habitat and mortality. Removal of guy wires from existing infrastructure was not specifically analyzed in the Northwest Colorado GRSG PLUPA/FEIS, however upon renewal of existing authorizations or new proposed facilities, new site specific NEPA analysis would be conducted and the placement of guy wires would be assessed at that time. The Required Design Features for Lands and Realty located in Appendix I would apply to renewals and new proposed projects.

GRSG - General

Issue Number: PP-NORTHWESTCO-GRSG-15-03-12

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: It is arbitrary and capricious for the FEIS to use population triggers for one management zone and apply these to populations in another management zone: the BLM cannot cite any empirical data that links the demography of the PPR population with that of the Northwestern Colorado or North Park populations. Furthermore, as Garfield County has repeatedly, and emphatically stated to the BLM, and shown by way of quantitative analysis of data, that the habitat of the PPR population is unique (naturally fragmented and limited in extent), compared to GRSG populations occurring elsewhere in Colorado and Wyoming.

Issue Number: PP-NORTHWESTCO-GRSG-15-05-1

Organization: Off-Road Business Association

Protestor: Scott Jones

Issue Excerpt Text: The direct conflict of agency management standards for trail and route development is arbitrary and capricious and lacks any scientific basis. ORBA is vigorously opposed to the arbitrary change in the management of trails and route development in the FEIS applies that treats USFS lands differently than lands that are under BLM management. ORBA submits that management of this issue in this manner simply entirely lacks scientific basis and is exactly the type of arbitrary standards conflict that the cross agency planning initiative was designed to avoid. ORBA submits that there is a wide range of

research recognized as best available science that conclude recreational usage simply is not a threat to the GRSG. This research is more specifically addressed in subsequent portions of the appeal. There is simply no basis for such an arbitrary boundary in the management of habitat areas in this research. The USFS habitat areas applies the two following standard and guidelines to all habitat areas:

“GRSG-RT-ST-065-Standard- In PHMA and GHMA, do not conduct or allow new road or trail construction (does not apply to realignments for resource protection) except when necessary for administrative access, public safety, or to access valid existing rights. If necessary to construct new roads and trails for one of these purposes, construct them to the minimum standard, length, and number and avoid, minimize and compensate for impacts.”

“GRSG-R-GL-063-Guideline - In PHMA, new recreational facilities or expansion of existing recreational facilities (e.g., roads, trails, campgrounds), including special use authorizations for facilities and activities, should not be approved unless the development results in a net conservation gain to GRSG and/or its habitats or the development is required for visitor safety.” The BLM applies the following standard to priority habitat areas only: “(PHMA) Use existing roads or realignments whenever possible. If it is necessary to build a new road, and the use of existing roads would cause adverse impacts to GRSG, construct new roads to the appropriate minimum Gold Book standard and add the surface disturbance to the total disturbance in the PHMA if it meets the criteria in Appendix H, Guidelines for Implementation. Construct no new roads if the biologically significant unit (Colorado populations) and proposed project analysis area (Colorado MZ) is over

the 3 percent disturbance cap, unless there is an immediate health and safety need, or to support valid existing rights that cannot be avoided. Evaluate and implement additional, effective mitigation necessary to offset the resulting loss of GRSG habitat. “

“(PHMA) Allow upgrades to existing routes after documenting that the upgrade will not adversely affect GRSG populations due to habitat loss or disruptive activities.”

ORBA submits that such arbitrary boundary lines for significant management changes simply lacks any factual or scientific basis. At no point does the FEIS even attempt to justify the management differences that are proposed solely based on land management agencies. The arbitrary nature of the standard is compounded by the fact that USFS lands are consistently of lower quality to the GRSG and simply may not be occupied at all, further undermining any basis for more strict management of this low quality habitat.

Issue Number: PP-NORTHWESTCO-GRSG-15-06-1

Organization: COHVCO / Trails Preservation Alliance

Protestor: Scott Jones

Issue Excerpt Text: The direct conflict of agency management standards for trail and route development is arbitrary and capricious and lacks any scientific basis. The Organizations are vigorously opposed to the arbitrary change in the management of trails and route development in the FEIS applies that treats USFS lands are differently than lands that are under BLM management. The Organizations submit that management of this issue in this manner simply entirely lacks scientific basis and is exactly the type of arbitrary standards conflict that the cross agency planning initiative was designed to avoid. The Organizations submit that there is a wide range of research recognized as

best available science that concludes recreational usage simply is not a threat to the GRSG. This research is more specifically addressed in subsequent portions of the appeal. There is simply no basis for such an arbitrary boundary in the management of habitat areas in this research. The USFS habitat areas applies the two following standard and guidelines to all habitat areas:

“GRSG-RT-ST-065-Standard- In PHMA and GHMA, do not conduct or allow new road or trail construction (does not apply to realignments for resource protection) except when necessary for administrative access, public safety, or to access valid existing rights. If necessary to construct new roads and trails for one of these purposes, construct them to the minimum standard, length, and number and avoid, minimize and compensate for impacts. “

“GRSG-R-GI-063-Guideline- In PHMA, new recreational facilities or expansion of existing recreational facilities (e.g., roads, trails, campgrounds), including special use authorizations for facilities and activities, should not be approved unless the development results in a net conservation gain to GRSG and/or its habitats or the development is required for visitor safety.” The BLM applies the following standard to priority habitat areas only : “(PHMA) Use existing roads or realignments whenever possible. If it is necessary to build a new road, and the use of existing roads would cause adverse impacts to GRSG, construct new roads to the appropriate minimum Gold Book standard and add the surface disturbance to the total disturbance in the PHMA if it meets the criteria in Appendix H, Guidelines for Implementation. Construct no new roads if the biologically significant unit (Colorado populations) and proposed project analysis area (Colorado MZ) is over the 3 percent disturbance cap, unless there is an immediate health and safety need, or to

support valid existing rights that cannot be avoided. Evaluate and implement additional, effective mitigation necessary to offset the resulting loss of GRSG habitat. “ (PHMA) Allow upgrades to existing routes after documenting that the upgrade will not adversely affect GRSG populations due to habitat loss or disruptive activities. The Organizations submit that such arbitrary boundary lines for significant management changes simply lacks any factual or scientific basis. At no point does the FEIS even attempt to justify the management differences that are proposed solely based on land management agencies. The arbitrary nature of the standard is compounded by the fact that USFS lands are consistently of lower quality to the GRSG and simply may not be occupied at all, further undermining any basis for more strict management of this low quality habitat.

Issue Number: PP-NORTHWESTCO-GRSG-15-07-1

Organization: Tri-State Generation and Transmission Association

Protestor: Barbara Walz

Issue Excerpt Text: Tri-State requests the BLM incorporate the APLIC GRSG Best Management Practices (BMP), much like the BLM has for avian protection plans (APP), into the Proposed LUPA to serve as the current best practices for GRSG issues related to electric utility facilities. This is consistent with GRSG-LR-SUA-ST-001-Standard identified in Table 2.8 on page 2-146 of the Northwest Colorado LUPA/FEIS recognizing exceptions for best available science. Furthermore, APLIC's GRSG BMPs arguably represent the best available science for avian interactions with power lines. Related to this request, we observed that several of the proposed LUPAs for GRSG in Wyoming do reference the APLIC BMPs (BLM and USFS 2015). Accordingly,

this request appears aligned with broader BLM recognition of the APLIC GRSG BMPs.

Issue Number: PP-NORTHWESTCO-GRSG-15-07-5

Organization: Tri-State Generation and Transmission Association

Protestor: Barbara Walz

Issue Excerpt Text: The “Conservation Buffer Distance Estimates for GRSG” report was not included in the DEIS (Manier et al 2014). Conservation buffer distances vary between the BLM and the USFS within the LUPA/EIS, and from the Colorado GRSG Conservation Plan, prepared by Colorado Parks and Wildlife (CPW), BLM, and USFS, among others.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-27

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not made a showing through its collective NEPA analyses that GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that responses of GRSG to human-induced habitat alternations are remarkably similar across the species' range. Given that the science does not differ significantly across the species' range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by

similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In the Colorado RMP EIS, the agencies have failed to apply in their proposed plan amendments the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and as a result development approved under the proposed plan violate the directives of BLM and Forest Service Sensitive Species Policies and will result in both unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these areas (violating NFMA viability requirements), undermining the effectiveness of the plan amendment strategy as an adequate regulatory mechanism in the context of the decision.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-66

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The affected LUPAs contain inconsistent explanations, and do not consistently apply or explain what provisions apply and what provisions do not. For example, the Nevada and Northeastern California LUPA expressly explains that the transmission project's surface disturbance counts against the cap that is applicable to other industries, but in contrast, this application is only implicitly provided for in the NW Colorado LUPA and other LUPAs applicable to Wyoming and Utah.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-12

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: A comparison of Table 2.3 and Table 2.5, the Seasonal Habitat Desired Conditions on BLM and FS lands, respectively, demonstrates that there is not a uniform commitment between the agencies. See e.g. PLUPA/FEIS at 2-29–31, 2-36. The differences are neither addressed nor explained, but have significant implications for implementation on the ground. For example, the FS prescribes an upland perennial grass height of 7 inches when grazing occurs during breeding and nesting season. BLM, on the other hand, prescribes no numeric value for upland grass height, only stating that perennial grass height will “provide overhead and lateral concealment from predators.” Compare Tables 2.3 and 2.5. The Forest Service also provides its grass height recommendations based on season of grazing use. PLUPA/FEIS at 2-36. This is important because it is clear that the height isn't an end-of-season measure, but the canopy cover is measured at the time it matters most— when the GRSG need it to hide their nests and chicks. Unlike the Forest Service, the BLM's application of these desired conditions don't clearly relate to livestock

authorization periods or pastures on the allotments. The Forest Service does not provide a sagebrush canopy cover, sagebrush height, sagebrush shape, grass canopy or height, or perennial forb canopy cover indicators (or many other indicators that BLM does address) for the lekking and nesting habitats and other seasonal habitats. Table 2.5. The Forest Service also has no guideline for condition of riparian areas and meadows during the brood rearing period.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-13

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 PLUPA/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 a minimum an explanation for the variation among plans.

Issue Number: PP-NORTHWESTCO-GRSG-15-25-2

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text:

The NW Colorado plan should follow the example set by the South Dakota plan...

The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4)-the NW Colorado plan should avoid doing the same); prohibit renewable energy development, and require managers to avoid granting other rights-of-way in winter habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 15; 154, Table 2-6, Action 30); and require that all new power lines be buried in wintering areas, where feasible (SD FEIS: 95, Table 2-5). Finally, the Proposed Plan would only allow prescribed fire in/ around winter range to preserve the areas by reducing future fire risk (SD FEIS: 48).

Issue Number: PP-NORTHWESTCO-GRSG-15-25-3

Organization: Defenders of Wildlife

Protestor: Mark Salvo

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

7 inches high in GRSG breeding habitat (HiLine FEIS: 42, Table 2.4; 195, Table 2.27). The Proposed Plan in the Idaho FEIS includes desired conditions for GRSG habitat that include perennial grasses and forbs 7 inches high during nesting and early brood-rearing season (Idaho FEIS: 2-20, Table 2-3). While these plans also provide that desired conditions may not be met on every acre of GRSG habitat and that a specific site's ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (and recognizing that these additional disclaimers, by themselves, further complicate grazing management in GRSG range), the plans at least adopt science-based minimum standards for nesting habitat to evaluate grazing effects and inform adaptive management of GRSG nesting and brood-rearing habitat.

Issue Number: PP-NORTHWESTCO-GRSG-15-25-4

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-NORTHWESTCO-GRSG-15-25-6

Organization: Defenders of Wildlife

Summary:

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

Protestor: Mark Salvo

Issue Excerpt Text: 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.

Response:

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM and the Forest Service have used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level.

The agencies have allowed some inconsistencies among sub-regional plans as a means to address specific threats at a local and sub-regional level and for other reasons as discussed below. Consistent with the National GRSG Planning Strategy (BLM 2011), the BLM as a lead agency, together with the Forest Service as a cooperating agency, prepared 15 EISs with associated plan amendments and revisions. Five of the 15 EISs involve National Forest System lands. Threats affecting GRSG habitat were identified and the intensity of these threats vary by management zones. Within each management zone, differences in ecological conditions and ecological site potential affect the area's susceptibility to the various threats and its restoration potential. Further, each sub-region has varying local situations.

Each LUPA/FEIS takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests. Developing the LUPAs involved unprecedented collaboration with state agencies and leadership and were built upon local GRSG conservation efforts initiated by a number of states, including Wyoming's core area strategy, Idaho's three-tiered conservation approach, and Oregon's "all lands, all threats" approach. Where available, state population data and habitat use information were considered in developing management approaches in the LUPAs. Some states have regulatory measures in place for improved habitat protection, other rely on voluntary actions. These variations were accounted for in the analyses.

Conservation measures are in the context of all the laws governing public land use and reflect the differing regulations and policies for the BLM and Forest Service. For example, BLM proposed plans identified goals, objectives, and management actions and Forest Service plans identified desired future conditions, objectives, standards, and guidelines. Conservation measures are also in the context of the objectives of each alternative, keeping in mind that each alternative represents a distinct approach to meeting the purpose and need.

Each LUPA/FEIS, in the beginning of Chapter 4, recognizes that certain information was unavailable because inventories either have not been conducted or are not complete in that planning area, therefore some impacts cannot be quantified. Where this data gap occurs, subsequent site-specific inventory data could be collected for a project level analysis to determining appropriate application of LUPA-level guidance.

All these variables influenced the environmental analyses and management direction, resulting in portions of the LUPAs where there is uniformity across the landscape range and other aspects where there are differences.

See also responses to protest points about specific habitat objectives and management actions (such as density and disturbance caps).

GRSG - Density and Disturbance Cap

Issue Number: PP-NORTHWESTCO-GRSG-15-04-5

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Encana protests the disturbance and density caps within PHMA. See Proposed LUPA at 2-22, D-7. BLM has failed to justify this restrictive surface disturbance cap or explain how the cap will be applied in conjunction with other LUPA restrictions. Furthermore, BLM's methodology for calculating density and disturbance caps does not clearly describe how the density and disturbance caps will be applied. First, BLM must clearly identify the “biologically significant units” (BSU) within which the disturbance caps apply. See Proposed LUPA/Final EIS at E-2. Encana understood that BSUs are Colorado Management Zones (MZs); however, statements in the Proposed LUPA/Final EIS suggest otherwise. For example, the Proposed LUPA/Final EIS states that it will apply “a 3 percent disturbance cap in PHMA (by biologically significant unit) with disturbances limited to 1 disturbance per 640 acres density calculated by Colorado MZ and proposed project analysis area would apply to new lease activities.” By stating that the disturbance cap is calculated by BSU but then stating that the density cap is calculated by Colorado MZ, the Proposed LUPA/Final EIS suggests that the BSUs and MZs are different. Elsewhere, BLM also appears to distinguish the two: “No new

leasing in PHMA if disturbance cap exceeds 3 percent calculated by biologically significant unit (Colorado populations) and proposed project analysis area (Colorado MZ) or 1 disturbance per 640 acres density is exceeded”. BLM must clearly define BSUs and, if different then MZs, must provide maps of BSUs and the number of acres in each BSU. BLM must also provide a breakdown of the amount of disturbance remaining under the cap in each BSU. The public has no way of knowing which areas constitute BSU and therefore cannot assess the effects of the disturbance caps.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-17

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Importantly, the NTT (2011) recommended that disturbance density be calculated per square-mile section, based on their review of the best available science. This is supported by subsequent scientific study by Knick et al. (2013), who found a limit of 3% development (and the vast majority of surviving leks had much less than this percentage surrounding them) based on a 3-mile buffer around leks was the threshold beyond which GRSG populations were rarely able to sustain themselves.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-1

Organization: Beatty & Wozniak obo Exxon/XTO Energy

Protestor: Bret Sumner

Issue Excerpt Text: 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-NORTHWESTCO-GRSG-15-12-44

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Additionally, the Agencies must clearly define and publish maps of the "biologically significant units" within which the disturbance caps apply. See Proposed LUPA/Final EIS at E-2. The public has no way of knowing which areas constitute BSU and therefore cannot assess how impacts will be evaluated.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-11

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The plan does not include grazing as a surface disturbance subject to the disturbance cap. PLUPA/FEIS at Glossary 31-32. Rather, the plan considers it a diffuse disturbance. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and

Summary:

Protests dispute the application of density and disturbance caps of being insufficient to protect GRSG as the calculation does not include disturbance associated with livestock grazing. BLM did not disclose how much disturbance is currently mapped in each BSU. Additionally,

structural range improvements that disrupt vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns to other uses.

Issue Number: PP-NORTHWESTCO-GRSG-15-18-14

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: Adding to the arbitrary nature of the prescription, Appendix E shows that the one facility allowed per 640 acres may include a wide range of dissimilar facilities. For example, an entire solar field is counted as a facility as is a single oil or gas well. Appendix E at E-3. A solar energy installation occupies 140 acres (Nellis Air Force Base) or 320 acres, Boulder City Nevada, as compared to six acres of disturbance for a well pad and road. A coal mine counts as a facility and yet so does a single wind tower. Id. Geothermal facilities aren't even defined and neither are mining "developments." Id. The BLM's density requirement offers absurd management prescriptions that cannot be correlated to any sound rationale, are based on faulty science in violation of the DQA, and show that the BLM shirked its responsibility to take a hard look under NEPA when they accepted a pre-determined generic management prescription.

BSUs should be mapped as a means of disclosing areas to the public so that disturbance caps can be estimated.

Response:

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

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.” Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the PLUPA/FEIS that address these impacts.

Regarding the lack of disturbance mapping in the Northwest Colorado GRSG PLUPA/FEIS: Appendix E discusses the methods and data used in calculating disturbance in the BSUs. Per the appendix, the calculation of disturbance within a given BSU will occur during the analysis and planning of site-specific project proposals.

The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in the Northwest Colorado GRSG PLUPA/FEIS.

Mapping and calculations associated with the density and disturbance caps will occur at the project level and will therefore provide for public disclosure of the current condition of the BSUs.

GRSG - Adaptive Management

Issue Number: PP-NORTHWESTCO-GRSG-15-12-22

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Second, the Agencies cannot implement the “responses” to the hard triggers because there is nothing to implement. The Proposed LUPA does not define any concrete actions that BLM will implement in response to the hard triggers. See Proposed LUPA/Final EIS at 2-47 – 2-48. The planning regulations do not permit BLM to change the management

prescriptions in an RMP or LUPA via an open-ended placeholder.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-41

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

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

reached. See Proposed LUPA/Final EIS at 2-47.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-42

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Furthermore, the hard triggers the Agencies set, which are based on the 25 percent quartile of the high male lek count²⁴ in the two main populations of Colorado GRSG, do not adequately take into account natural fluctuations in populations. Proposed LUPA/Final EIS at 2-46 – 2-47. As an initial matter, the Agencies provide no scientific justification for their reliance upon the upper quartile as a threshold for adaptive management triggers. Further, although the Agencies claim this threshold will account for natural fluctuations, Proposed LUPA at 2-46, the data show otherwise. To illustrate,

Figure 1 below shows the peak male counts from Northwest Colorado from 1953 to 2005 with the 25 percent quartile indicated with a red line. Appendix I of the Colorado Plan, however, demonstrates that Northwest Colorado population numbers frequently dip below the 25 percent quartile. Colorado Plan, app. I at 5 (demonstrating high male lek counts in Northwest Colorado population from 1952 to 2012). Thus, natural fluctuations can likely be expected to result in hard triggers being reached, not as a result of any definable management action on the part of the Agencies, but due to natural factors. By not taking into account the role of natural factors, such as regional climatic variation (weather) on GRSG populations, see section IX.B, *infra*, on GRSG populations, the Agencies may be adjusting management based on variations that have little or nothing to do with the Agencies' management actions.

Summary:

The Adaptive Management Plan associated with the Northwest Colorado GRSG PLUPA/FEIS is insufficient as it does not describe concrete responses to a tripped soft trigger and applies restrictions without assessing what causal factor may exist. In addition, the hard triggers do not account for natural fluctuations in populations.

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 RMPA provides for various implementation level responses that will more appropriately address the causal factors in these situations.

As described on page 2-46 of the Northwest Colorado GRSG PLUPA/FEIS, in order for the hard trigger to be breached, both the lek count and habitat loss thresholds must be breached in both the Northwest Colorado and North Park populations. In addition, the lek count threshold is determined from the 25 percent quartile of the high male count in each of the Northwest Colorado and North Park populations over the period of years for which consistent lek counts are available. (The 25 percent quartiles were determined using the annual high male counts rather than the 3-year running average to ensure that normal variation in lek counts is above the threshold.) These two factors reduce the potential for natural fluctuations to breach the hard trigger.

The BLM and Forest Service are within their authority and appropriately apply an adaptive management plan to conserve GRSG habitat.

GRSG - Data and Inventories

Issue Number: PP-NORTHWESTCO-GRSG-15-18-11

Organization: Moffat County Commissioners

Protestor: Chuck Grobe

Issue Excerpt Text: The reports upon which the LUPA relies do not address the specific soil, climate, and precipitation conditions in northwestern Colorado and exclude the data that would have been based on these specific facts. BLM's adoption of generic management prescriptions that may or may not apply is arbitrary and capricious, because it fails to consider relevant factors and fails to assess the impacts of the scientific disputes. As a result, the LUPA, as being based on data with serious methodological flaws, is not the best available science, does not support the BLM's decisions and is arbitrary and capricious.

Summary:

The Northwestern Colorado PLUPA/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:

- Failing to include site-specific information
- Failing to include the Wyoming Basins Ecoregional Assessment

Response:

The BLM and the Forest Service consulted with, collected, and incorporated data from other agencies and sources for soil, climate, and precipitation conditions. These sources include, but are not limited to, the U.S. Geological Survey, U.S. Department of Agriculture, Western Regional Climate Center, National Climate Assessment Advisory Committee, and the National Fish, Wildlife, and Plants Climate Adaptation Partnership (pp. 3-203, 3-216, 3-217). Considerations included but were not limited to soil surveys, average annual precipitation, climate models, and the Colorado Plateau Rapid Ecological Assessment Report.

The BLM entered into an agreement in 2011 with the US Geological Survey to perform the Rapid Ecoregional Assessment analysis for the Wyoming Basin. The Work Plan was completed

Issue Number: PP-NORTHWESTCO-GRSG-15-10-9

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: This policy required BLM to complete an Ecoregional Assessment for the Wyoming Basins Ecoregion. Id. at 11. This Wyoming Basins Ecoregional Assessment publication (“WBEA”) was completed in 2011, and BLM should reference the findings of this report as they apply to Wyoming, which falls substantially within the Wyoming Basins Ecoregion, in order for the BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy.

in 2013 (<http://dx.doi.org/10.3133/ofr20131223>). The final report has not been released. As such, it was not available for use in the Northwest Colorado PLUPA/FEIS. The Northwest Colorado PLUPA/FEIS did incorporate information from the Colorado Plateau Ecoregional Assessment, specifically in Sections 3.18 and 4.19.

As a result of these actions, the BLM and the Forest Service 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 (PLUPA/FEIS, Sections 4.17 and 4.19). As a result, the BLM and the Forest Service have fulfilled their obligation to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives.

GRSG - Habitat Objectives

Issue Number: PP-NORTHWESTCO-GRSG-15-18-16

Organization: Moffat County Commission

Protestor: Chuck Grobe

Issue Excerpt Text: The BLM has not documented whether the lands in the Planning Area capable of producing sage brush can reach the 70 percent threshold in Moffat County. Assuming lands that produce sage brush can reach BLM's 70 percent threshold, BLM has not analyzed whether those lands can produce 10-30% canopy cover. LUPA at 2-29. Thus, BLM's blanket prescription is not justified on the

basis of any analysis that 70 percent in Moffat County is better than another percentage. The BLM's cursory reference to Technical Reference 1734-6, Interpreting Indicators of Rangeland Health is inadequate. The Technical Reference details a visual observation made by a team of people as a starting point to describe a site. It is not meant to be the binding guideline on which to base the 70 percent capability assumption. Thus, the BLM's reliance on the technical reference appears to be an arbitrary selection not tailored to the Planning Area - a clear violation of NEPA's hard look standard.

Summary:

BLM did not document whether the lands in the Planning Area capable of producing sage brush can reach the 70 percent threshold in Moffat County and BLM did not analyze whether those lands can produce 10-30% canopy cover.

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)

Programmatic documents are regional in scope and place emphasis on developing broad environmental policies, programs, and plans. Site-specific data is important during

implementation level decisions, which may be tiered to the decisions made in this document. For this document, the best available information was used as generated and provided by the organizations and agencies with authority and special expertise to provide that information on a planning scale.

Throughout the planning effort, the BLM and the Forest Service considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level. The data needed to support broad-scale analysis of the planning area are substantially different than the data needed to support site-specific analysis of projects. The Northwest Colorado GRSG PLUPA/FEIS is a programmatic NEPA effort to conserve GRSG and its habitat across a broad geographic area.

The BLM described the current conditions and trends in the affected environment for vegetation broadly, across a range of conditions, appropriate to program-level land use planning actions. Section 3.5 Vegetation (Forest, Rangelands, Riparian and Wetlands, and Noxious Weeds) (p. 3-92 to 3-108) describes existing conditions and trends, along with citations to the best available science. As stated on p.3-93 of the Northwest Colorado GRSG PLUPA/FEIS, “A number of different vegetation communities exist within GRSG habitat in the planning area, including sagebrush steppe, agricultural/irrigated meadow, mountain shrub, desert shrub/scrub, grasslands subalpine meadow, pinyon-juniper, other forests and woodlands, riparian and wetlands, and other.” Table 3.20 displays the acreage and percent of each of these vegetation communities - across GRSG habitat in the planning area, including the composition and condition of each. Sagebrush is a primary component of sagebrush steppe communities, and shows the least decadence at higher elevations (mature shrubs where approximately 25 percent or more of the plant is dead), but can also occur in mountain shrub and desert shrub/scrub communities. As disclosed in the Northwest Colorado GRSG PLUPA/FEIS, sagebrush steppe vegetation occupies 61.4 percent of ADH and 69.8 percent of PH throughout the entire planning area (p.3-94), 66.0 percent of ADH and 78.4 of the PH on lands administered by BLM (p. 3-101), and 75.5 percent of the ADH and 84.1 percent of the PH on lands administered by the USFS (p.103). Sixteen references were cited in the analysis of existing vegetation (pp.107-108). The BLM and the Forest Service used the most recent and best information available that was relevant to a land-use planning-level analysis, including the Baseline Environmental Report (BER; Manier et al. 2013). The BER assisted the BLM and the Forest Service in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment (Chapter 3) and cumulative impacts (Chapter 5) sections, and provided a review of opposing science and information.

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.

Vegetative impacts across the range of alternatives are discussed in Chapter 4, Environmental Consequences, Section 4.5 Special Status Species (p. 4-75 through 4-178) and Section 4.7 Vegetation (Forest, Rangelands, Riparian and Wetlands, and Noxious Weeds) (p. 4-188 through

4-210), including indicators and assumptions (p. 4-189), direct and indirect impacts on vegetation including those associated with travel management, recreation management, lands and realty management, wind energy and industrial solar development, range management wild horse management, fluid minerals management, solid minerals-coal management, fuels management, fire operations, emergency stabilization and rehabilitation, and habitat restoration (pp. 4-189-210), as well as a summary of impacts on vegetation, and cumulative effects were disclosed in Chapter 5.

The Northwest Colorado GRSG PLUPA/FEIS (Chapter 2.7) contains an adaptive management plan which promotes flexible resource management decisions to adjust in the face of uncertainties as outcomes from management actions and other events become better understood. The FEIS contains a monitoring framework in Section 2.6.2 that includes an effectiveness monitoring component. Habitat loss exceeding a threshold of 30 percent cumulative loss of PHMA, is identified as a hard trigger, to be measured independently in Northwest Colorado and North Park populations (Northwest Colorado GRSG PLUPA/FEIS, pp.2-45-47).

The Northwest Colorado GRSG PLUPA/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 adequately documented the baseline existing conditions for sagebrush and analyzed the direct, indirect, and cumulative effects of the alternatives on vegetation including sagebrush.

[GRSG - Livestock Grazing](#)

Issue Number: PP-NORTHWESTCO-GRSG-15-14-6

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The agencies also fail to define grazing as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1- June 15). PLUPA/FEIS at Glossary-10; 31-32. And yet, the best science recommends that grazing be restricted during this same period. However, the only seasonal restrictions on livestock grazing pertain to vague and inadequate limits on trailing and bedding activities near occupied leks. This limited protection is inconsistent with other

perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PLUPA/FEIS should be revised to limit spring season harms to leks.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-7

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: The PLUPA/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 PLUPA/FEIS has not considered limiting grazing in this way within the planning area. The PLUPA/FEIS also doesn't specify a utilization limit on grazing (except for on sagebrush itself in winter habitat), but Dr. Braun recommends a 25-30 percent utilization cap for herbaceous vegetation 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 PLUPA/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

Issue Number: PP-NORTHWESTCO-GRSG-15-14-9

Organization: Western Watersheds Project

Protestor: Travis Bruner

Issue Excerpt Text: GRSG-LG-GL-037-Guideline restricts “bedding sheep and locating camps within 1.2 miles of the perimeter of a lek during lekking (March 1

to April 30),” PLUPA/FEIS at 2-37. And GRSG- LG-GL-038-Guideline directs minimizing the same while trailing. Id. BLM’s direction contains only some vague language to “address disruptive activities,” and implying that it may be necessary to specify terms for “locations of bed grounds, sheep camps, trail routes, and the like.” PLUPA/FEIS at 2-18–2-19. No such limitations or mitigation measures are proposed within occupied and permitted allotments, meaning that while herders might cause trailing sheep and cows to avoid leks, the permitted livestock can linger unchecked on leks, disturbing GRSG courtship and nesting, and degrading the lekking environment. Livestock presence may alter GRSG behavior (NTT, 2011 page 14). Jankowski et al., 2014 found that stress hormone levels in GRSG increased as use increased (i.e. cows have a direct impact on GRSG). Many hens nest within a 3 km radius of a lek, i.e. leks are in or close to nesting habitat and thus leks are indicators of nesting habitat. If the agency wants to protect, conserve, and recover GRSG, these activities should be prohibited throughout the breeding season, not merely minimized or avoided during trailing activities.

Summary:

- The agencies fail to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science.
- Dr. Braun recommends protecting GRSG during nesting season from effects of livestock grazing; this was not considered in the analysis.
- The Northwest Colorado GRSG PLUPA/FEIS violates NEPA by failing to analyze seasonal restrictions, set utilization limits or stocking rates, and mandate specific terms and conditions to grazing permits.

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 agencies 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). Likewise the Forest Service is guided by CEQ (40 CFR 1500-1508) and Forest Service Handbook 1909.15 on NEPA implementation.

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011,p. 8): “GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, impacts from improper grazing are assessed and there are provisions and management actions proposed in the NTT Report and incorporated in the Northwest Colorado GRSG PLUPA/FEIS that address these impacts. Within all designated habitat (ADH), the Plan will incorporate GRSG habitat objectives and management considerations into all BLM and Forest Service grazing allotments through Allotment Management Plans or permit renewals and/or Forest Service Annual Operating Instructions (Table 2.2 Description of BLM Proposed Land Use Plan Amendment, NWCO PLUPA/FEIS, p. 2-18) Additionally, in PHMA “the BLM will prioritize: 1. the review of grazing permits/leases, in particular to determine if modification is necessary prior to renewal, and 2. the processing of grazing permits/leases in PHMA. In setting workload priorities, precedence will be given to existing permits/leases in these areas not meeting Land Health Standards, with focus on those containing riparian areas, including wet meadows. The BLM may use other criteria for prioritization to respond to urgent natural resource concerns (e.g., fire) and legal obligations” (Table 2.2, p. 2-18). The BLM will also, in ADH, “conduct land health assessments that include (at a minimum) indicators and measurements of vegetation structure/condition/composition specific to achieving GRSG habitat objectives (Doherty et al. 2011b). If local/state seasonal habitat objectives are not available, use GRSG habitat recommendations from Connelly et al. 2000a and Hagen et al. 2007” (Table 2.2, p. 2-18). The NWCO PLUPA directs the BLM to manage for attainment of the scientifically-referenced seasonal habitat objectives detailed in Table 2.3 Seasonal Habitat Desired Conditions for GRSG (p. 2-29 to p. 2-31)

The agencies did not fail to consider and apply the best available science in the Northwest Colorado GRSG PLUPA/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 CEQ guidance and BLM's Land Use Planning Handbook and BLM IM No. 2012-169, the agencies 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 agencies developed a reasonable range of alternatives that meet the purpose and need of the Northwest Colorado GRSG PLUPA/FEIS and that address resource issues identified during the scoping period. The Northwest Colorado GRSG PLUPA/FEIS analyzed six alternatives, which are described in Chapter 2, Proposed Action and Alternatives (p. 2-1 through 2-225). Two additional alternatives were considered but not carried forward for detailed analysis (Section 2.11, p. 2-224 through 2-225). The Northwest Colorado GRSG PLUPA/FEIS considered retiring grazing allotments within all GRSG habitat under Alternative C (Table 2.8, p. 2-159).

The agencies have considerable discretion through grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, including seasonal restrictions, and to allocate forage to uses of the public lands and National Forest System lands in an RMP/LMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in the Northwest Colorado GRSG PLUPA/FEIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental review. 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 RMP/LMP objectives. Acres closed to all classes of livestock grazing for the life of the plan range from 0 acres (Alts A, B, D, BLM Proposed LUPA, and Forest Service Proposed LMPA), to 1,751,600 acres (Alt C).

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 modifications for permits issued by BLM would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR Part 4100. Livestock grazing permit modifications for permits issued by the Forest Service would be in accordance with the Range Management Regulations found in 36 CFR 222. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, site-specific NEPA and compliance with 43 CFR Subpart 4160, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives.

The agencies considered a reasonable range of alternatives and considered grazing restrictions in the Northwest Colorado GRSB PLUPA/FEIS in full compliance with NEPA; changes to individual permits is not appropriate at the land management planning scale and would occur at the implementation stage.

Protester alleges the Northwest Colorado GRSB PLUPA/FEIS violates NEPA by failing to analyze seasonal restrictions, set utilization limits or stocking rates, and mandate specific terms and conditions to grazing permits. These are actually implementation-level constraints that would be analyzed in site-specific NEPA reviews at the time of livestock grazing permit renewal, in accordance with 43 CFR Part 4100.

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 agencies are required to take a “hard look” at potential environmental impacts of adopting the Northwest Colorado GRSB PLUPA/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 agencies 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 agencies are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling, or an application to graze livestock), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. The analysis regarding the impacts from range management are found throughout Chapter 4. Specifically the impacts from range management on vegetation are discussed on p. 4-197 to 4-199 and impacts from range management on GRSB are discussed on p. 4-85 to 4-88. of the Northwest Colorado GRSB PLUPA/FEIS. Section 4.14 of Chapter 4 discusses the impacts on range management from proposed GRSB management actions of other resources and resource uses. Cumulative effects of grazing/free-roaming equids are discussed on p. 5-49 to 5-54.

The agencies complied with NEPA’s requirement to analyze the environmental consequences from grazing in the Northwest Colorado GRSB PLUPA/FEIS.

[GRSB - Mitigation](#)

Issue Number: PP-NORTHWESTCO-GRSG-15-04-11

Organization: Encana Oil & Gas

Protestor: Jason Oates

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 LUPA's

requirement that lessees provide compensatory mitigation to provide a net conservation gain.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-32

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

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 LUPA’s requirement that lessees provide compensatory mitigation to provide a net conservation gain.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-24

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: Additionally, the Final EIS does not adequately analyze the effects of the requirement that land users provide compensatory mitigation to obtain a

“net conservation gain.” Most significantly, the Final EIS does not analyze whether sufficient compensatory mitigation is available to satisfy the requirements of the mitigation framework. BLM must examine whether adequate mitigation opportunities exist in the Planning Area, such as through conservation easements or restoration activities. This analysis is particularly important because the Service has not endorsed any GRSG mitigation banks or exchanges in Colorado, Utah, Montana, and California; accordingly, land users may have a difficult time securing mitigation opportunities. The BLM cannot condition permits on a requirement that land users cannot fulfill due to lack of mitigation.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS violates existing regulations at 43 CFR 1600 and 3100 by requiring compensatory mitigation, including 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.”
- 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 Northwest Colorado GRSG PLUPA/FEIS is to identify and incorporate appropriate GRSG conservation measures into the existing land use plans. Consistent with Instruction Memorandum 2012-044, the measures to be considered include appropriate conservation measures developed by the NTT. For the purposes of this planning effort, conservation measures include both restrictions on land uses and programs that affect GRSG and measures to reduce the impacts of BLM/Forest Service programs or authorized uses (p. 1-10) and the requirement for a net conservation gain accounts for uncertainty associated with the effectiveness of mitigation.

Chapter 4, Section 4.6.3 Mitigation (Vol. 2, p. 4-604) 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/USFS management actions. In undertaking BLM/USFS 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/USFS would require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This would be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Given that impacts requiring mitigation would vary by project, more detailed consideration and analysis of appropriate GRSG mitigation measures would occur on a project-specific basis.

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 Northwest Colorado GRSG PLUPA/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 Northwest Colorado GRSG PLUPA/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. Therefore, this protest is denied.

Administrative Procedure Act

Issue Number: PP-NORTHWESTCO-GRSG-15-12-4

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Trades protest the Agencies’ adoption of several elements of the Proposed LUPA— 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 the Agencies cannot apply before they complete the formal rulemaking procedures required by the APA. See 5 USC § 553. Additionally, the Trades protest the limitations on modifications and waivers of No Surface Occupancy (NSO) stipulations in PHMA because they improperly amend a BLM regulation without BLM completing the formal rulemaking procedures.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-5

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed LUPA’s waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. First,

the Proposed LUPA prohibits waivers and modifications despite the regulation’s language that stipulations “shall be subject to modification or waiver.” Second, the Proposed LUPA expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and CPW. These direct contradictions reflect that BLM is attempting to alter its regulations through the LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-13

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: FLPMA specifically requires BLM to promulgate rules through the APA rulemaking process at 5 USC § 553(a)(2), and while it is true that land use plans are generally not required to follow APA rulemaking procedures, the Proposed LUPA goes beyond ordinary land use planning efforts is effectively a promulgation of rules. Compare 43 USC § 1740 with Id. § 1712.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-15

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: Finally, the provisions of the Proposed LUPA constituting legislative rules have not been subject to notice required by 5 USC § 553(b). Although notice of the Proposed LUPA was published in the Federal Register, the notice only informed the public that BLM had revised its land use plans. The notice did not alert the public to the fact that BLM were establishing new legislative rules that would apply in all GRSG habitat nationwide. Likewise, the notice did not inform the public that BLM was altering its regulation at 43 CFR § 3101.1-4. Accordingly, the public had every reason to believe BLM was only finalizing a land use plan, which is a statement of priorities to guide future actions, rather than a formal rule. See *Norton v. S Utah Wilderness Alliance*, 542 US. 55, 70-71 (2004). Because the procedures associated with the Proposed LUPA are not comparable to the formal rulemaking provisions of the APA, BLM may not implement the legislative rules set forth in the Proposed LUPA until the complete the formal rulemaking process required by the APA.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-26
Organization: Colorado Oil & Gas Association
Protestor: David Ludlam

Issue Excerpt Text: WSCOGA protests BLM's adoption of several elements of the Proposed LUPA- specifically, the

Summary:

The BLM and Forest Service acted arbitrarily and capriciously, and in violation of the Administrative Procedure Act, when they:

- 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; and
- made changes to existing regulations – in this case, the process for applying waivers, exemptions, and modifications, without first completing a formal rulemaking process.

compensatory mitigation requirement; the “net conservation gain” standard; lek buffer distances; density and disturbance caps; and Required Design Features (“RDFs”) because each constitutes a substantive rule that BLM cannot apply before they complete the formal rulemaking procedures required by the APA. See 5 USC § 553. Additionally, WSCOGA protests the limitations on modifications and waivers of NSO stipulations in PHMA because they improperly amend a BLM regulation without completing the formal rulemaking procedures.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-27
Organization: Colorado Oil & Gas Association
Protestor: David Ludlam

Issue Excerpt Text: The Proposed LUPA's waiver and modification provisions violates 43 CFR § 3101.1-4. First, the Proposed LUPA prohibits waivers and modifications despite the regulation's language that stipulations “shall be subject to modification or waiver.” Second, the Proposed LUPA expands decision-making authority on whether to grant an exception to parties beyond BLM to FWS and CPW. Before BLM may issue a LUPA and ROD, it must revise the Proposed LUPA to be consistent with its regulations by removing the limitations on waivers, modifications, and exceptions.

Response:

The Federal Land Policy and Management Act 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. (Refer to section 1.4.2 of the Northwest Colorado GRSG PLUPA/FEIS for a discussion of corresponding Forest Service policy.) 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 Northwest Colorado GRSG PLUPA/FEIS is a targeted amendment 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 and Forest Service's planning processes respectively allow for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

The regulations concerning land use planning, 43 CFR 1610, 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 introduction to this RMP Amendment, Section 1.1.1, 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 LUPA's waiver and modification provisions are inconsistent with 43 CFR § 3101.1-4. That regulation does not require BLM to provide for waivers or modifications but instead provides regulatory limits on BLM's ability to allow waivers or modifications if BLM determines (e.g., consistent with the plan and its regulatory authority) that it wishes to grant one.

Therefore, the elements of the Northwest Colorado GRSG PLUPA/FEIS do not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by Section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally -- and the process followed for this planning effort specifically -- provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA.

[Energy Policy Act of 2005](#)

Issue Number: PP-NORTHWESTCO-GRSG-15-04-13

Protestor: Jason Oates

Organization: Encana Oil & Gas

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed LUPA should expressly state that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed LUPA. Not only does BLM lack authority under its leases to defer approval of APDs, the Energy Policy Act of 2005 requires BLM to approve APDs if the requirements of the National Environmental Policy Act (NEPA) “and other applicable law” have been completed. 30 USC 22Q(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 I Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. BLM should revise the Proposed LUPA to clearly state that BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-17

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Finally, the “net conservation gain” is inconsistent with EPAct.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-18

Organization: Encana Oil & Gas

Protestor: Jason Oates

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.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-4

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Additionally, Encana protests the lek buffer distances because they are more restrictive than necessary to conserve the GRSG. The Energy Policy Act of 2005 (“EPAct”) requires the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (MOU) regarding oil and gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and “only as restrictive as necessary to protect the resources for which the stipulations are applied.” EPAct, Pub. L. No 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005): Because alternative buffer distances may offer comparable protection to the GRSG, BLM should have examined and adopted these alternative distances. Because the lek buffer distances are unnecessarily restrictive, BLM must revise the Proposed LUPA to identify measures that comply with the directives of EPAct.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-34

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed LUPA should clarify that BLM may not defer oil and gas activities on leases that were issued before approval of the Proposed LUPA. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of 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’tl Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. BLM should revise the Proposed LUPA to clearly state that BLM may not defer or deny development on oil and gas leases issued prior to approval of the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-37

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: The requirement that lessees mitigate impacts to GRSG to provide a “net conservation gain” is more restrictive than necessary. The Agencies could have required lessees to mitigate impacts to avoid unnecessary or undue degradation, see 43 USC § 1732(b). Though inconsistent with FLPMA, the Agencies did not even consider

requiring that mitigation achieve “no net loss” of GRSG habitat. Because the requirement that mitigation achieve a “net conservation gain” is inconsistent with EPAct, the Agencies must revise the Proposed LUPA to remove the “net conservation gain” requirement.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-38

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in section IX(B), *infra*. Furthermore, in the Final EIS, the Agencies did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed LUPA/Final EIS at 4-231 – 4-266. Because the lek buffer distances are unnecessarily restrictive, the Agencies must revise the Proposed LUPA to identify measures that comply with the directives of EPAct.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-39

Organization: Western Energy Alliance/American Petroleum Institute
Protestor: Richard Ranger

Issue Excerpt Text: Furthermore, the proposal not to make lands available for lease within one mile of active leks in all GRSG habitat is unnecessarily restrictive. See Proposed LUPA/Final EIS at 2-21. The Agencies have not established why an NSO stipulation would not offer the same level of protection as completely closing the area to leaving. Because the lek buffer distances are unnecessarily restrictive, the Agencies must revise the Proposed LUPA to identify

measures that comply with the directives of EPAAct.

Issue Number: PP-NORTHWESTCO-GRSG-15-12-40

Organization: Western Energy Alliance/American Petroleum Institute

Protestor: Richard Ranger

Issue Excerpt Text: Finally, the requirement on National Forest System lands that lessees limit noise from discretionary activities during construction, operation, and maintenance to not exceed 10 decibels above ambient sound levels (not to exceed 20-24 dB) at occupied leks from two hours before to two after official sunrise and sunset during breeding season is overly restrictive, particularly because the noise limitation is not justified by science. See Proposed LUPA/Final EIS at 2-33. The Agencies should have analyzed the effects of less stringent noise limitations. Indeed, even the USGS has observed that the effects of noise on the GRSG are not well understood. See USGS Report at 91; see also Patricelli, G.L. et al., Recommended Management Strategies to Limit Anthropogenic Noise Impacts on GRSG in Wyoming, Human-Wildlife Interactions 7:230-249. Furthermore, the threshold of 20 – 24 decibels is unreasonable. The Occupational Safety & Health Administration’s (OSHA) sound level scale discloses that ambient noise levels at the North Rim of the Grand Canyon average 25 dBA and that a “soft whisper” at two meters is approximately 35 dBA. See OSHA, Occupational Noise Exposure. Accordingly, EPAAct required the Agencies to consider and adopt less restrictive measures.

Issue Number: PP-NORTHWESTCO-GRSG-15-13-4

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: The lek buffer distances are more restrictive than necessary, as explained in detail above. Furthermore, in the Final EIS, BLM did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed LUPA/Final EIS 8 at 4-231 -4- 266. Because the lek buffer distances are unnecessarily restrictive, BLM should revise the Proposed LUPA to identify measures that comply with the directives of EPAAct. Additionally, the proposal to close off to leasing lands within one mile of active leks in all sage- GRSG habitat is unnecessarily restrictive. See Proposed LUPA Final EIS at 2-21. BLM has not established why an NSO stipulation would not offer the same level of protection as completely closing the area to leasing.

Issue Number: PP-NORTHWESTCO-GRSG-15-15-9

Organization: Mesa County Commission
Protestor: Rose Pugliese

Issue Excerpt Text: Mesa County protests the failure of the FEIS to provide adequate support for its management decisions. The BLM is required to utilize the least-restrictive management practices with respect to oil and gas development. Pursuant to Section 363 of the Energy Policy Act of 2005, lease restrictions should be “only as restrictive as necessary to protect the resource for which the stipulations are provided.” 42 USC § 15922(b)(3)(C). With respect to oil and gas resources, the BLM's Manual 1601 on Land Use Planning, and Manual 1624 on Planning for Fluid Minerals, both specifically direct the BLM to not only identify which areas would be subject to different categories of restrictions as included in the RMPA/FEIS, but also to show that “the least restrictive constraint to

meet the resource protection objection [is] used.” See ELM Handbook H-1601-1, App. C.11.H at 24.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-15

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The Proposed RMP directs BLM to defer approvals of permits to drill...The Proposed LUPA should clarify that BLM may not defer oil and gas activities on federal leases that were issued before approval of the Proposed LUPA. The Energy Policy Act of 2005 requires BLM to approve applications for permits to drill if the requirements of the National Environmental Policy Act of 1969 (“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

Summary:

The Northwest Colorado GRSG PLUPA/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
- Imposing noise restrictions

federal leases. BLM should revise the Proposed LUPA to clearly state that BLM may not defer or deny development on federal oil and gas leases issued prior to approval of the Proposed LUPA.

Issue Number: PP-NORTHWESTCO-GRSG-15-20-16

Organization: Colorado Oil & Gas Association

Protestor: David Ludlam

Issue Excerpt Text: The lek buffer distances are more restrictive than necessary, as explained in detail above. Furthermore, in the Final EIS, BLM did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed LUPA/Final EIS at 4-231 -4-266. Because the lek buffer distances are unnecessarily restrictive, BLM should revise the Proposed LUPA to identify measures that comply with the directives of EPAct. Additionally, the proposal to close off to leasing lands within one mile of active leks in all GRSG habitat is unnecessarily restrictive. See Proposed LUPA/Final EIS at 2-21. BLM has not established why an NSO stipulation would not offer the same level of protection as completely closing the area to leasing. Because restriction on leasing within one mile of leks and the lek buffer distances are unnecessarily restrictive, WSCOGA encourages BLM to revise the Proposed LUPA to identify measures that comply with the directives of EPAct.

- Providing for a “net conservation gain” of GRSG habitat

Response:

The Northwest Colorado GRSG PLUPA/FEIS does not proposed deferring approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6 of the Northwest Colorado GRSG PLUPA/FEIS beginning on page 2-21.

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 and FS 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 and FS 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, FS Handbook 1909). Accordingly, each alternative analyzed in the Northwest Colorado PLUPA/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.

The Northwest Colorado GRSG PLUPA/FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (PLUPA/FEIS, Chapters 4 and 5). By comparing impacts across the alternatives, the BLM and FS determined which management actions in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Northwest Colorado GRSG PLUPA/FEIS.

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for GRSG—A Review” (USGS 2014). The Proposed LUPA includes a management action to incorporate the lek buffer distances identified in the report during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the Draft EIS, applying these buffers was addressed in the Draft EIS and is qualitatively within the spectrum of alternatives analyzed. Accordingly, the management decision to require analysis of lek buffers for development within certain habitat types is within the range of alternatives analyzed. In addition, the PRMP/FEIS analyzed a variety of leasing allocations (i.e., closed to leasing, no surface occupancy) in a variety of locations (e.g., ADH, PHMA, 1-mile from active leks). The impacts of the lek buffers and the various leasing configurations on GRSG are disclosed in Section 4.5.2 of the Northwest Colorado PLUPA/FEIS beginning on page 4-89.

Similarly, a range of alternatives was developed around noise restrictions, with several alternatives not containing any noise restrictions. The impacts of noise restrictions on GRSG are disclosed in Section 4.5.2 of the Northwest Colorado PLUPA/FEIS.

Based on the impacts analysis performed, the BLM and FS determined that the stipulations, conditions or approval, and best management practices considered are not overly restrictive, are

necessary to meet the goals and objectives of the Northwest Colorado GRSG PLUPA/FEIS, and do not violate the Energy Policy Act.

The guidance in the Northwest Colorado GRSG PLUPA/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. In addition, as it relates to mitigation, page 2-50 of the Northwest Colorado GRSG PLUPA/FEIS states:

The intent of the Mitigation Framework is to achieve a net conservation gain to the GRSG. To do so, in undertaking BLM/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 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. Actions that result in habitat loss and degradation include those identified as threats that contribute to GRSG disturbance as identified by USFWS in its 2010 listing decision (75 Federal Register 13910) and shown in Table 2 in the GRSG Monitoring Framework (Appendix F) 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, (and Forest Service Manual 2672.1, which states: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”).

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

ACECs

Issue Number: PP-NORTHWESTCO-GRSG-15-10-28

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: The BLM has not complied with FLPMA’s mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, BLM determined not

to designate them. Instead, BLM created a completely

new, less-restrictive designation called Sagebrush Focal Areas. BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs—yet has instead

developed a new, less-restrictive designation for them— BLM has failed to put

designation of ACECs first, in violation of FLPMA.

Summary:

The Northwest Colorado PRMP/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs to protect relevant and importance values. Proposed management of these areas is less restrictive than an ACEC designation and failed to provide an explanation as to how such a designation would protect the identified resource values.

Response:

The BLM has acted consistent with FLPMA, which provides that BLM in its land use plans give priority to the designation and protection of areas of critical environmental concern. BLM policy does not require that a potential ACEC's relevant and important values be protected to the same level or degree of protection in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that “[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes” (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The Northwest Colorado GRSG PLUPA/FEIS analyzed a range of alternatives for the management of potential ACECs. Section 3.16 details the affected environment and the current BLM/USFS management strategy for areas of special designation. Section 4.16.1 contains the alternatives analysis of ACEC designations and the impacts of those designations on other resource areas. The Northwest Colorado GRSG PLUPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative, including an alternative that designated almost 1 million acres as ACEC (Alternative C) Section 2.6.1, Development of Proposed Land Use Plan Amendments, describes how 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. As described in that section, land use allocations in the Proposed LUPA would limit or eliminate new surface disturbance in PHMA while minimizing disturbance in GHMA. In addition to establishing protective land use allocations, the Proposed LUPA would implement a suite of management tools, such as disturbance limits, GRSG habitat objectives, and monitoring, GRSG habitat desired conditions, mitigation approaches, adaptive management triggers and responses, and lek buffer distances 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/Forest Service manage activities in GRSG habitat. The BLM adequately considered the protection of relevant and important values in the Northwest Colorado GRSG PLUPA/FEIS.

Fluid Minerals

Issue Number: PP-NORTHWESTCO-GRSG-15-03-15

Organization: Holsinger Law LLC obo Garfield County Commission

Protestor: Kent Holsinger

Issue Excerpt Text: Another new issue raised in the FEIS is BLM's derogation of duty under the Mineral Leasing Act. Specifically, the FEIS provides in PHMAs, no exceptions or waivers to NSOs would be granted without the consent of CPW and the FWS.²² BLM has no statutory authority to delegate its duty under the Mineral Leasing Act to CPW and FWS.

Issue Number: PP-NORTHWESTCO-GRSG-15-04-22

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The Proposed LUPA/Final EIS's requirement of a full reclamation bond for all oil and gas operations allows BLM to increase bond amounts when not authorized by its regulation at 43 CFR § 3104.5. Proposed LUPA/Final EIS at 2-23. BLM's existing regulations only allow increases in bond amounts when an operator poses a risk due to factors such as history of previous violations, a notice from the Office of Natural Resources Revenue that there are uncollected royalties due, or where there is a significant reason to believe the operator will default. 43 CFR § 3104.5(b).

Summary:

The Northwest Colorado GRSG Proposed LUPA/FEIS violates FLPMA and the MLA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations. Additionally, the requirement of a full reclamation bond for oil and gas allows bond amounts to be increased, which is not authorized by BLM regulations.

Issue Number: PP-NORTHWESTCO-GRSG-15-11-10

Organization: Beatty & Wozniak obo Exxon/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, Colorado Parks and Wildlife (CPW) and FWS, BLM is ceding its authority over oil and gas development to the FWS – in other words, providing FWS a de facto veto authority over 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-NORTHWESTCO-GRSG-15-13-12

Organization: SWN Production Company, LLC

Protestor: Jeffrey Sherrick

Issue Excerpt Text: By categorically prohibiting BLM from modifying or waiving NSO stipulations, and by requiring that FWS and CPW find that an exception is warranted, the Proposed LUPA violates BLM's regulation regarding waivers and modifications of lease stipulations.

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 D of the Northwest Colorado GRSG PLUPA/FEIS describes the stipulations applicable to fluid mineral leasing and land use authorizations and the process for granting exceptions, modifications, and waivers to these stipulations. Under management action #46, “the BLM Authorized Officer may not grant an exception unless the applicable state wildlife agency, USFWS, and BLM unanimously find that the proposed action satisfies (i) or (ii)... In the event their finding is not unanimous, the exception will not be granted.” The Proposed LUPA provides specificity to the process for granting exceptions, modifications, and waivers, and therefore does not violate FLPMA, the MLA, or BLM guidance for the aforementioned reasons.

Reclamation Bonds

“The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s)...” (43 CFR 3104.1(a)). In addition, 43 CFR 3104.5(b) states, “the authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the Authorized Officer.”

While the protestor is correct in that the BLM’s existing regulations provide for increases in bonds due to history of previously violations, notice of uncollected royalties due, or significant reason to believe the operator will default, 43 CFR 3104.5(b) does give the Authorized Officer discretion to increase bond amounts if the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount.

The Proposed LUPA directs the BLM, for future actions, to “require a full reclamation bond specific to the site in accordance with 43 CFR 3104.2, 3104.3, and 3104.5.” and “ensure bonds are sufficient for costs relative to reclamation that would result in full restoration of the lands to the condition it was found prior to disturbance,” (p. 2-23). Therefore, the BLM is not in violation of regulations by increasing bond amounts based on Authorized Officer’s estimates of total cost of reclaiming lands.

Special Status Species

Issue Number: PP-NORTHWESTCO-GRSG-15-10-14

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: 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.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-7

Organization: WildEarth Guardians

Protestor: Erik Molvar

Summary:

Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of BLM Sensitive Species Policy.

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

Issue Excerpt Text: The Objectives of BLM’s sensitive species policy includes the following: “To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” BLM Manual 6840.02. Under this policy, District Managers and Field Managers are tasked with “Ensuring that land use and implementation plans fully address appropriate conservation of BLM special status species.” BLM Manual 6840.04(E)(6).

Issue Number: PP-NORTHWESTCO-GRSG-15-10-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG toward ESA listing in violation of BLM Sensitive Species policy,

Response:

Contrary to the protest issues raised, the proposed Northwest Colorado GRSG plan amendment analyzed in the FEIS does satisfy the BLM's Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM's Special Status Species policy is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for the conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM'S multiple use mission as specific in the FLPMA. (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans." (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the Greater-GRSG as contemplated in the policies (See Chapter 2, Section 2.4.1, Alternative B starting on page 2-6 and Table 2.2).

As described and analyzed in the FEIS, BLM considered relevant baseline information and studies about Greater-GRSG, including the NTT report and proposed conservation measures to address Greater-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. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of Greater-GRSG and the information it relied on in such analysis. (See FEIS at 2-13). Specifically, the BLM incorporated conservation measures identified in the NTT Report and COT Report (See FEIS, Table 2-2 at 2-26).

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the Greater-GRSG and provided for conservation measures in the FEIS. For example, in Chapter 4 it states "Conservation measures outlined in each alternative would reduce the potential for fragmentation and degradation across sagebrush landscapes within each Colorado MZ" (FEIS at 4-29). 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 Proposed Plan/ Final EIS 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 Northwest Colorado GRSG PLUPA/FEIS, the management proposed in the Northwest Colorado GRSG Amendment satisfies BLM's intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Travel Management

Issue Number: PP-NORTHWESTCO-GRSG-15-10-19

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Road densities are also an issue, because GRSG avoid habitats adjacent to roads. Holloran (2005) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to GRSG populations. This road density should be applied as a maximum density in Priority and General Habitats, and in areas that already exceed this threshold, existing roads should be decommissioned and revegetated to meet this standard on a per-square-mile-section basis. The proposed plan amendment fails to provide adequate limits on road density for either agency.

Issue Number: PP-NORTHWESTCO-GRSG-15-10-20

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM proposes to complete activity-level travel plans “as soon as possible,” including the designation of routes in different categories. FEIS at 2-14.

Summary:

The Northwest Colorado GRSG PLUPA/FEIS violated NEPA by failing to utilize best available science (the NTT report) to identify limits on road location and density. The BLM must identify a schedule for completing travel plans within 5 years after the ROD is signed for the Northwest Colorado GRSG PLUPA/FEIS.

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 “ensure 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

However, there is no indication that vehicle travel will be limited to designated routes, nor is a timetable provided for completion of activity-level travel planning. Id. The Forest Service does not propose new travel management nor limiting vehicle use to designate routes. FEIS at 2-39. This conflicts with the recommendations of federal GRSG experts based on the best available science (NTT 2011), and undermines GRSG conservation.

Issue Number: PP-NORTHWESTCO-GRSG-15-26-1

Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: BLM can look to its standard guidance for completing travel plans as part of land use planning, which directs the agency to complete travel and transportation designations within 5 years after signing a Record of Decision. BLM Manual 1626.06(B)(3); BLM Handbook 8342(J)(C)(ii). Using this approach as a guide, BLM must also come up with an action plan and planning schedule, and can prioritize areas that will be completed. BLM Handbook 8342(1V)(B).

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

The Northwest Colorado GRSG PLUPA/FEIS considered alternative B, which was based on “A report on National GRSG Conservation Measures” (NTT 2011). Consistent with the NTT report (p. 11) this alternative would at a minimum limit OHV travel within PHMA to existing roads, primitive roads, and trails (Northwest Colorado GRSG Proposed LUPA/Final EIS, p. 2-137). All action alternatives, including the BLM and Forest Service Proposed LUPA alternatives include the same requirement. Travel management planning has already been conducted on the Routt NF designating roads, trails and areas where travel is allowed. If the Forest Service official found a need to meet changing conditions a revision could be completed per § 212.54 Revision of designations.

The BLM utilized the NTT report, and the USGS Report on Conservation Buffer Distance Estimates for GRSG to define allowable maximum landscape anthropogenic disturbance, required distance from leks for new actions, and density of mining or energy facilities. The Proposed LUPA includes surface disturbance direct areas of influence when calculating acreage for the disturbance cap, which would include consideration of roads when determining whether a project should be deferred or permitted. This would address impacts from new roads in place of a limit for road density.

As discussed previously under the NEPA—Range of Alternatives Section, of this report, the BLM complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM regulations, policy, and guidance. The travel management actions in the Northwest Colorado GRSG PLUPA/FEIS fall within the range of alternatives for protecting GRSG related to travel limitations, road maintenance, and road construction.

The Northwest Colorado GRSG PLUPA/FEIS includes a list of references (Chapter 7), which lists information considered by the BLM in preparation of the FEIS.

Upon approval of the Northwest Colorado GRSG PLUPA/FEIS, the BLM will “complete activity level travel plans as soon as possible, subject to funding” with a priority of completing activity level travel plans in PHMA first (Northwest Colorado GRSG PLUPA/FEIS, p. 2-14). The BLM will comply with all policy during subsequent activity level travel planning, including BLM’s policy that “if the decision on delineating travel management networks is deferred in the land use plan to the implementation phase, the work normally should be completed within 5 years of the signing of the ROD for the RMP.” (BLM Land Use Planning Handbook H-1601-1, p. C-18).