



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

**Idaho-Southwestern Montana  
Sub-Regional  
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..... 6

FLPMA-General ..... 6

Valid Existing Rights ..... 9

Multiple Use Mandate..... 15

Consistency with State and Local Plans (BLM)..... 19

Viability (Forest Service)..... 22

Coordination with State and Local Governments (Forest Service) ..... 25

Range of Alternatives ..... 25

Purpose and Need ..... 32

Cumulative Effects..... 37

Public Comments ..... 40

Cooperating, Joint, and Lead Agencies ..... 42

Supplemental EIS..... 45

Best Available Science ..... 54

Public Participation..... 66

Impacts – Greater GRSG ..... 71

Impacts – Air Quality..... 75

Impacts – Oil and Gas..... 77

Impacts – Socioeconomics..... 79

Impacts – Grazing ..... 82

Impacts – Other..... 87

Endangered Species Act ..... 90

GRSG-General..... 90

GRSG-Density and Disturbance Cap..... 94

GRSG-Adaptive Management..... 96

GRSG-Habitat Objectives..... 97

GRSG-Livestock Grazing..... 100

GRSG-Data and Inventories ..... 106

GRSG-Mitigation..... 109

Administrative Procedure Act..... 114

Energy Policy Act of 2005..... 116

Areas of Critical Environmental Concern..... 119

Fire ..... 121

Fluid Minerals..... 123

Solid Minerals – Including Mining Law of 1872 ..... 125

Special Status Species..... 128

Lands and Realty..... 131

Travel Management ..... 132

Clarifications and Clerical Errors ..... 138

## 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**

**Issue Topics and Responses**  
NEPA

**Topic heading**

**Submission number**

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-XX **Protest issue number**

**Organization:** The Forest Initiative **Protesting organization**

**Protester:** John Smith **Protester's name**

**Issue Excerpt Text:** **Direct quote taken from the submission**

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** **General statement summarizing the issue excerpts (optional).**

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

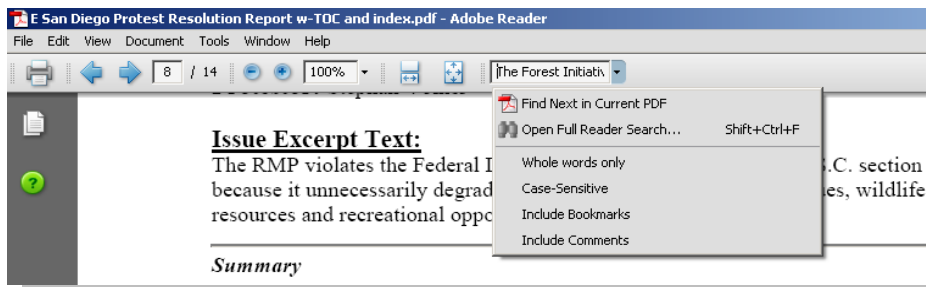
---

**Response** **BLM's response to the summary statement or issue excerpt if there is no summary.**

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

### *How do I find my Protest Issues and Responses?*

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



## List of Commonly Used Acronyms

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

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Joe Merrick	Owyhee County Commission	PP-IDSOUTHWESTMT-GRSG-15-01	Denied – Issues and Comments
Jack Lyman	Idaho Mining Association	PP-IDSOUTHWESTMT-GRSG-15-02	Denied – Issues and Comments
R. Jeff Richards	Rocky Mountain Power (PacifiCorp)	PP-IDSOUTHWESTMT-GRSG-15-03	Denied – Issues and Comments
Alan Prouty	Simplot Livestock	PP-IDSOUTHWESTMT-GRSG-15-04	Denied – Issues and Comments
Erik Molvar	WildEarth Guardians	PP-IDSOUTHWESTMT-GRSG-15-05	Denied – Issues and Comments
Dave Galt	Montana Petroleum Association	PP-IDSOUTHWESTMT-GRSG-15-06	Denied – Issues and Comments
Laura Skaer	American Exploration & Mining Association	PP-IDSOUTHWESTMT-GRSG-15-07	Denied – Issues and Comments
Travis Bruner	Western Watersheds Project	PP-IDSOUTHWESTMT-GRSG-15-08	Denied – Issues and Comments
No Name provided	Public Lands Council / National Cattlemen’s Beef Association	PP-IDSOUTHWESTMT-GRSG-15-09	Denied – Issues and Comments
John Peiserich	Idaho Petroleum Council	PP-IDSOUTHWESTMT-GRSG-15-10	Denied – Issues and Comments
Wayne Prescott	Idaho Cattle Association	PP-IDSOUTHWESTMT-GRSG-15-11	Denied – Issues and Comments
CL “Butch” Otter	Governor of Idaho	PP-IDSOUTHWESTMT-GRSG-15-12	Denied – Issues and Comments
Jim Hagenbarth	Hagenbarth Livestock	PP-IDSOUTHWESTMT-GRSG-15-13	Denied – Issues and Comments
Darcy Helmick	Simplot Livestock	PP-IDSOUTHWESTMT-GRSG-15-14	Denied – Issues and Comments
Mike Best	Avian Power Line Interaction Committee	PP-IDSOUTHWESTMT-GRSG-15-15	Denied – Issues and Comments
Christopher Clark	Y-3 II Ranch	PP-IDSOUTHWESTMT-GRSG-15-16	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-IDSOUTHWESTMT-GRSG-15-17	Dismissed – Comments Only
Mark Salvo	Defenders of Wildlife	PP-IDSOUTHWESTMT-GRSG-15-18	Denied – Issues and Comments
Don Amador	BlueRibbon Coalition	PP-IDSOUTHWESTMT-GRSG-15-19	Denied – Issues and Comments
Robert Schweigert	For Multiple Protestors	PP-IDSOUTHWESTMT-GRSG-15-20	Denied – Issues and Comments

## Issue Topics and Responses

### FLPMA-General

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-10

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Neither agency proposes to seek withdrawal of PHMAs or IHMAs from locatable mineral entry. Only Sagebrush Focal Areas are proposed for such withdrawal, and apparently only for BLM lands. FEIS at 2-27, 2-54, 2-72. 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 BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, the agencies 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-IDSOUTHWESTMT-GRSG-15-05-2

**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-IDSOUTHWESTMT-GRSG-15-06-34

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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-IDSOUTHWESTMT-GRSG-15-06-41

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Trades maintain the Proposed LUPA's proposal to prioritize leasing outside of PHMA and IHMA and to make PHMA and IHMA open for leasing with NSO stipulations that cannot be waived or modified constitutes a de facto withdrawal under FLPMA. See 43 USC § 1702(j) (defining “withdrawal”), 1714(1)(1) (referencing withdrawals resulting from closure of lands to leasing under the Mineral Leasing Act of 1920). FLPMA requires that the Secretary of the Interior notify both houses of Congress of withdrawals of five

thousand acres or more no later than the effective date of the withdrawal; as part of this notification, FLPMA also imposes additional procedural requirements. Id. § 1713(g). At a minimum, the Secretary of the Interior must report its decision to exclude a principal or major use of the public lands (mineral leasing) from tracts of land more than 100,000 acres to the House of Representatives and Senate, and complete additional procedural requirements. Id. § 1712(e). Accordingly, the Secretary of the Interior must comply with FLPMA and notify Congress of the de facto withdrawals of PHMA and IHMA from mineral leasing.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-6

**Organization:** Montana Petroleum Association

**Summary:**

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

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that uses a non-legislated standard of “net conservation gain” to determine impacts of projects, creating a de facto recovery plan for an unlisted species that exceeds the “unnecessary and undue degradation” standard.

**Response:**

The Federal Land Policy Management Act details the BLM’s broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, 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 and Forest Service Sensitive 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); Forest Service Manual 2672.1 (“Sensitive 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.”)).

The Idaho and Southwestern Montana GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the

**Protestor:** Dave Galt

**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 2-4. BLM’s stated goal of “enhance, conserve, and restore” is beyond BLM’s authority under FLPMA. BLM must revise the Proposed LUPA to require that land users avoid unnecessary or undue degradation to the GRSG and its habitat.

potential of its being listed (see Section 1.2, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

The full range of action alternatives in the Idaho and Southwestern Montana GRSG PLUPA/FEIS, as described starting on page 2-8, “[m]aintain and/or increase GRSG abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in collaboration with other conservation partners”. 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Idaho and Southwestern Montana 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 Idaho and Southwestern Montana 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, the Idaho and Southwestern Montana 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 withdrawal of as much as 13.3 million acres from mineral entry. BLM's decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-54, is based on the value of the habitat to the GRSG. Also, decision LOC-2 establishes protocols to include RDFs in order to avoid, minimize and mitigate impacts of that resource use on the GRSG habitat.

For the development of fluid minerals under existing leases, the Idaho and Southwestern Montana GRSG PLUPA/FEIS details BLM's management objective FLM-OBJ-2: (page 2-51) to “work with the lessees, operators, or other project proponents to avoid, minimize and apply compensatory mitigation to the extent compatible with lessees' rights to drill and produce fluid mineral resources.” Action FLM-3 through FLM-7, pages 2-52 and 2-53, detail the BLM's approach for managing existing fluid mineral leases in GRSG habitats, using Conditions of Approval and other approaches to minimize and mitigate 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.

Moreover, the limitations on oil and gas leasing in GRSG habitat do not constitute a “withdrawal” decision triggering compliance with the withdrawal provisions of section 204 of FLPMA. While a withdrawal may be one tool to close areas to oil and gas leasing, it is not the only one. The proposed plan's actions with respect to oil and gas leasing invoke BLM's planning authority under section 202 of FLPMA, not the withdrawal authority of section 204. To the extent withdrawals are contemplated by the proposed plan, they are “recommended” for withdrawal not made as part of this planning effort. There is no “de facto” withdrawal.



The net conservation gain 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, 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 and Forest Service Manual 2672.1 mentioned above because it reduces or eliminates threats to GRSG and its habitat.

### *Valid Existing Rights*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-12

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Both the Draft LUPA/DEIS and LUPA/FEIS recognize the concept of valid existing rights and include a definition of that phrase in the glossary. Valid existing rights are meaningless if an IMA member's ability to access and develop those rights is precluded by the LUPA/FEIS. IMA protests the portions of the LUPA/FEIS that are inconsistent with valid existing rights. For example, the travel management planning guidelines in Appendix L calls for a balancing test to balance the resource against the purpose and need for a travel route and the consideration of closure of a route in GRSG habitat where resource conflicts outweigh the purpose and need of the route. Additionally, the travel management guidelines call for limitations on road maintenance. These provisions have the potential to interfere with an operator's ability to obtain and maintain a right-of-way necessary to access valid existing rights. There is no recognition of practical or economic limitations in the balancing test such as the example where an existing road access to a project might require 25 miles of travel around GRSG habitat that could be

accomplished with two miles of road through habitat. As recognized in Chapter 4, required design features for roads and travel management would likely add additional limitations on routes in GRSG habitat. See p.4-208. Further, where the 3% disturbance cap is applied, new road development would be prohibited, thus further restricting access to valid existing rights. Lek buffers would add additional restrictions. In short, because of the overall requirement that rights-of-way must achieve a net conservation gain for GRSG, activities in support of valid existing rights will incur additional costs and longer project review periods. Id at p.4-221. These numerous restrictions impinge upon and can render meaningless valid existing rights.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-03-3

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. 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-IDSOUTHWESTMT-GRSG-15-04 -9

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** The language in AD-1 needs to be clear that these features, both for existing mines and for future mines (in which there is an existing right), are not subject to the disturbance cap and density cap. This includes being able to access pipelines, such as the ore slurry pipeline that carries phosphate ore from the Smoky Canyon Mine to the phosphate mineral processing facility in Pocatello, Idaho.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-23

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Trades protest the Agencies' decisions to impose new restrictions on existing federal oil and gas leases. The Proposed LUPA/Final EIS attempts to impose numerous restrictions on existing oil and gas leases.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-24

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Trades protest the Agencies' imposition of new restrictions that are inconsistent with existing leases. First, BLM does not have the authority to impose new restrictions on valid existing leases through a 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-IDSOUTHWESTMT-GRSG-15-06-25

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The proposed addition of new restrictions to existing leases exceeds BLM's legal authority under FLPMA. BLM may not modify existing lease rights through its land use planning process because FLPMA expressly states that all BLM actions, including authorization of resource management plans (LUPAs), 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-IDSOUTHWESTMT-GRSG-15-06-26

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** BLM’s Land Use Planning Manual reinforces that LUPAs 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 BLM’s own policies.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-27

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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, IHMA, and GHMA leave no room for consideration of valid existing rights. In PHMA and IHMA, 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, app. DD at DD-2 – DD-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 Proposed LUPA/Final EIS, app. DD at DD-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 or IHMA 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, app. DD at DD-2 – DD-3.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-28

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-29

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Section 3101.1-2, 43 CFR, states that BLM may impose “reasonable mitigation measures...to minimize adverse impacts...to the extent consistent with lease rights granted.” 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-IDSOUTHWESTMT-GRSG-15-06-31

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-33

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-42

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Agencies have not adequately explained or justified the proposal to designate all PHMA and IHMA as right-of-way avoidance or exclusion areas. Lessees’ 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-IDSOUTHWESTMT-GRSG-15-07-5

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The vast majority of claim holders with claims in GRSG strongholds face almost certain invalidation and forfeiture of their mining claims because very few mining claims can withstand the rigorous economic evaluation, known as a claim validity examination, to which they would be subjected. The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PLUPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, legitimate exploration activity will cease on lands withdrawn pursuant to the Proposed Plan. Indeed, upon information and belief, the Protesting Parties believe that investment of legitimate

exploration is already being impacted by the mere recommendation of an area of withdrawal identified in the PLUPA/FEIS, regardless of whether the withdrawal actually ever happens.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-11

**Organization:** State of Idaho

**Protestor:** CL “Butch” Otter

**Issue Excerpt Text:** Throughout the LUPA/FEIS, BLM conditions several objectives, goals, management actions, and standards and guidelines subject to "Valid Existing Rights" ("VERs") with the implication that the impact of these restrictions on claim holders would be mitigated because their rights to their claims would be protected. The Governor's Alternative also takes into consideration of VERs, but does not invoke the reference as a broad sanction for the unprecedented land withdrawals in the Proposed Plan. The VER requirement puts an overly restrictive and unrealistic burden on mining operators exercising their rights under the General Mining Law, and creates a defacto withdrawal which is outside BLM's authority and contrary to law.

**Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violates valid, existing rights by imposing disturbance caps restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

**Response:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)). For example, the Fluid Minerals Objective 1 on p. 2-51 states: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMA, IHMA, and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA, IHMA, and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights...”

Additionally, the following direction from p. 2-29 would be applied regarding the disturbance cap: “For Idaho and Montana, if the 3 percent anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) within GRSG PHMA (or IHMA in Idaho) Habitat Management Areas in any given BSU, then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the General Mining Law of 1872, as amended, valid existing rights, etc.) will be permitted by BLM within GRSG PHMAs and IHMAs in any given BSU until the disturbance has been reduced to less than the cap. As measured according to the Monitoring Framework (Appendix G) for the intermediate scale.”

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 (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200, 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. Restrictions only apply to future requests and provides options if the alternative is impracticable.

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.

One protest suggested that operations and maintenance activities be considered exempt from more restrictive management actions that would be implemented in response to hard and soft adaptive management triggers. According to the comment response (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Appx T, p.20) “Soft triggers represent an intermediate threshold indicating that management changes are needed at the project/implementation level to address habitat and population losses. Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation goals and objectives as set forth in the BLM and Forest Service plans. The adaptive management soft and hard triggers

and land use planning responses to these triggers are described and analyzed fully in this EIS (Proposed Plan actions AM-1 through AM-16).”

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

Other protests that suggest valid existing rights are violated by travel management restrictions such as right-of-way and access provisions, or that the restrictive VER requirements for mining claims result in a de facto withdrawal - these issues are discussed further in the Travel Management section of this document.

While the Idaho and Southwestern Montana GRSG PLUPA/FEIS provides management direction for conditions of approval on valid existing leases it does so only consistent with lessees’ valid existing rights.

### *Multiple Use Mandate*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-18

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Dedicating PHMAs to GRSG conservation to the exclusion of locatable minerals development would also unreasonably restrict mining exploration and mining operations inconsistent with the Agencies' multiple use mandate to manage "in a manner which recognizes the Nation's need for domestic sources of minerals." 43 USC § 1701(a)(12). It also would be contrary to the Agencies' obligations to provide for a "combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for ... minerals."

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-6

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Although the Agencies mention the multiple-use mandate under FLPMA, the purpose and need

statement does not provide for the consideration of the NFMA multiple-use requirements to provide for "harmonious and coordinated management of the various resources" on National Forest System lands. See 16 USC § 531 (a). Because the purpose and need statement does not recognize the Forest Service's NFMA multiple use mandate, the LUPA/FEIS is fundamentally flawed. Even if the Agencies intended to apply their multiple-use mandates consistent with FLPMA and NFMA, the Agencies' Proposed Plan to close areas to phosphate leasing without considering the merits of a particular proposed lease exploration or development project-in areas where mining is not a primary threat or without providing reasoned explanation of how such closures will provide benefits to the GRSG that otherwise could not be achieved in conjunction with mining (e.g., through mitigation or other conservation measures)-establishes that these alternatives are inconsistent with and do not meet the multiple-use requirements of the purpose and need for the environmental review process by failing to provide for a combination of" balance and diverse

resource uses." The Agencies' failure to comply with their multiple-use requirements violates FLPMA, NFMA, MUSYA, and NEPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-11

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** As described in Simplot's comments and in this protest document. Federal land management agencies are required by statute to manage lands for multiple uses. It is important that the LUPA provide the process for this multiple use to happen along with measures needed for the protection of the GRSG. The importance of providing this "balance" in the LUPA was underscored by a letter by Governor Hickenlooper to BLM

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-3

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** The proposed restrictions and effective withdrawals from mineral entry directly conflict with FLPMA's requirement that the Secretary must manage public lands to respond to the Nation's needs for minerals.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-13

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** For the BLM, the multiple use balance is to be achieved in the Section 202 land use planning process and the resulting Resource Management Plans ("RMPs"). FLPMA does not authorize the subordination of any of these uses in

preference for a single land use such as GRSG habitat conservation outside the requirements under § 202(c)(3) and BLM's planning regulations at 43 CFR § 1610.7-2. See also 43 USC § 1732(b) (which states that except for the limited provisions of Section 1744, Section 1782 and subsection (f) of section 1781 of FLPMA, "no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under the Act..."). Likewise, under § 529 of MUSYA, Congress directs USFS to give "due consideration" to resources. Consequently, USFS must strike an appropriate balance between potentially competing interests and land management objectives, while considering the needs of all species – including the needs of humans for minerals. Emphasis on one resource, GRSG, across an entire planning area, is not consistent with NFMA and MUSYA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-8

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The land use restrictions and prohibitions, especially the proscribed actions for proposed withdrawals from mineral entry, see LOC 3, PLUPA/FEIS at 2-54 (SFA withdrawals), and the widespread travel and transportation restrictions, see TM 1, TM-2, PLUPA/FESI at 2-56 to 57 (limited off-highway travel and temporary closures), are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102(a)(12)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-9

**Organization:** American Exploration and Mining Association



**Protestor:** Laura Skaer

**Issue Excerpt Text:** By withdrawing millions of acres of land in the Western United States from location under the General Mining Law and imposing exhaustive restrictions on mineral leasing, the PLUPAs violate the multiple-use mandate of FLPMA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-09-2

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

**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-IDSOUTHWESTMT-GRSG-15-11-2

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The last-minute inclusion of livestock grazing in the SFA management regime, along with other conservation measures, inappropriately elevates grazing to a primary threat to the species contrary to the best available science and the agencies' multiple-use mandates.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-7

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The dramatic shift in the Proposed Plan treating livestock grazing as a primary threat, without modification, would violate the agencies' multiple-use mandate under FLPMA's multiple-use and

sustained yield mandate under § 102(a)(7), and in the land use planning title of FLPMA under § 202(c)(1), and NFMA § 1604(c)(1).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-10

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** The BLM is required to strike an appropriate balance between potentially competing interests and land management objectives. Therefore, the LUPA/FEIS' mineral withdrawals, prohibitions, and restrictions are contrary to explicit statutory language in FLPMA, and MUSYA, and Section 22 of the General Mining Law.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-8

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Even if the Agencies intended to apply their multiple-use mandates consistent with FLPMA and NFMA, the Agencies' Proposed Plan to significantly restrict livestock grazing without providing reasoned explanation of how such restrictions will provide benefits to the GRSG that otherwise could not be achieved in conjunction with ranching (e.g., through mitigation or other conservation measures) establishes that these alternatives are inconsistent with and do not meet the multiple-use requirements of the purpose and need for the environmental review process by failing to provide for a combination of "balance and diverse resource uses." The Agencies' failure to comply with their multiple-use requirements violates FLPMA, NFMA, MUSYA, and NEPA.

**Summary:**

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

- recommending mineral withdrawals within PHMAs (FLPMA section 102(a)(12));
- closing areas to phosphate leasing without considering other alternatives in areas where mining is not a primary threat;
- requiring additional conservation measures by elevating livestock grazing as a primary threat; and
- prioritizing wildlife over other uses (e.g., livestock grazing).

**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.

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

Consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA)(16 USC 528–531), the Forest Service manages National Forest System land 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 MUSYA for the development and revision of land management plans.

The Idaho and Southwestern Montana 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 (Section 1.2, Purpose and Need). Both, the Forest Service's and BLM's planning processes allow for analysis and consideration of a range of alternatives in the Idaho and Southwestern Montana GRSG PLUPA/FEIS that identified and incorporated conservation measures 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS included alternatives (Section 2.8) that provided 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS, as described in Chapter 2 (Vol. 1, p.2-1 through 2-224), provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS satisfies FLPMA's and MUSYA's multiple use mandates.

### *Consistency with State and Local Plans (BLM)*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-01-2

**Organization:** Owyhee County Commission

**Protestor:** Joe Merrick

**Issue Excerpt Text:** The Decision is inconsistent with County Plans and the Idaho Governor's GRSG Plan.

The inconsistencies have not been addressed, with the intent of resolving them so as to obtain consistency. Resolving the inconsistencies would result in compliance with the FLPMA consistency requirement and would not degrade the intended result of conserving GRSG.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-01-5

**Organization:** Owyhee County Commission

**Protestor:** Joe Merrick

**Issue Excerpt Text:** The Decision EIS has a 4-tiered habitat approach (with 3.6 million acres of focal areas getting a higher level of protection) instead of the Governor's 3-tiered approach. That difference will be significant in terms of restrictions applied to grazing uses on the federal lands which

constitute a significant part of our county economy.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-1

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Trades protest the significant inconsistencies between the Proposed LUPA and the Montana GRSG Habitat Conservation Strategy, see Montana Executive Order 10- 2014 ("Montana Plan"), and the Federal Alternative of Governor C.L. "Butch" Otter for GRSG Management in Idaho, see Proposed LUPA/Final EIS, app. Q ("Idaho Plan"). These inconsistencies are the result of BLM's choice to impose a national, one-size-fits-all approach to GRSG conservation in violation of FLPMA's requirement for BLM to coordinate land use planning with state and local governments. The Proposed LUPA diverges from the Montana Plan in many important respects. For example, the Montana Plan imposes a five percent disturbance cap within core areas. Montana Plan at 14, 17. The Proposed LUPA, on the other hand, requires a three percent disturbance cap. Proposed LUPA/Final EIS

at 2-29, AD-1. The Montana Plan imposes a 0.25 mile buffer around active leks in general habitat and 0.6 miles around leks in core habitat, Montana Plan at 14, 19, while the Proposed LUPA imposes total NSO stipulations in priority habitat management areas (PHMAs) and GRSG focal areas (SFAs) and buffers in all habitat, Proposed LUPA/Final EIS at 2-51, FML-1. Similarly, although the Idaho Plan imposes NSO restrictions on all core habitat zones (CHZ) (similar to PHMAs) and important habitat zones (IHZ) (similar to important habitat management areas (IHMA)), oil and gas development is allowed if a proponent can demonstrate that the project will not cause declines in GRSG populations and that unavoidable impacts will be mitigated. Idaho Plan at V.D.4.iv.b, V.E.ii. The Proposed LUPA, on the other hand, imposes NSO stipulations on new leases within PHMA and IHMA, subject to a single, limited exception where a proponent can demonstrate that the action “[w]ould not have direct, indirect, or cumulative effects on the [GRSG] or its habitat” or the action “[i]s proposed to be undertaken as an alternative to a similar action occurring on a nearby parcel, and would provide a clear conservation gain to [GRSG].” Proposed LUPA/Final EIS at 2-52, FLM-3. Oil and gas activities are subject to best management practices in the Idaho Plan, including a five percent disturbance cap in IHZs, Idaho Plan at V.G.2.ii, while the Proposed LUPA imposes a three percent disturbance cap in IHMA, Proposed LUPA/Final EIS at 2-29 – 2-30, AD 1. In addition, the Idaho Plan imposes a single lek buffer of one kilometer around occupied leks, Idaho Plan at V.G.2.iii, while the Proposed LUPA imposes 3.1 mile buffers for energy development, Proposed LUPA/Final EIS at 2-34, AD-9.

**Issue Number:** PP-IDSOUTHWESTMT-

GRSG-15-06-3

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Agencies’ refusal to adopt the Montana Plan as to the Montana portion of the planning area is arbitrary and capricious under the Administrative Procedure Act (APA).<sup>2 5</sup>

USC § 706. The Montana Plan is nearly identical in its GRSG restrictions to a similar plan adopted by the State of Wyoming, which the Agencies in Wyoming adopted in their sage- GRSG management plan revisions. Compare Wyoming Executive Order 2011-5, Attachment B at 8 – 12 (describing five percent disturbance cap, 0.6 mile core lek buffers, 0.25 mile general lek buffers, and two mile seasonal buffers), with Montana Plan, Attachment D at 14 – 17 (describing the same stipulations). The Wyoming GRSG Land Use Planning Amendments (May 2015) (“Wyoming 9-Plan LUPA”), the Buffalo Resource Management Plan revision (May 2015) (“Buffalo RMP”), and the Bighorn Basin Resource Management Plan revision (May 2015) (“Bighorn Basin RMP”), for example, incorporate the Wyoming Plan’s NSO lek buffers, Wyoming 9-Plan LUPA at 2-60, Management Nos. 129, 130; Buffalo RMP at 186, 192, 196, SS WL-4024; Bighorn Basin RMP at 2-23, Record No. 4117; the Wyoming Plan’s seasonal restrictions, Wyoming 9-Plan LUPA at 2-60 – 2-61, Management Nos. 131 – 33; Buffalo RMP at 191, 195, 199, SS WL-4024; Bighorn Basin RMP at 2-23, Record Nos. 4118, 4119; and the Wyoming Plan’s five percent disturbance cap, Wyoming 9-Plan LUPA at 2-58, Management No. 127; Buffalo RMP at 186, SS WL-4024; Bighorn Basin RMP at 2-23, Record No. 4117. Even the Agencies admit in the Proposed LUPA that the Montana Plan “is similar to the Wyoming

executive order.” Proposed LUPA/Final EIS at 5-11. The Agencies provided no explanation in the Proposed LUPA for their choice to adopt these important provisions in the Wyoming Plan but failure to consider or adopt the same provisions in the Montana Plan.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-12

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** Under Section 202(c)(9) of FLPMA, 43 USC § 1712(a) and (c)(9), BLM’s LUPs “shall be consistent with State and local plans to the maximum extent . . . consistent with Federal law and the purposes of this Act,” and BLM must “assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands,” and “assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans.” See also *Yount v. Salazar*, 2013 WL 93372, \*13 (D. Ariz. 2013) (not reported) (stating “[b]oth FLPMA and NEPA require meaningful participation of and consultation with local governments, and, to the extent possible, consistency of federal actions with local

**Summary:**

The BLM is in violation of FLPMA because the PLUPA/FEIS is inconsistent with the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014, “Montana Plan/Strategy”), Idaho Governor’s GRSG Plan, and county plans as well as Utah, Colorado, and Oregon state plans. BLM has failed to address the inconsistencies in the PLUPA/FEIS. BLM also acted arbitrarily and capriciously under the Administrative Procedure Act (APA) by not adopting the Montana Plan, since it is nearly identical in its GRSG restrictions to a similar plan adopted by the State of Wyoming, which the agencies adopted in their Wyoming GRSG management plan revisions.

land use plans.”).

The Protesting Parties participated in development of the GRSG conservation plans developed by the sovereign States per invitation of the Secretary of the Interior. Among others, the Protesting Parties agreed that state regulation of mining operations within their respective sovereign borders were sufficient to address the issue of whether the State plans constituted an “adequate regulatory mechanism” under Section 4(a)(1)(D) of the Endangered Species Act.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-15-3

**Organization:** Avian Powerline 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 state's GRSG Management Plans.

**Response:**

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)). Section 706(2)(A) of the In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Idaho and Southwestern Montana GRSG PLUPA/FEIS, including the Montana GRSG Habitat Conservation Strategy (Montana Executive Order 10-2014), and other related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Idaho and Southwestern Montana GRSG PLUPA/FEIS. Chapter 5 describes the coordination that has occurred throughout the development of the Idaho and Southwestern Montana GRSG PLUPA/FEIS. A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.7. Appendix R reviews the county plans and identifies inconsistencies.

BLM acknowledges some similarities between the Montana GRSG Habitat Conservation Strategy and the Wyoming Plan, but there are several reasons why BLM was not able to achieve complete consistency with the Montana Strategy (see Chapter 2, page 2-30). If the BLM determines that the State of Montana has adopted a GRSG Habitat Conservation Program that contains comparable components to those found in the State of Wyoming’s Core Area Strategy including an all lands approach for calculating anthropogenic disturbances, a clear methodology for measuring the density of operations, and a fully operational Density Disturbance Calculation Tool, then the potential for further consistency would increase.

The agency will discuss why any remaining inconsistencies between the Idaho and Southwestern Montana 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-IDSOUTHWESTMT-GRSG-15-05-32

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The Forest Service has similar Sensitive Species responsibilities, and also must maintain viable populations of

GRSG well-distributed across National Forest units pursuant to the National Forest Management Act and its 1982 implementing regulations. These agencies, through the Idaho-Montana RMP Amendment, need to provide management that will prevent this decline of GRSG across the planning area.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-25

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** 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. Garton et al., 2015 have identified substantial concerns regarding the viability of GRSG populations across the planning region, with many of the populations showing declines and increased risks of extirpation. It is therefore imperative that the LUPAs incorporate all measures necessary

to prevent any further population declines due to activities or projects permitted and authorized under the Forest Plan amendment. This includes authorizing livestock grazing. As we have explained above, the proposed actions with respect to livestock grazing are not just insufficient to prevent significant impacts to GRSG populations and their habitats, but in many cases will increase habitat loss. This will result directly in significant population declines of GRSG on National Forest lands, threatening the viability of GRSG populations both across the region and across the species' range, in contravention of NFMA viability requirements and Sensitive Species requirements.

**Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS did not adequately address viability requirements of the 1982 Planning Rule (implementing NFMA) 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 adequate management of livestock grazing 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 GRSG amendments is included in Appendix CC. It evaluates the effects of implementing the proposed management direction for the proposed plan alternative as described in Chapter 2, pages 2-58 to 2-74 of the FEIS. The Biological Evaluation’s determination for GRSG is that, “under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. Therefore, the Idaho and Southwestern Montana GRSG Land Use Plan Amendment and Environmental Impact Statement Proposed Plan may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the GRSG in the plan area.” Adverse impacts from implementing actions under the plan amendment are expected to be short-term, but would result in long term benefits for GRSG habitat.

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 livestock grazing, the Biological Evaluation discloses that additional measures to conserve existing sagebrush habitat would further minimize negative impacts on sensitive species that may occur in GRSG habitat. These include: range improvements designed to reduce the chance of bird strikes; reducing the likelihood of surface disturbance in sensitive areas and ensuring brood-rearing habitat is available to GRSG; and limiting structural range improvements not beneficial to GRSG to improve forage and cover in GRSG habitat to protect nesting GRSG from population loss due to predation.

The plan direction, including desired conditions for seasonal habitat (pages 2-58 thru 2-60), guideline for tall structure (pg 2-60 thru 2-61), livestock grazing desired conditions/guidelines (pg 2-65 thru 2-66), fire management plan direction (pg 2-66 thru 2-68), wild horse and burro guidelines (pg 2-68), and others work in concert to improve habitat conditions for GRSG, contributing to habitat conditions suitable to support a viable population.

The PLUPA/FEIS 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 CC, with its careful 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-IDSOUTHWESTMT-GRSG-15-06-2

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The disregard for the provisions of the Montana and Idaho Plans evidenced in the Proposed LUPA is

inconsistent with NFMA and Forest Service regulations. Although the Forest Service is not required to ensure absolute consistency with state and local plans, 36 CFR § 219.4(b)(3), the Forest Service is required to coordinate its planning efforts with equivalent efforts of state and local governments. 16 USC § 1604(a); 36 CFR § 219.4(b)(1).

### **Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violates NFMA and Forest Service regulations because it did not coordinate its planning efforts with the equivalent efforts of state and local governments.

### **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 Idaho and Southwestern Montana GRSG PLUPA /FEIS. The BLM and Forest Service have worked closely with state, local, and Tribal governments during preparation of the Idaho and Southwestern Montana GRSG PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Idaho and Southwestern Montana GRSG PLUPA /FEIS. A list of the local, state, and Tribal plans that the BLM and Forest Service considered can be found in Chapter 1, Section 1.7. Therefore, the Forest Service has satisfied the coordination requirements under NFMA and Forest Service regulations in preparation of the Idaho and Southwestern Montana GRSG PLUPA /FEIS.

## *Range of Alternatives*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-3

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** In deciding what conservation measures should be imposed to avoid a listing, the Agencies must consider whether the measures proposed may cost

more than the ESA listing that the Agencies are attempting to avoid. Further, these restrictions are beyond what is required or adequate under the ESA and are not therefore within a reasonable range of alternatives to provide adequate regulatory mechanisms in response to the "warranted but precluded" finding.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-7

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** The alternatives must be technically and economically feasible. The range of alternatives provided in the Draft LUPA/EIS must be technically or economically feasible. NEPA requires the Agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 USC § 4332(2)(E). The Agencies failed to include only alternatives that are "practical or feasible from the technical and economic standpoint." BLM NEPA Handbook H-1790-1, at 50 (Jan. 2008); see also *N. Alaska Env'tl. Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006) (agency need not discuss alternatives "which are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area"); 40 CFR § 1508.25(a). In determining what is "technically or economically" feasible, the Agencies should have considered whether implementation is likely given past and current practice. See BLM NEPA Handbook at 52.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-3

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Guardians also submitted our GRSG Recovery Alternative (DEIS Attachment 11) 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 PHMAs and GHMAs, 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-IDSOUTHWESTMT-GRSG-15-06-12

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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. Finally, the Final EIS does not analyze the alternative of the Montana Plan.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-22

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Finally, BLM cannot implement the “responses” to the 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 4-51. 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 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 trigger responses without amending the Proposed LUPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-18

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure to consider an alternative would remove livestock grazing from the entirety of GRSG habitat, including all of the priority and important habitats. Alternative C removes grazing from the PHMA and Alternative F would reduce grazing (PLUPA/FEIS at 2-206) but, despite the wording (“Alternative C would make public lands unavailable to livestock grazing,” *ibid.*), the analysis of this alternative is limited to removing livestock only in the PHMA, and none of the alternatives consider eliminating livestock grazing across the range.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-9

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The need for seasonal restrictions has been affirmed by leading GRSG scientists and the courts. Dr. Clait Braun identified the need for the seasonal restrictions in 2006: “Grazing should not be allowed until after 20 June and all livestock should be removed by 1 August with a goal of leaving at least 70% of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1).” *WWP v. Salazar*, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012). The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve, protect, and enhance GRSG habitats.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-13

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** Further, Manier et al 2014 reported minimum distances, and maximums (mostly reported by a single source), but did not report on other reported disturbance distances between the minimum and maximum levels reported in the literature. The FEIS could have, and should have, assessed alternative lek buffer distances, as reported by various original literature sources, and should not have relied upon the completely arbitrary creation by Manier et al 2014.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-3

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** In deciding what conservation measures should be imposed to avoid a listing, the Agencies must consider

whether the measures proposed may cost more than the ESA listing that the Agencies are attempting to avoid. Further, these restrictions are beyond what is required or adequate under the ESA and are not therefore within a reasonable range of alternatives to provide adequate regulatory mechanisms in response to the "warranted but precluded" finding.

**Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS failed to adequately consider a range of reasonable alternatives not analyzing in detail alternatives relating to:

- EIS measures more costly and restrictive than ESA measures;
- adaptive management triggers and responses;
- a “net conservation gain” goal of protecting GRSG habitat;
- the monitoring framework;
- seasonal restrictions on livestock grazing;
- excluding livestock grazing from all GRSG habitat;
- the State of Montana Plan;
- lek buffer distances; and
- those alternatives submitted by conservation groups.

In addition, it was stated that the Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzed an alternative that was unreasonable and did not meet the purpose and need to provide adequate regulatory mechanisms and failed to include only alternatives "practical or feasible from the technical and economic standpoint."

**Response:**

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Section 2.11 Issues and/or Alternatives Eliminated from Detailed Analysis). 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 (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Section 1.2, Purpose and Need) and that address resource issues identified during the scoping period. The Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzed seven distinct alternatives in detail, which are described in 2.8 Draft LUPA/EIS Alternatives (p.2-79). 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.

### Unreasonable and Not Practical or Feasible

The BLM National Environmental Policy Act Handbook (H-1790) (p. 50) states, “In determining the alternatives to be considered, the emphasis is on what is reasonable rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.’” The range of alternatives considered and analyzed in the Idaho and Southwestern Montana GRSG PLUPA/FEIS are reasonable with reference to the purpose and need.

### EIS Measures More Costly Than ESA Measures

An alternative of this nature is considered speculative (BLM Manual 1790-1, 6.6.3 Alternatives Considered but Eliminated from Detailed Analysis, p.52) and need not be analyzed in detail in the Idaho and Southwestern Montana GRSG PLUPA/FEIS. At this time it is not certain the GRSG will be listed or not and what regulatory measures would be to be implemented and amending the associated land use plans.

### 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 (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. 2-74 and 2-75). These adaptive management strategies would be developed in partnership with the States of Idaho and Montana, project proponents, partners, and stakeholders, incorporating the best available science. A strategy to develop a framework consistent with the approved RMP at the time an anomaly is identified through monitoring and surveillance does not require the triggers to be varied between the action alternatives. Adaptive management hard trigger responses were analyzed within the range of alternatives. For example, in a Conservation Area, if a hard trigger is reached in IHMA, all IHMA in the Conservation Area would be managed as PHMA for all resources. Adaptive triggers were also analyzed in Alternatives D and E (p. 2-4).

### Net Conservation Gain - Monitoring Framework

Net conservation gain is described in Chapter 5/Glossary (p. 8-16) of the Idaho and Southwestern Montana GRSG PLUPA/FEIS as “The actual benefit or gain above baseline conditions.” and is also addressed in the section Changes Between the Draft LUPA/EIS and Proposed LUPA/Final EIS (2-5). The net conservation gain strategy responds to the landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The PLUPA provides management direction to meet this landscape-scale goal (p. 2-14 through 2-58). In addition, net conservation gain is derived from the purpose and need which calls for the agencies to incorporate measures to “conserve, enhance and/or restore GRSG habitat”; and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework (P. 2-4) for GRSG Habitat Management describes a methodology to ensure the BLM/USFS are 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 (Appendix E). A methodology for monitoring implementation of the PLUPA does not require it to be varied between the action alternatives.

### Livestock Seasonal Restrictions

As identified in 2.8 Draft LUPA/EIS Alternatives (p. 2-79), each alternative (A through F) 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.

Alternative E is the Idaho Governor's Alternative and provides recommendations and policies to aid the State of Idaho in developing a conservation plan adapted to Idaho GRSG populations. Conservation measures apply to three GRSG management areas: CHZ, IHZ, and GHZ. It also allows for a flexible approach for GHZ, allowing for more multiple-use activities. Alternative F was resulted from individual and conservation group scoping comments. This alternative contains a mixture of management actions from A Report on National GRSG Conservation Measures as well as additional restrictions on resource uses and increased resource protection - providing greater restrictions on allowable uses and less resource management flexibility.

Table 2-8 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. Moving towards desired habitat conditions would conserve, protect and enhance GRSG habitat.

### Remove Grazing from GRSG Habitats

The section, Alternatives Considered but Not Analyzed in Detail (p. 204) provides a detailed and succinct discussion as to why an alternative to make the entire area unavailable to livestock

grazing (No Livestock Grazing/Reduced Grazing) was not analyzed in detail. No issues or conflicts were identified during this land use planning effort that requires the complete removal of livestock grazing within the planning area. NEPA requires agencies to study, develop and describe appropriate alternatives that involve unresolved conflicts concerning resource uses. The CEQ guidelines for compliance with NEPA require that agencies analyze the “No Action Alternative” in all EISs (40 CFR 1502.14(d)). For the purposes of this NEPA analysis the “no action alternative” is to continue the status quo, which includes livestock grazing. For this reason and those stated above, a no grazing alternative for the entire planning area was dismissed from further consideration in this RMP/EIS (p. 205).

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

The Idaho and Southwestern Montana GRSG PLUPA/FEIS references the Montana State Executive Order No.10-2014 in section Adaptive Management and Monitoring (p. 2-74) in reference to adaptive management and monitoring. In addition, the PLUPA/EIS states, “The Montana GRSG Oversight Team (MSGOT) shall regularly reevaluate the effectiveness of the Conservation Strategy, at a minimum annually, as new science, information and data emerge regarding the habitats and behavior of GRSG, and shall recommend such changes as are appropriate.” Consideration of and inclusion of the executive order did not warrant development of a stand-alone alternative.

#### Lek Buffer Distances

A variety of approaches to managing disturbances near leks, including varying buffer distances, were evaluated in the Idaho and Southwestern Montana GRSG PLUPA/FEIS, as documented in Table 2-11 - Management Actions by Alternative.

#### Individual/Conservation Group Alternative

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, the IDSWMT PLUPA in sections 2.8.4 (p. 2-80) and 2.8.6 (2-81)] briefly describes that management recommendations for protecting and conserving GRSG habitat were received from individuals and conservation groups; and the Idaho Governor. These recommendations were used to develop two distinct Alternatives, C and E respectively. Differences between the two alternatives are described in the following manner. Alternative C management actions are applied to all occupied habitat (PHMA) and focus on the removal of livestock grazing from the landscape to alleviate threats to GRSG. Alternative E conservation measures apply to three GRSG management areas: CHZ, IHZ, and GHZ that represents a management continuum that includes at one end, a relatively restrictive approach aimed at providing a high level of protection to the most important CHZ and a relatively flexible approach for GHZ, allowing for more multiple-use activities.

#### Conclusion:

The BLM considered a reasonable range of alternatives in the Idaho and Southwestern Montana GRSG PLUPA/FEIS in full compliance with NEPA.

## Purpose and Need

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-5

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** The purpose and need statement in the LUPA/FEIS does not ensure proper implementation of the Agencies' multiple-use obligations. The purpose and need statement directs the Agencies to incorporate new conservation measures into the land use plans and to consider such measures in the context of multiple-use. See LUPA/FEIS at p.1-13. This approach predetermines, however, that the affected public lands will be managed for GRSG conservation and all other uses may exist only where compatible with such conservation. In other words, the purpose and need statement improperly tips the scales in favor of one resource use over all other uses, rather than requiring the Agencies to consider each potential resource use on their merits and to provide "a combination of balanced and diverse resource uses" on BLM- managed lands. See 43 CFR § 1702(c).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-1

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Furthermore, "The purpose of the LUPA is to identify and incorporate appropriate conservation measures into LUPs to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat." FEIS at 1-14. "The BLM and Forest Service committed to using the best available scientific information to determine appropriate local and regional management strategies to enhance and restore GRSG

habitats." FEIS at 2-3. 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-IDSOUTHWESTMT-GRSG-15-05-5

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Extensive opportunities for exceptions, modifications and waivers of GRSG protective stipulations are provided in the new plan. Such provisions effectively render each conservation measure that would be applied under the proposed plan amendment optional on the part of the agency, and completely negates any regulatory certainty that may otherwise have been attained through the adoption of conservation measures. In order to meet the purpose and need for this EIS, the agencies are required to implement measures that have scientifically demonstrated effectiveness and certainty of implementation.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-6

**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 Greater 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. 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-IDSOUTHWESTMT-GRSG-15-08-4

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Indeed, the plan delays any substantive changes to livestock grazing until sometime in the indefinite future, calling only for changes based on “site-specific conditions to meet management objectives during term permit renewals, AMP development, or other appropriate implementation planning.” PLUPA/FEIS at 2-44 (emphasis added). Thus, the plans themselves won’t be effective immediately to conserve, enhance, and restore GRSG habitats; at some uncertain future date, they might.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-3

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The last-minute inclusion of livestock grazing in the SFA management regime inappropriately elevates that activity to a primary threat contrary to the Purpose and Need statement.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-8

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** Taken together, these significant changes – including SFAs, lek buffers, the dramatic shift to a presumption of improper grazing, and the adaptive management response – leaves no doubt that the agencies in the FEIS consider grazing a primary threat notwithstanding the fact that the underlying record does not. Failure to adequately explain this threat misalignment as well as the unnecessary resource diversion in an SEIS is arbitrary and capricious and violates the Purpose and Need statement.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-4

**Organization:** State of Idaho

**Protestor:** CL “Butch” Otter

**Issue Excerpt Text:** The COT Report indicates wildfire is a widespread threat to the two largest GRSG populations (Snake-Salmon-Beaverhead and the Northern Great Basin) in Idaho. COT Report, Table 2 at 23-24. However, SFAs and the associated Management Actions do not reduce the wildfire threat above and beyond conservation actions already included in the Proposed Plan for PHMA. The COT Report also indicates that weeds and annual grasses are a widespread threat to the Weiser, Snake-Salmon-Beaverhead, and Northern Great Basin GRSG populations. Id However, SFA designations and the associated Management Actions do not

provide any additional conservation benefit than those contained in the Proposed Plan for PHMA.

Instead, the COT Report indicates that mining is not a threat in four (East Central, Snake- Salmon-Beaverhead, Sawtooth and Weiser) GRSG populations in Idaho and is a localized threat to the Northern Great Basin Population. Id. Mining is not listed as a widespread threat to GRSG populations in Idaho. The SFA mining withdrawal conservation action does not address a priority threat to GRSG in Idaho and is therefore arbitrary.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-5

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** SFAs in Idaho include "[t]hree areas of Non-Habitat managed by the BLM or USFS...included at the direction of the Washington [D.C.] Office. These include an area in and adjacent to the BLM Donkey Hills ACEC, approximately 12,400 acres; 4,900 acres managed by the USFS in the Lost River Range described as Borah Peak, and 6,800 acres of USFS managed lands described as Big Flat Top Mountain/Copper Basin Knob." FEIS at 2-27. These non-habitat areas included in SFAs do not provide any additional conservation benefit for GRSG because these areas are not GRSG habitat by the BLM's own definition. The purpose of the FEIS and LUPA is to "identify and incorporate appropriate conservation measures in to LUPs, to conserve, enhance and restore [GRSG] habitat by reducing, eliminating, or minimizing threats to that habitat." FEIS at 1-14. Thus, the inclusion of

**Summary:**

these areas does not meet the purpose of the FEIS and Proposed LUPAs.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-7

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** The Purpose and Need statement in the LUPA/FEIS does not ensure proper implementation of the Agencies' multiple-use obligations. The Purpose and Need statement directs the Agencies to incorporate new conservation measures into the land use plans and to consider such measures in the context of multiple-use. See LUPA/FEIS at p. 1-13. This approach predetermines, however, that the affected public lands will be managed for GRSG conservation and all other uses may exist only where compatible with such conservation. In other words, the purpose and need statement improperly tips the scales in favor of one resource use over all other uses, rather than requiring the Agencies to consider each potential resource use on their merits and to provide "a combination of balanced and diverse resource uses" on BLM- managed lands. See 43 CFR § 1702(c). Although the Agencies mention the multiple-use mandate under FLPMA, the Purpose and Need statement does not provide for the consideration of the NFMA multiple-use requirements to provide for "harmonious and coordinated management of the various resources" on National Forest System lands. See 16 USC § 531(a). Because the Purpose and Need statement does not recognize the Forest Service's NFMA multiple use mandate, the LUPA/FEIS is fundamentally flawed.

The Purpose and Need to conserve, enhance, and/or restore GRSG habitats for the Idaho and Southwestern Montana GRSG PLUPA/FEIS has not been met because:

- opportunities for exceptions, modifications and waivers of GRSG protective stipulations are provided in the new plan;
- the plan delays any substantive changes to livestock grazing until sometime in the indefinite future... won't be effective immediately to conserve, enhance, and restore GRSG habitats;
- the best available science has not been used;
- improper livestock grazing is considered a primary threat, and protecting GRSG habitat from the effects of livestock grazing is without factual basis;
- SFA designations do not provide additional conservation benefit, particularly with respect to wildfire threats, and improperly include areas of non-habitat areas;
- the SFA mining withdrawal recommendation does not address a priority threat to GRSG and is therefore arbitrary; and
- it does not ensure proper implementation of multiple use, favoring one resource over all other resources.

**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).

Exceptions, modifications and waivers are described for various uses. However, certain conditions must be met in order for an exception, modifications or waiver. Should an exception be granted, there will be enforceable institutional controls and buffers sufficient to allow the BLM to conclude that such benefits will endure for the duration of the proposed action's impacts. The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action satisfies identified conditions and that the proposed action would not have direct, indirect, or cumulative effects on GRSG or its habitat; or is a similar action occurring on a nearby parcel.

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 of this protest report. The management actions developed and analyzed in the alternatives for this PLUPA 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 RMPA 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.

SFAs include characteristics such as existing high-quality sagebrush habitat; highest breeding densities; have been identified as essential to conservation and persistence of the species; represent a preponderance of current federal ownership and in some cases are adjacent to protected areas that serve to anchor the conservation importance of the landscape. While SFAs provide essential habitat for the conservation of GRSG, a broad, landscape approach that integrates appropriate conservation efforts across habitats occurring outside the SFAs, in accordance with the Proposed Plan, is also integral since effective conservation strategies are predicated on identifying key areas across the landscape that are necessary to maintain redundant, representative and resilient GRSG populations. In light of the landscape level approach to GRSG conservation provided through this planning effort and as defined by the characteristics set forth above, as well as additional considerations, including potential for impacts from climate change, fire and invasives, these areas have been identified as SFAs. Regarding the inclusion of Sagebrush Focal Areas (SFAs), the PLUPA included them according to a FWS memo dated October 2014. SFAs and proposed management actions were included to ensure the regulatory certainty required in the Purpose and Need.

These management actions provide for the conservation of the species while still providing for multiple use as defined at 43 USC 1702(c):

“The term “multiple use” means 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; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources

and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”

The BLM applied the best information available when it developed the proposed RMP Revision 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-IDSOUTHWESTMT-GRSG-15-02-11

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** There is no discussion in the LUPA/FEIS of the combined impacts resulting from the GRSG conservation measures provided in the alternatives with the reasonably foreseeable nonenergy leasable minerals projects. The Agencies must discuss how the proposed conservation measures will impact the environment by altering existing management of past, present, or foreseeable activities on or uses of the public lands. The Agencies' analysis of the cumulative impacts of leasable minerals development (or other uses of the public lands) was insufficient and therefore violated NEPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-10

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Similarly, the release of the Montana Plan 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. See 40 CFR § 1508.7 (defining “cumulative impact” as the impact of the proposed action

combined with past, present, and reasonably foreseeable future federal and non-federal actions). The Agencies did not adequately analyze the cumulative impacts of the Montana Plan. Aside from a few references to the plan in Chapter 5, see Proposed LUPA/Final EIS at 5-19, 5-21, 5-26, 5-29, 5-40, 5-43, 5-47, the Agencies listed the plan's major provisions and noted it was “similar to the Wyoming executive order.” Proposed LUPA/Final EIS at 5-10 – 5-11. The Agencies did not consider the Montana Plan in any detail, and did not discuss its impacts in Chapter 4.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-17

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 LUPAs 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-IDSOUTHWESTMT-GRSG-15-06-18

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 ten million acres are designated for leasing subject to NSO and 2,353,200 acres are closed to mineral leasing entirely. See Proposed LUPA/Final EIS, Table 2-9 at 2-94. Nationwide, BLM and the Forest Service propose to designate an additional 31 million mineral acres as subject to NSO

stipulations. Throughout GRSG range, the cumulative amount of land leased with NSO (and therefore effectively rendered inaccessible) could have significant impacts on the development of federal oil and natural gas resources. The 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.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-9

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Here, the LUPA/FEIS includes a cumulative impacts section, Chapter 5 that purported to review past, present, and reasonably foreseeable activities in the cumulative effects area by examining specific resources that may be affected. The LUPA/FEIS, however, fails to include the required “quantified or detailed information.” See *id.* Instead, it provides a short, generic summary of the impacts under the Proposed Plan. NEPA requires more than this. The Agencies did not attempt to quantify the extent to which reasonably foreseeable future actions may affect grazing or to describe with any particularity the nature of those impacts. The various projects identified in table of reasonable foreseeable actions, Table 5-24, are not specifically mentioned again. The tables purport to show a selection of some of the larger projects from the reasonably foreseeable future actions in the area of WAFWA Management Zone IV that covers the Idaho/Nevada border where Y-3 TT operates.

Additionally, there is no discussion in the LUPA/FEIS of the combined impacts resulting from the GRSG conservation

measures provided in the alternatives with the reasonably foreseeable grazing projects. The Agencies must discuss how the proposed conservation measures will impact the environment by altering existing management of past, present, or foreseeable activities on or uses of the public lands. The Agencies' analysis of the cumulative impacts

of grazing (or other uses of the public lands) is insufficient and therefore violates NEPA. See *Te-Moak Tribe*, 608 F.3d at 606. NEPA requires the Agencies to take a hard look at the cumulative impacts of the proposed LUP amendment and other projects; this, the Agencies failed to do.

### **Summary:**

The BLM and USFS failed to adequately analyze cumulative impacts related to:

- new information from the Montana Plan;
- the proposed RMP amendments and revisions nationwide;
- impacts to mineral leasing and development;
- combined impacts from GRSG conservation measures and the RFD scenario; and
- impacts to Livestock Grazing.

### **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 identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 5 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 effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Throughout Chapter 5, the PLUPA/FEIS provides analysis of impact from implementation of GRSG conservation measures on mineral leasing, livestock grazing, and various types of development. 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.

As indicated on page 5-2, the cumulative effects analysis for the PLUPA/FEIS includes quantitative analysis where possible. Where quantitative data are not available, analysis is qualitative. This analysis includes past, present and reasonably foreseeable future actions for all land ownerships in the Management Zones, and evaluates the impacts of the Idaho and Southwestern Montana GRSG PLUPA/FEIS, by alternative, when added to those.

Page 5-1 of the PLUPA/FEIS defines the cumulative effects study area. In accordance with CEQ guidance, cumulative effects need to be analyzed in terms of the specific resource and ecosystem being affected (CEQ 1997). As discussed in Chapter 1, the purpose for the proposed federal action is to identify and incorporate appropriate conservation measures to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to GRSG habitat. The Western Association of Fish and Wildlife Agencies (WAFWA) delineated seven GRSG management zones based on populations within floristic provinces (Stiver et al. 2006). Therefore, the cumulative effects analysis study area for GRSG extends beyond the Idaho and Southwestern Montana Sub-region boundary and incorporates WAFWA Management Zones (MZs) IV, and II/VII. This delineation of the impact area is the reason why the other GRSG plan amendments were not included in this analysis.

The cumulative effects on livestock grazing are described on pages 5-163 to 5-164. Under the Proposed Plan, the contribution to cumulative impacts would be similar to that described under Alternative B and D. Under Alternative B, while no direct reduction to permitted AUMs would occur, compared to Alternative A, permitted active use would decline to a greater extent over time. This is because of the implementation of grazing management changes to meet GRSG habitat objectives. These include potential grazing management changes and restrictions on structural improvements and water developments. As a result forage availability may increase in GRSG habitat, although this forage would generally not be available for livestock use. On NFS lands implementation of the grazing use guidelines would have greater impacts to livestock management on allotments within nesting habitat. This could include the reduction of AUMs on these allotments over time. Management changes focused on achieving specific vegetation objectives based on site conditions would improve vegetation and forage conditions for livestock and wildlife in the long term within GRSG habitat.

A discussion of the Montana Plan, and other states' programs are included on pages 5-10 to 5-11 of the PLUPA/FEIS.

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 Idaho and Southwestern Montana GRSG PLUPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM and Forest Service adequately analyzed cumulative effects in the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

### [Public Comments](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-2

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** IMA is listed as a commenter; still, there is no assurance that the specific comments of P4 Production

were given any consideration by the Agencies.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-03-1



**Organization:** Rocky Mountain Power  
(PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** Rocky Mountain  
Power submits the following protest on the

Idaho and Southwestern Montana 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 January  
28, 2014

**Summary:**

The BLM did not recognize and adequately address comments that were received on the Idaho and Southwestern Montana GRSG PLUPA/FEIS. The BLM introduced SFAs that were not included in the DEIS and did not allow the public the opportunity to comment on SFAs. LUPA/EIS did not recognize or cite as mentioned in comments that power line collisions are not an issue for GRSG. There is no assurance that comments were given any consideration by the agencies.

**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 (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

The BLM and Forest Service considered all substantive comments received and revised the plan based on certain issues raised in the comments, as presented in this Proposed RMP and Final EIS. The agencies prepared a Comment Analysis Report that summarizes all substantive comments received during the 90-day public comment period and the agencies' responses to those comments, including how the agency revised the PRMP and FEIS based on comments. The Comment Analysis Report is presented in Appendix T.

Regarding SFAs and power lines, allocations in the proposed plan/FEIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat. Allocations that were changed between the preferred Alternative and the Proposed Plan are as follows:

- Major ROWs in PHMA, analyzed as exclusion in Alternative D in the DEIS, were changed to Avoidance, and analyzed in the Proposed Plan.
- Major ROWs in GHMA, analyzed as avoidance in Alternative D in the DEIS, were changed to open, and analyzed in the Proposed Plan (Idaho only).
- Minor ROWs in GHMA, analyzed as avoidance in Alternative D in the DEIS, were changed to open, and analyzed in the Proposed Plan.

In accordance with the BLM's NEPA Handbook (H-1790-1), comments received on the Idaho and Southwestern Montana GRSG PLUPA/FEIS were analyzed and responded to if they: "are substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used; identify new impacts or recommend reasonable new alternatives or mitigation measures; or involve substantive disagreements on interpretations of significance." (See 40 Code of Federal Regulations [CFR] 1502.19, 1503.3, 1503.4, 1506.6 and 516 DM 4.17).

The BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every substantive comment is considered when preparing the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

The BLM and Forest Service have provided adequate opportunity for comments, have considered all substantive comments and responded adequately to comments received for the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

### *Cooperating, Joint, and Lead Agencies*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-12

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** 43 CFR § 11 0(c) requires that the Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process. The BLM's process began with adequate and effective "consensus based" management. However, inexplicably, the BLM abandoned its collaborative approach with the State and abandoned its own regulations by creating and including SFAs and the associated Management Actions without any outreach

efforts whatsoever. Such an approach fails the standards set in 43 CFR § 46.1 1 0(a).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-8

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** When BLM included SFAs and their associated Management Actions without consultation, cooperation, and coordination with State agency partners, the BLM violated their own Land Use Planning Hand book ("Handbook").

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-9

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** During the planning process, the State was not invited to participate in the planning of SFAs which constitutes a violation of 43 CFR § 1610.2(a). Adding SFAs to the Proposed LUPAs and FEIS based only on a Service memorandum violates the spirit of the collaborative process that the State of Idaho was operating in good faith under and with the clear intent of Section 202(c)(9) of FLPMA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-6

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Finally, there is no indication in the LUPA/FEIS that the Agencies consulted with USDA's Animal and Plant Health Inspection Service ("APHIS") and its Wildlife Services bureau on the existence of predators, predator habitat, and predator control. The bureau is listed in the Idaho list of cooperating agencies as having been invited to cooperate but Wildlife Services did not accept the invitation. Wildlife Services did not have the discretion to refuse to lend its special expertise on predators. The NEPA regulations define special expertise as statutory responsibility, agency mission, or related program experience. 40 CFR § 1508.26.

**Summary:**

The BLM and the Forest Service did not adequately coordinate with the State in the identification of SFAs and associated management actions. BLM and the Forest Service also failed to include USDA's Animal and Plant Health Inspection Service ("APHIS") and its Wildlife Services Bureau in the predation discussions or as a cooperator.

Wildlife Services has special expertise in predator control under all of these definitions of special expertise. When a lead agency asks another federal agency which has jurisdiction by law over an aspect of the environmental issues, that agency must be a cooperating agency. Id. at 1501.6. Additionally, an agency that has special expertise with respect to an environmental issue may be a cooperating agency upon request of the lead agency. Id. Wildlife Services clearly has jurisdiction and special expertise. The Agencies had a duty to invite Wildlife Service's comments on the DEIS. Id. at § 1503.1. Wildlife Services had a corresponding duty to comment on the DEIS. Id. at § 1503.2. The Idaho plan fails to explain why Wildlife Services refused to cooperate under its jurisdiction by law and based upon its special expertise. Consequently, the purpose of the regulation, to emphasize agency cooperation early in the NEPA process, was frustrated. Id. at 1501.6. These regulatory requirements are directly tied to NEPA itself which requires, to the fullest extent possible, that prior to making any EIS, the lead agency "shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." 42 USC § 4332(C). The Agencies' and Wildlife Service's failure to comply with NEPA and its implementing regulations on the involvement of APHIS Wildlife Services is a violation of law that must be corrected through the supplementation of the FEIS.

**Response:**

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

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 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 Idaho and Southwestern Montana LUPA/EIS, and identification of issues and data during scoping and during the draft Idaho and Southwestern Montana GRSG LUPA/EIS public comment period. The Idaho and Southwestern Montana GRSG PLUPA/FEIS further describes the participation of cooperating agencies in Chapter 5.

Sagebrush Focal Areas (SFAs) were identified and included in the PLUPA/FEIS based on documents and new information released since the publication of the draft LUPA/EIS including recommendations in a U.S. Fish and Wildlife Service (USFWS) memorandum and a USGS report. The memorandum and associated maps provided by the USFWS identify areas that represent recognized “strongholds” for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. SFAs are considered within the realm of the alternatives presented in the draft LUPA/FEIS, and the alternatives were developed after public participation and scoping.

The BLM and Forest Service addressed the impacts predators can have on GRSG in Chapter 4 of the PLUPA/FEIS. The BLM and Forest Service have authority to manage the habitat and provided analysis to describe how the numerous management actions across the range of alternatives could affect the habitat and indirectly the effects of predation. Altering the sagebrush habitat of the GRSG can create an influx of predators into an area and lead to a population decline. Roads, fences, power lines, trails and other disturbances may make access easier for potential predators and increase risks to the species. The PLUPA/FEIS calls for measures that will substantially reduce disturbances in the bird’s habitat, thus reducing predation risk. The PLUPA/FEIS also calls for careful monitoring of grazing allotments within GRSG nesting habitat to ensure suitable grass and forb cover is reserved so we can minimize the associated predation risks. The BLM and Forest Service have existing memoranda of understanding, as indicated in Chapter 1, Section 1.7.5 with USDA, APHIS and continue to work with the organization, as appropriate.

The BLM and Forest Service properly involved all cooperating agencies in the development of the Idaho and Southwestern Montana GRSG PLUPA/FEIS. Both the BLM and the Forest Service appreciate the state's involvement in the planning effort and will continue to coordinate as appropriate.

### Supplemental EIS

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-14

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** The Agencies are also required to prepare a supplemental draft or final EIS if an agency makes substantial changes in the proposed action that are relevant to environmental concerns. Given the impact of the multi-million acre withdrawal and the lack of analysis in the DEIS, the Agencies have made substantial changes in their proposed action that requires supplementation under NEPA. 40 CFR § 1502.9(c)(1)(i).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-15

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Other significant changes summarized in Chapter 2.1 further support the need for supplementation of the NEPA analysis. These include:

- Changing salable minerals in PHMA from "open" in the DEIS to "closed" to new development in the Proposed Plan.
- Non-energy leasable minerals in PHMA were analyzed as "open" in the DEIS and changed to "closed" to new development in the Proposed Plan.
- The addition of a "net conservation gain" strategy as part of mitigation requirements.

...The IMA protests the lack of supplemental analysis of these significant changes in the Proposed Plan and the significant new

information that has not been analyzed prior to release of these documents.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-11

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The management proposed under the Montana Plan presents another management alternative that the Agencies should consider adopting. Because the Montana Plan constitutes "significant new circumstances," the Agencies must prepare a Supplemental Draft EIS.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-19

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** BLM's own planning handbook unequivocally directs BLM to issue a supplement to a draft EIS when "substantial changes to the proposed action, or significant new information 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 mitigation plan, the monitoring plan, the lek buffer distances, and the adaptive management triggers and responses unquestionably are a "substantial change" when compared to the alternatives

included in the Draft LUPA, BLM should have prepared and released for comment a supplement to the Draft LUPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-20

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 mitigation plan, 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-IDSOUTHWESTMT-GRSG-15-06-8

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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, and the lek buffer distances. BLM first presented the public with these components when it released the Proposed LUPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-9

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Most troubling is the fact that the net conservation gain requirement, revised mitigation plan, revised monitoring plan, and lek buffer distances 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, revised mitigation plan, and revised monitoring plan 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 U.S. Fish & Wildlife Serv., GRSG Mitigation Framework (2014); BLM, The GRSG Monitoring Framework (2014). Similarly, the lek buffer distances 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-IDSOUTHWESTMT-GRSG-15-07-1

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The Lek Buffer Study, coupled with the Ashe Memo, collectively

constitute “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required on that basis under 40 CFR § 1502.9(c)(1)(ii). When two new, key and significant pieces of information come late and are not subject to fair comment, this is fatal to the mandatory “meaningfulness” of this NEPA process.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-2

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** Courts have required an SEIS when the proposed action differs “dramatically” from the alternatives described in the DEIS because, de facto, meaningful public comment on the proposed action was precluded, see *California v. Block*, 690 F.2d 753, 758 (9th Cir. 1982). Here, none of the DEIS alternatives utilized all or most of the key elements found in the Proposed Action, particularly the SFAs, lek-buffer distances, and the disturbance cap

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-3

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The Proposed Action in the PLUPA/FEIS could not have been fairly anticipated from reviewing the DEIS alternatives. Because the Agencies have “seriously diluted the relevance of public comment” on the DEIS, *California v. Block*, 690 F.2d at 758, an SEIS is warranted. See also *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (new alternative proposing new locations of activities

required an SEIS because it affected “environmental concerns in a different manner than previous analyses,” even though the general nature of the alternatives impact resembled those already analyzed).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-4

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** the Agencies’ justification that the PLUPA is a lawful “suite of management decisions that present a minor variation of the Preferred Alternative identified in the Draft LUPA/EIS,” FEIS at 2-6, fails both practically and as a matter of law.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-1

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** IPC notes preliminarily that strict compliance with 43 CFR § 1610.5-2(a), which purports to restrict protests to issues raised earlier in the planning process, has been rendered impossible by BLM and the Service, as they included entirely new elements in the FEIS (e.g., significantly expanded habitat designations and entirely new “sagebrush focal areas” and related management actions) which were never previously subjected to public scrutiny. They also purport to rely in the FEIS on scientific literature published after the DEIS was issued, such that it also was never subject to public scrutiny in connection with the NEPA process. This fundamental failure of the FEIS also forms the basis for one of IPC's protest points, that BLM and the Service are required to prepare a supplemental EIS to

address the substantial differences between the DEIS and the FEIS

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-3

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** In the FEIS, MA-10 designates SFAs and manages them as a Priority Habitat Management Area ("PHMA"), to be managed as NSO, without waiver, exception, or modification, for fluid mineral leasing. See FEIS at 2-27. SFAs cover 3,842,900 acres within the sub-region. Id. at 2-2. IPC protests MA-10 and any reference thereafter (collectively referred to as "Management Actions") to SFAs based on the points discussed below. The SFAs were based on an October 27, 2014 United States Fish and Wildlife Service memorandum entitled GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes. This constitutes important new information, and the designation of SFAs was far more than a minor variation; consequently a supplemental EIS is required.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-1

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The last-minute inclusion of livestock grazing in the Sagebrush Focal Area (SFAs) management regime, coupled with the imposition of lek buffers for range improvement based on the 2014 USGS Report, warrants a Supplemental Environmental Impact Statement (SEIS), 40 CFR § 1502.9(c)(1)(i-ii).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-1

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** The additional Management Actions, prioritization, and restrictions, as well as the lek buffers, were not "qualitatively within the spectrum" of draft alternatives. Richardson, 565 F.3d at 705. And these additions certainly constitute more than a "minor variation" from the alternatives analyzed at the DEIS stage. Id. Here, because BLM has "seriously diluted the relevance of public comment on the draft EIS alternatives," an SEIS is required.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-10

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** PLUPA Elements Protested: There is a fatal flaw in inclusion of new material not seen in the DLUPA. Specifically: GIS shapefiles: A comparison between shapefiles created in 2014 and 2015 show significant differences. One significant difference can be found in the Bruneau Canyon Allotment. In 2014, it was not included in any habitat layers, which is appropriate. However in the 2015 PLUPA shapefile, the Bruneau Canyon Allotment is not only considered Priority habitat, it is also within a GRSG Focal Area. The map attached was created using 2014 and 2015 shapefiles provided on inside Idaho. Pink area shows areas designated as habitat in 2015 that were not habitat during the DLUPA process. Hatched areas show SFA. This is just one example of major changes that have not been reviewed by the public.

DLUPA shapefile vs. FLUPA shapefile



Documents Addressing this Issue. GIS Shapefiles, acquired from Inside Idaho. Rationale for Protest: The State Director's decision is wrong for the following reason: Changes to maps and subsequent GIS shapefiles were not vetted through the public review process.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-7

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** Rationale for Protest: The State Director's decision is wrong for the following reasons:

1. GRSG Focal Areas are a completely new concept.
2. BSUs are a completely new concept included within the PLUPA, and based on unpublished data.
3. Data is not complete for all new material provided in PLUPA. Explanatory charts for BSUs were removed from document.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-10

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Y-3 II protests the addition of a number of instances of significant, new information contained in the LUPA/FEIS that were not contained in the Draft LUPA/DEIS, thus precluding one of the main purposes of NEPA which is to foster public review and comment on the Agencies' proposed action. Perhaps the most significant new proposal, not discussed in the draft documents, is the insertion of Sagebrush Focal Areas ("SFAs"). These SFAs constitute 3.8 million acres in Idaho within PHMA based on an internal memorandum from the Fish and Wildlife Service to the BLM and Forest Service (cited as USFWS 2014 in the LUPA/FEIS).

This memorandum, dated October 27, 2014, post-dated the Draft LUPA/DEIS (released November 1, 2013) by nearly one year. These are the same areas that are prioritized for management and conservation actions and thus have the potential to significantly affect Y-3 II since all of Y-3 II's allotments are in the designated SFAs. Because SFAs only appeared in the LUPA/FEIS, Y-3 II has not been able to previously review and comment on the basis for the designation of the SFAs as to either scope or substance. The Agencies are also required to prepare a supplemental draft or final EIS if an agency makes substantial changes in the proposed action that are relevant to environmental concerns. Given the impact of the prioritized management and actions in the SFAs and the lack of analysis in the DEIS, the Agencies have made substantial changes in their proposed action that requires supplementation under NEPA. 40 CFR § 1502.9(c)(1)(i). Similarly, the Agencies must supplement their NEPA analysis if there is significant new information relevant to environmental concerns and bearing on the proposed action or its impacts. *id.* at (1)(ii). Incorporation of the USGS buffer study, cited as "USGS 2014" (see pp. 1-10, 2-10) meets the test for significant new information relevant to environmental concerns. As stated in the LUPA/FEIS, this buffer report was not available at the time of the DEIS release and the information it contains significantly changes the proposed buffers in the Proposed Plan. Other significant changes further support the need for supplementation of the NEPA analysis. These include the addition of a "net conservation gain" strategy as part of mitigation requirements and numerous other changes in Sec. 2.1 of the LUPA/FEIS. Also, the Agencies conclude that supplementation under NEPA is not necessary based on a conclusion that the LUPA is "minor variation" of the co-

preferred alternatives in the DEIS. See p.2-6. SFAs covering 3.8 million acres, the addition of significant changes in lek buffers, the change in the mitigation strategy, and the other changes made after the Draft LUPA/DEIS as summarized in Section 2.1 cannot be reasonably termed as minor variations. They are very significant changes especially regarding the potential impacts on the Idaho ranching industry. Y-3 II protests the lack of supplemental analysis of these significant changes in the Proposed Plan and the significant new information that has not been analyzed prior to release of these documents.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-19-2

**Organization:** BlueRibbon Coalition

#### **Summary:**

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

- None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain;
- The BLM and Forest Service introduced elements in the FEIS that were not analyzed in the DEIS including hard and soft triggers, sagebrush focal areas, changes in mapping of habitat, and the lek buffer distances identified in the USGS Report are elements introduced in the FEIS which were not analyzed or made available to the public; and
- The change in withdrawal of minerals, the change in salable minerals in PHMA from "open" in the DEIS to "closed", and the change in non-energy leasable minerals in PHMA from "open" in the DEIS and to "closed" are new developments in the Proposed Plan.

#### **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

**Protestor:** Don Amador

**Issue Excerpt Text:** The Proposed LUPA/FEIS includes significant components that were not previously made available to the reviewing public, and were thus not available for public comment. These changes are generally discussed in the FEIS at pages 2-1 through 2-5. Of particular concern is the eleventh hour inclusion of SFAs and entirely new "lek buffer" guidance. It is unclear what the site-specific effect of these last minute changes will be, but it appears these changes will fall beyond the "meaningful" threshold for new information that would require a supplemental NEPA document to allow the public meaningful comment on the new information.

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

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

As such, the BLM has determined that the Proposed LUPA is a minor variation of the preferred alternative and that the impacts of the Proposed LUPA would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed RMP/Final EIS are similar or identical to those described Draft LUPA/Draft EIS.

Changes were indeed made from the Draft EIS to the Final EIS and Proposed Plan. As provided in section 2.1 of the FEIS, review of the DEIS, caused mapping adjustments to be made in response to public comments and were based on agency field personnel input and discussions with State of Idaho and USFWS (Appendix N). Specifically, adjustments were intended to address the broad scale nature of the initial map and to address disparities. Certain portions of the Alternative D and Alternative E maps still encompassed some areas of non-habitat, such as timber or farm lands; were missing some areas of potential restoration or other locally definable areas or habitat; or were designated inappropriately as Core and/or Important. As a result, in preparing the Proposed Plan/FEIS, BLM, Forest Service, USFWS and the State of Idaho worked together to refine the GRSB Habitat Management Area map. To resolve map disparities between Alternatives D and E, and to provide more recognizable boundaries of Habitat Management Areas on the ground, BLM and Forest Service worked closely with field personnel in December 2013. During the winter and spring of 2014, BLM and Forest Service also worked closely with the State of Idaho and USFWS (Idaho Fish and Wildlife Office, Boise) in re-evaluating the Core, Important or General Management Zone designations of Alternative E, in order to move forward with a map for the Proposed Plan that met BLM and Forest Service objectives for habitat and State of Idaho and USFWS objectives for populations.

Allocations for PHMA, IHMA, and GHMA — allocations in the proposed plan/FEIS provide more opportunities for uses in GHMA, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSB habitat. Allocations were changed between the preferred Alternative and the Proposed Plan.

Major ROWs in PHMA, analyzed as exclusion in Alternative D in the DEIS, were changed to Avoidance, and analyzed in the Proposed Plan. Major ROWs in GHMA, analyzed as avoidance in Alternative D in the DEIS, were changed to open, and analyzed in the Proposed Plan (Idaho). Minor ROWs in GHMA, analyzed as avoidance in Alternative D in the DEIS, were changed to open, and analyzed in the Proposed Plan. Solar development in PHMA, analyzed as avoidance in Alternative E in the DEIS, was changed to exclusion and analyzed in the Proposed Plan.

Wind development in PHMA, was analyzed as Exclusion in the Proposed Plan. The Proposed Plan's allocation for wind is within the range of alternatives analyzed in the DEIS. Wind development in IHMA, was analyzed as Avoidance in the Proposed Plan. The Proposed Plan's allocation for wind is within the range of alternatives analyzed in the DEIS.

Salable minerals in PHMA, analyzed as open in Alternative E in the DEIS, was changed to closed to new development and analyzed in the Proposed Plan. Non energy leasables in PHMA, analyzed as open in Alternative E in the DEIS, was changed to closed and analyzed in the Proposed Plan.

SFAs have been identified in the Proposed Plan based on recommendations in a USFWS memorandum, and are a subset of PHMA with additional management. Recommended for withdrawal, NSO without waiver, exception, or modification for fluid mineral leasing; and prioritized for management and conservation actions including, but not limited to review of livestock grazing permits/leases. In the Draft EIS chapter 4, Alternatives B and C recommended withdrawal from locatable minerals development; alternatives B and D proposed closure of PPMA to fluid mineral development whereas Alternative E proposed the Idaho Core Habitat Zone as open to fluid minerals with NSO. Alternatives C and F proposed no grazing in occupied GRSG habitat whereas other alternatives were open with varying management action. As such, the management of these areas as SFAs and the impacts of the associated management decisions was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed.

BLM and the Forest Service will manage these areas, totaling approximately 3,842,900 acres (3,606,100 acres of BLM; 236,800 acres of Forest Service) within the Idaho and Southwestern Montana sub-region, as SFAs because of the importance to the conservation of the species range-wide. Specifically, SFAs include characteristics such as existing high-quality sagebrush habitat; highest breeding densities; have been identified as essential to conservation and persistence of the species; represent a preponderance of current federal ownership and in some cases are adjacent to protected areas that serve to anchor the conservation importance of the landscape. While SFAs provide essential habitat for the conservation of GRSG, a broad, landscape approach that integrates appropriate conservation efforts across habitats occurring outside the SFAs, in accordance with the Proposed Plan, is also integral since effective conservation strategies are predicated on identifying key areas across the landscape that are necessary to maintain redundant, representative and resilient GRSG populations (see LUPA/DEIS Issues Section 1.5.2, Management and Monitoring). In light of the landscape level approach to GRSG conservation provided through this planning effort and as defined by the characteristics set forth above, as well as additional considerations, including potential for impacts from climate change, fire and invasives, these areas have been identified as SFAs.

As noted in the DEIS, the goals of this planning effort are to protect both the habitat and the species. While action Alternatives B through F, and portions of Alternative A emphasize a slightly different mix of resources and resource uses, all have goals to 1) conserve, enhance, and restore the sagebrush ecosystem that GRSG populations depend on in order to maintain or increase their abundance and distribution, in cooperation with other conservation partners; and 2) to protect GRSG habitats from disturbances that will reduce distribution or abundance of GRSG

(see LUPA/DEIS Section 2.2.1 Management Common To All Alternatives and Table 2-17). The BLM and Forest Service committed to using the best available scientific information to determine appropriate local and regional management strategies to enhance and restore GRSG habitats (see LUP/DEIS Section 1.6.1 Preliminary Planning Criteria and Section 4.1.2 Incomplete or Unavailable Information).

The USGS Buffer Study included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternatives B, C, D, E, and F) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for locatable mineral withdrawal, elimination of grazing, saleable mineral restrictions, and ROW avoidance and exclusion. Alternatives B and C were the most restrictive. The following were analyzed in the DEIS: 1) closing PHMA to fluid minerals development (Alternatives B and C); 2) recommending withdrawal of PHMA to locatable minerals (Alternatives B and C); 3) closing occupied GRSG habitat to livestock grazing (Alternatives C and F); and 4) closing PHMA to saleable minerals (Alternatives B, C, and F) and applying a 3 kilometer buffer restriction for saleable minerals around leks (Alternative B). In addition to specific management actions designed to protect GRSG habitat, the DEIS included a Required Design Features and Best Management Practices Appendix D that applies protective measures during project implementation. However, the No Action was still the least restrictive of all alternatives analyzed. Accordingly, the management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed.

Adaptive management—identification of hard and soft adaptive management triggers for population and habitat and identified appropriate management responses. Chapter 2 of the DEIS 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, in a Conservation Area, if a hard trigger is reached in IHMA, all IHMA in the Conservation Area would be managed as PHMA for all resources. Adaptive triggers were analyzed in Alternatives D and E of the Draft EIS.

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

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal (GRSG Goals: Goal 1, 2, 3 and 5; Special Status Species Objectives: MA-OBJ-1, 2, and 3; HM-OBJ-1 and 2; Vegetation Management Objectives VEG-OBJ-1, 2, and 3, Wildland Fire Management Objective Fuel-OBJ - 1). WAFWA Management Zone Cumulative Effects Analysis on GRSG – a quantitative cumulative effects analysis for GRSG was included in the FEIS. This analysis was completed to analyze the effects of management actions on GRSG at a biologically significant scale which was determined to be at the WAFWA Management Zone. The DEIS, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the FEIS at the WAFWA Management Zone.

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-IDSOUTHWESTMT-GRSG-15-02-9

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** To the extent the Agencies have incorporated in the Proposed Plan or the Agencies' alternatives certain conservation measures from the BLM GRSG National Technical Team's "Report on National GRSG Conservation Measures" (Dec. 21, 2011) ("NTT Report"), the Agencies should not adopt in the Proposed Plan or any alternative that is based on this flawed document. The NTT Report measures are overly restrictive, inconsistent with applicable law, and improperly focused on anthropogenic disturbance rather than the more significant threats of fire and invasive species.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-18

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The agency provides no standards to prevent the use of guyed

towers that pose a hazard to GRSG; this also is inadequate to prevent undue degradation to GRSG habitats. The record establishes that met towers can result in GRSG population declines, with the relevant data coming from Idaho (see Cotterel Mountain data reviewed in 'Wind Power in Wyoming,' attached to Guardians' DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied. In addition, this restriction should not be limited to PHMAs but should also extend to all other GRSG habitats as well.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-43

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The stipulations, restrictions, and conservation measures in

the Proposed LUPA are largely based on the U.S. Fish and Wildlife Service's (FWS) GRSG (*Centrocercus urophasianus*) Conservation Objections: Final Report (Feb. 2013) ("COT Report") and 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-IDSOUTHWESTMT-GRSG-15-06-44

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

itself.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-45

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The NTT Report also cites authority misleadingly in a number of cases. NWMA Review at 14. For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15%. 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% to 30% depending on habitat function and quality. NWMA Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15% canopy cover standard. Misleading citations, failure to properly reference and list sources in the Literature Cited section, and similar technical errors render the NTT Report difficult to read, difficult to verify, and far less than the "best available science."

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-46

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the three percent disturbance cap, which has been proposed in the Proposed 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-IDSOUTHWESTMT-GRSG-15-06-47

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created. See NTT DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Ramey, Brown, & Blackgoat. As explained by Ramey, Brown, and Blackgoat, studies prior to the NTT Report’s publication were based upon older, more invasive forms of development: Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental



regulations and newer technologies have lessened the threats to GRSG. Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions). The NTT authors' refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report's recommendations for oil and gas development inapplicable to current practices.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-48

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. Applegate & Owens at 287 – 89. In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone. Id. at 289. All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and gas producing basins across the United States. 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-IDSOUTHWESTMT-GRSG-15-06-49

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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-IDSOUTHWESTMT-GRSG-15-06-50

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for GRSG: A Changing Paradigm for Game Bird Mgmt., in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on the GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20 percent of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases

since that time. 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. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone:

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-51

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA Review at 14; NTT DQA Challenge at 25 – 26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2;

BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not provided, an exceptionally rigorous robustness check was performed as required. OMB Guidelines, V(3)(b)(ii)(B)(ii), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The studies upon which the NTT Report relies are therefore unverifiable and not reproducible, which is inconsistent with the DQA guidelines. OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The COT Report similarly cited frequently to a study whose data and programs are not public and, therefore, not reproducible. COT DQA Challenge, Exhibit A at 7.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-52

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Both the NTT and COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate. OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459. Because the NTT and COT Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-1

**Organization:** Travis Bruner

**Protestor:** Western Watersheds Project

**Issue Excerpt Text:** We Protest BLM's failure to conserve, enhance, and restore GRSG habitat, by failing to conform to the

best available scientific information for reducing, eliminating, or minimizing threats to GRSG habitat.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-53

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The buffer restrictions are also unsupported by sound science. As an initial matter, current data from the Pinedale planning area refutes the necessity of wide buffers surrounding GRSG leks. A recent review of this data showed that regional climatic variations, rather than anthropogenic threats such as oil and gas, accounted for 78 percent of the variation in lek attendance in the Pinedale area from 1997 to 2012. Rob R. Ramey, Joseph Thorley, & Lex Ivey, Hierarchical Bayesian Analyses of GRSG Population Dynamics in the Pinedale Planning Area & Wyoming Working Groups: 1997-2012, at 3 (Dec. 2014). 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-IDSOUTHWESTMT-GRSG-15-06-54

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Moreover, many of the studies that the USGS Buffer Report relied upon use outdated information and contain other methodological weaknesses or errors. One study the report cites to describe the response by GRSG to industrial development contains serious flaws. D.E. Naugle, et al., Energy Development &

GRSG, in GRSG: Ecology of a Landscape Species & its Habitats, Studies in Avian Biology No. 38 (S.T. Knick & J.W. Connelly eds., 2011) (“Naugle et al. 2011”). As one reviewer has noted, this study is not an impartial review of existing literature. The authors examined 32 studies, reports, management plans, and theses regarding GRSG responses to energy development, and dismissed all but seven of these studies, four of which were authored by the reviewers. Rob R. Ramey & Laura M. Brown, A Comprehensive Review of GRSG: Ecology & Conservation of a Landscape Species & its Habitat at 115 (Feb. 2012), Attachment 12. 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-IDSOUTHWESTMT-GRSG-15-06-55

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Another study on which the USGS Buffer Report relied for its energy buffers in particular had similar

problems. See USGS Buffer Report at 5, 7 (citing A.J. Gregory & J.L. Beck, Spatial Heterogeneity in Response of Male GRSG Lek Attendance to Energy Development, PLoS One, June 2014). This study, like many similar studies, was based on peak male lek count data. Id. at 2; see also D.H. Johnson, et al., Influences of Env’t & Anthropogenic Features on GRSG Populations, 1997 – 2007, in 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), Attachment 13. Mean average lek counts provide a more accurate picture of population trends. See, e.g., id.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-56

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-57

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

of various well densities on GRSG); D.H. Johnson, et al., *Influences of Env’t & Anthropogenic Features on GRSG Populations, 1997 – 2007*, in *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-IDSOUTHWESTMT-GRSG-15-10-12

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The lek buffer "interpreted range" was arbitrarily chosen in the USGS report entitled *Conservation Buffer Distance Estimates for GRSG - A Review* (Manier et al 2014) (which itself was not subjected to public review prior to the FEIS). The lek buffer distances are suggested by Manier et al 2014 to be some "reasonable range" between the minimum and maximum distances reported by the literature. However, those lek buffer distances constitute one alternative of many; for example, BLM did not consider or expose to public comment via any alternative the minimum lek buffer actually

reported in the literature, but instead the minimum "interpreted range" arbitrarily devised by Manier et al 2014

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-2

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The agencies' reliance upon any literature stating subjective opinions rather than scientific finding is arbitrary. For example, Lyon and Anderson (2003), erroneously characterized oil and gas development as having a negative effect on GRSG nest initiation rates. Lyon and Anderson (2003) has been cited by the BLM as a scientifically valid conclusion in the NTT Report. However, these authors themselves acknowledged that the data they developed was not statistically significant (and therefore scientifically valid), stating that their conclusions were based upon subjective belief: "Finally, even though nest initiation between disturbed and undisturbed hens was not statistically significant, we believe lower initiation rates for disturbed hens were biologically significant and could result in lower overall GRSG productivity." This is nonsensical. The purpose of applying statistics to biological data is to avoid invalid cause/effect conclusions. There can be no "biologically significant" scientific conclusion from data that does not produce a statistically significant difference between the sample and the control, or between two samples. Also, Holloran 2005 reported that GRSG survival probability was not statistically different between highly disturbed and completely undisturbed areas ( $61.5 \pm 6.4\%$  in highly disturbed areas) ( $48.5 + 14.4\%$  in control areas). Nevertheless, Holloran 2005 concluded that, "The evidence suggests that breeding population declines and eventual extirpation of leks near disturbances resulted from both

displacement and decreased survival. Regional GRSG population levels as well as population distributions are likely to be influenced negatively by development of natural gas fields." Holloran 2005, p. 110. This again represents a conclusion, like that in Lyon and Anderson (2003), that is not scientifically based

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-7

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The FEIS erroneously continues to conflate nest-bush post-hatch residual height recordings of successful GRSG hens with overall landscape residual heights, and further continues to ignore work by Hausleitner 2005 showing that residual vegetative heights of successful nests under the nest-bush, were 3.5 to 3.9 inches at the time of nest initiation. Therefore, Hausleitner 2005 continues to be the definitive work on nest-initiation residual vegetation heights. Like the DEIS, the FEIS completely ignores Hausleitner 2005, without explanation.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-2

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** There is no rational/scientific reason to use reduced livestock grazing as a mitigation tool adjacent to burned areas. The PLUPA continually and irrationally raises livestock grazing to a primary threat. There is no scientific need to reduce or change grazing activities adjacent to a burned area. This would only provide irrational impacts to grazing operations which have already been impacted by fire restoration activities.

There is no published research that supports restricting or closing grazing, in areas adjacent to burns, in order to compensate for loss of habitat attributable to wildfire (D-ESR- 5, page 2-134). This proposed management action makes an assumption that grazing has negative impacts to GRSB, but there are no compelling data to support such an assertion. The option to use non-native species in fire rehabilitation seed mixes, when native seed is unavailable, must also be maintained (D-ESR-2, page 2-133)

**Issue Number:** PP-IDSOUTHWESTMT-GRSB-15-14-5

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** The document does not recognize work done by Hausleitner et al 2005. The document continues to base objectives on landscape residual heights as opposed to nest-bush post-hatch residual height recordings. Overall, the "best available science" is not consistently used. For example, as to residual vegetation heights for nesting GRSB, the entire document is silent to the fact that the cited authors measured residual vegetation after the hens had left their nests, not at nest-initiation. Hausleitner et al 2005 is not even referenced by the document, let alone relied upon; however, Hnusleitner et al 2005 established that residual heights of 3.5-3.9 inches characterized the nest bowl and surrounding 1 meter around the nest bowl at the time of nest-initiation. Significant vegetative growth occurs between nest-initiation and post-hatch.

**Issue Number:** PP-IDSOUTHWESTMT-GRSB-15-18-1

**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 GRSB habitat. Allowing land uses and development to within minimum distances of GRSB breeding areas would have a greater negative impact on GRSB than if the agency required lek buffers. Managing to the minimum not only increases the risk of harming GRSB, 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 GRSB populations that depend on those leks and associated nesting and brood-rearing habitat. Requiring larger lek buffers would both conserve GRSB and preserve agency options for managing for GRSB and other values in breeding, nesting and brood-rearing habitat.

**Issue Number:** PP-IDSOUTHWESTMT-GRSB-15-20-5

**Protestor:** Robert Schweigert

**Issue Excerpt Text:** Lek Buffer distances (Appendix B in the Nevada NE California PRMP; Appendix DD in the Idaho SW Montana PRMP) are arbitrary and capricious and do not reflect "best science". The Nevada PRMP and Idaho PRMP impose the lower "interpreted range" suggested by Manier et al 2014, and do so universally within all GRSB habitat (GHMA and PHMA). See Appendix B, p. B-2 of the Nevada PRMP and Appendix DDp.DD-2 of the Idaho PRMP. Yet in Wyoming<sup>4</sup>, significantly smaller buffer distances are applied, and are differentially applied within PMHA as opposed to outside PMHA. The land agencies cannot simultaneously state that a 3.1 mile buffer zone is the "best science" in Nevada, NE

California, Idaho, and SW Montana, while stating that a 0.25 mile buffer zone is the "best science" in Wyoming. If it is the land agency's position that the Wyoming buffer distances are applicable due to local

conditions, then the same local condition consideration should be given to the other states, and there should not be imposed the across-the-board Manier buffer distances.

**Summary:**

The Idaho and Southwestern Montana 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 reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Idaho and Southwestern Montana 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 in the Proposed Alternative, setting objectives for nest-initiation residual vegetation height, and reducing livestock grazing as a mitigation tool.

**Response:**

Before beginning the Idaho and Southwestern Montana PLUPA/FEIS, the BLM and Forest Service gathered data from all sources, reviewed adequacy of existing data, identified data gaps, and determined the type of data necessary to support informed management decisions at the land-use plan level.

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

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM and the Forest Service in the planning process. The group produced a report in December 2011 that identified science-based management considerations to promote sustainable GRSG populations. The NTT is staying involved as the BLM and the Forest Service work 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 Rangeland 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, Idaho Department of Fish and Game, Idaho Governor's Office of Species Conservation, and Montana Fish, Wildlife, and Parks. The BLM and Forest Service relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Chapter 3) and impact analysis (PRMP/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 and Forest Service 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.

The Idaho and Southwestern Montana PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. The impacts of the various buffers are analyzed in Section 4.2 of Chapter 4. As such, the BLM has considered appropriate science when determining lek buffers.

The BLM and Forest Service used a variety of peer-reviewed literature to develop desired habitat conditions for the Idaho and Southwestern Montana PLUPA/FEIS. This literature is displayed in

Table 2-3 of the PLUPA/FEIS (p. 2-20). These habitat objectives summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in this sub-region. Thus, the habitat objectives provide the broad desired vegetative conditions across the landscape that indicates the seasonal habitats used by GRSG.

The relationship between livestock grazing and GRSG is discussed in Section 4.2 of Chapter 4 of the Idaho and Southwestern Montana PLUPA/FEIS (p. 4-11). It cites to numerous sources, including the NTT Report and Mainer, et al., 2013. The PRMP/FEIS contained a range of alternatives regarding fuels treatments. Alternatives B, C, and E contain management direction to rest areas that have undergone fuels treatments from livestock grazing in PHMAs for two full growing seasons unless vegetation conditions direct otherwise (B-FM-1, F-FM-1, pp. 2-133 through 2-134). Section 4.2 of Chapter 4 contains the impacts of management for fuels and fire on GRSG for each alternative under the heading "Impacts from Fire and Fuels Management." As such, the BLM and Forest Service have considered the best available science when considering fire and fuels management.

### Public Participation

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-1

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** In the event that Idaho Governor Otter recommends changes in the LUPA/FEIS which were not raised during the public participation process, the State Director must provide IMA and the public with an opportunity to comment on Governor Otter's recommendations pursuant to 43 CFR § 1610.3-2(e). Please inform IMA if that opportunity to comment arises during the course of Governor Otter's consistency review of the LUPA/FEIS.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-13

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** IMA protests the addition of a number of instances of significant, new information contained in the LUPA/FEIS that were not contained in the

Draft LUPA/DEIS, thus precluding one of the main purposes of NEPA which is to foster public review and comment on the Agencies' proposed action. Perhaps the most significant new proposal, not discussed in the draft documents, is the insertion of Sagebrush Focal Areas ("SFAs"). These SFAs constitute 3.8 million acres within PHMA based on an internal memorandum from the Fish and Wildlife Service to the BLM and Forest Service (cited as USFWS 2014 in the LUPA/FEIS). This memorandum, dated October 27, 2014, post-dated the Draft LUPA/DEIS (released November 1, 2013) by nearly one year. These are the same areas that are proposed for withdrawal from all mineral entry under the General Mining Law of 1872 and thus have the potential to significantly restrict IMA members from accessing lands for mineral exploration and production. Because SFAs and parallel proposals to withdraw many millions of acres from mineral entry only appeared in the Proposed Plan and FEIS, IMA has not been able to review the basis for the designation of the SFAs as to

either scope or substance.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-21

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** The 136 required design features would apply to both federal surface and nonfederal surface lands over federal minerals, based on the assumptions stated in Chapter 4. Further, all RDFs would apply to solid minerals and locatable minerals. See p.B-1. IMA protests the addition of these required design features for the first time in the final LUPA/FEIS. As noted at B-1, these RDFs were based upon "review of current science and effects analysis (circa 2014)" meaning that they were developed after the release of the Draft LUPA/DEIS in 2013 and were not available to the public for review and critique.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-03-2

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Idaho and Southwestern Montana LUPA states, "sagebrush focal areas (SFA's) have been identified in the proposed plan based on recommendations in the USFWS memorandum, and are proposed to be managed as PHMA (Chapter 2, page 2-2)." The BLM has already established Priority Areas of Conservation (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-03-4

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Idaho and Southwestern Montana LUPA states, "in undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third-party actions, 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)." (Chapter 2, page 34). This report was not included in the DEIS released on October 29th, 2013 and was not release to the public until November 2014.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-7

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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-IDSOUTHWESTMT-GRSG-15-08-20

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest that the establishment of forage reserves for livestock marks a significant change from the DEIS that the public has not been allowed to comment on in violation of NEPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-10

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** Several publications are purportedly in press, which precludes the public's review and vetting of or known at the time of the publication/comment period of the DEIS. This publication has become available only after issuance of the FEIS, on or about June 5, 2015 that ended on January 29, 2014. These include, but are not necessarily limited to: Stiver et al (in press); Lockyer 2015 (in press); Schmelzer et al 2015 (in press); Chambers et al 2015 (in press); Manier et al 2014; Coates et al 2014. The public was improperly precluded from vetting these publications and the veracity and/or applicability of each of them.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-4

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** BLM and the Service should withdraw the proposed LUPA until after they have completed a separate NEPA and decision-making process relative to what constitutes "sage brush focal areas", PHMAs and IHMAs, and expanded GHMAs, all of which was not previously subject to public scrutiny. This is necessary particularly because the many areas designated as habitat of different categories demonstrably include areas that are not GRSG habitat, i.e. perennial grasslands, annual grasslands, and juniper woodlands. For example, the agencies have designated areas under the "priority" category that are artificial seedings, and/or are dominated by cheatgrass, and/or are ecological sites that do not support sage-brush. The FEIS now identifies "biologically significant units," and "sagebrush focal areas," and has now defined GRSG habitat by an entirely new model. None of these changes were identified for public review and comment.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-5

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The public, and especially the participating states, were never afforded the opportunity to comment on the development of these new maps.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-8

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** There is a fatal flaw in inclusion of new material not seen in the DLUPA. This additional material again places an elevated emphasis on grazing, makes unreasonable demands, and also provides for guidance in fire management that would be detrimental to preserving

GRSG habitat. Specifically:  
GRSG-LG-GL-037- Guideline: "Do not use drought and degraded habitat condition to adjust values".

20 U.S. DOI. 2015(a). Idaho and Southwestern Montana PLUPA/FEIS. Page 2-26.

21 U.S. DOI. 2015(a). Idaho and Southwestern Montana PLUPA/FEIS. Page 2-27-28.

22 U.S. DOI 2015(a). Idaho and Southwestern Montana PLUPA/FEIS. Appendix G. Page G-28.

23 U.S. DOI. 2015(a). Idaho and Southwestern Montana PLUPA/FEIS. Appendix G. Page G-28.

GRSG-LG-GL-038 - Guideline: "... in PHMA, IHMA, GHMA and SFAs, consider closure of grazing allotments, pastures, or portions of pastures, or managing the allotment as a forage reserve as opportunities arise under applicable regulations, where removal of livestock grazing would enhance the ability to achieve desired habitat conditions (Table 2-6).

GRSG-FM-GL-050- Guideline: In PHMA, IHMA, GHMA and SFAs cross-country vehicle travel during fire operations should be restricted, whenever safe and practical to do so, as determined by fire line leadership and incident commanders.

GRSG-FM-GL-060- Guideline: In PHMA, IHMA, GHMA and SFA, consider using fire retardant and mechanized equipment only if it is likely to result in minimizing burned acreage.

Documents Addressing this Issue:

U.S. DOI. 2014. Idaho and Southwestern Montana DLUPA/DEIS. Appendix C.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-15-1

**Organization:** Avian Powerline Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The LUPAs state, "sagebrush focal areas (SFA's) have been identified in the proposed plan based on recommendations in the USFWS memorandum, and are proposed to be managed as Priority Habitat Management Areas (PHMA)" or "for energy development, the Oregon proposed plan relies on protective stipulations and buffers, in SFAs the no surface occupancy (NSO) stipulation would be applied without exception, which would protect important GRSG habitat from destruction." The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-15-5

**Organization:** Avian Powerline Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The Oregon and Idaho LUPAs both state, "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.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-20-1

**Organization:** Intermountain Range Consultants for Multiple Protestors

**Protestor:** Robert Schweigert

**Issue Excerpt Text:** Several publications are purportedly in press, which precludes the public's review and vetting of those publications. In addition, several publications are relied upon which were not relied upon or known at the time of the

publication/comment period of the DEIS's that ended on January 29, 2014. These include, but are not necessarily limited to: Stiver et al (in press); Lockyer 2015 (in press); Schmelzer et al 2015 (in press); Chambers et al (in press); Manier et al (2014); Coates et al (2014). As such, the public was precluded from vetting these publications and the veracity and/or applicability of each. of them during the public comment period to the DEISs.

### **Summary:**

The BLM failed to comply with NEPA when it did not provide an opportunity for public input and comment regarding new information in regard to the following:

- The establishment of SFAs and RDFs was not included in the DEIS which did not allow the public an opportunity to comment.
- Lek buffer distances identified in the USGS Report Conservation Buffer Distance Estimates for GRSG was not included in the DEIS and was not released to the public until after the comment period.
- Establishment of forage reserves for livestock is a change from the DEIS that the public has not had the opportunity to comment on this.
- The public was precluded from vetting publications that have become available only after issuance of the FEIS.
- The BLM included new material not seen in the DLUPA relating to drought, grazing restrictions in priority, important, general habitat and SFAs.

### **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.

The BLM and Forest Service issued a full text Final EIS, as required, as the result of changes being made between the Draft and Final EISs. The agencies have made diligent efforts to involve the public in preparing and implementing their NEPA procedures.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft LUPA/EIS, the BLM and Forest Service have developed the Proposed LUPA/FEIS for managing BLM-administered and National Forest System lands in the Idaho and Southwestern Montana GRSG sub-region. The Proposed LUPA/FEIS focuses on addressing public comments, while continuing to meet the BLM's and Forest Service's legal and regulatory mandates. The Proposed LUPA/FEIS is a variation of the co-preferred alternative (Alternatives D and E), and is within the range of alternatives analyzed in the DEIS.

The Proposed LUPA includes components of the alternatives analyzed in the Draft EIS. Taken together, these components present a suite of management decisions that present a minor variation of the preferred alternative identified in the Draft LUPA/Draft EIS and are qualitatively within the spectrum of alternatives analyzed and vetted through public comments. Publications were available. The term "in press" refers to a source not published in a science journal but many times is still available.

A complete summary of changes to Alternative E to develop the Proposed RMP/Final EIS begins in Chapter 2 on page 2-1. This summary explains where new provisions found in the Proposed RMP were analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and the adaptive management triggers and responses etc.

The agencies have provided adequate public involvement opportunities in the planning and NEPA process.

### *Impacts – Greater GRSG*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-8

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Although the Agencies propose to close large areas to phosphate leases to protect the GRSG or its habitat, the Agencies provide little, if any, explanation of impacts that phosphate mining has had on the species in past, particularly the near past... Because the Agencies failed to provide the environmental baseline information regarding past impacts of phosphate mining, the Agencies' analysis is flawed.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-20

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Existing designated corridors would remain open to new transmission rights of way (FEIS at 2-49), regardless of impacts to greater GRSG, and the Boardman to Hemingway and Gateway West transmission projects would be entirely exempted from GRSG protections (FEIS at 2-50). This is arbitrary and capricious and an abuse of discretion. These projects are not yet approved and therefore there are no valid existing rights associated with them. Due to the long planning lead-

times of large transmission projects like these, Boardman to Hemingway and Gateway West are likely to be the only large-scale transmission lines to be approved during the lifetime of the GRSG plan amendments; to exempt them from compliance with GRSG protections essentially renders protections for this scale of project in the proposed plan amendments null and void.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-26

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** BLM's NEPA analysis fails to take the legally required 'hard look' at impacts that cause surface disturbance, including industrial activities and excessive livestock grazing, as well as disturbances such as fire and sagebrush manipulation projects, by underestimating the time it will take for sagebrush to recover to the point where it becomes functioning habitat as food and cover for GRSG.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-27

**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-IDSOUTHWESTMT-GRSG-15-08-13

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** RM-7 encourages the establishment of forage reserves 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-IDSOUTHWESTMT-GRSG-15-08-13

**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 Idaho/Montana GRSG can actually withstand the 3 percent disturbance cap and exemptions proposed in the plan. PLUPA/FEIS at 2-29.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-23

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The agencies do not provide any analysis of whether the proposed managements or alternatives that are proposed to be applied across the range of the species are likely to result in an



increase, maintenance, or further decrease of GRSG populations, nor do the agencies 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-IDSOUTHWESTMT-GRSG-15-16-1

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** The LUPA/FEIS lacks updated census information and population requirements for sustainability of the species. In its comments on the Draft LUPA/DEIS, Y-3 II noted the draft EIS's continued failure to provide current information on GRSG populations in Idaho even though population numbers were obtainable in 2007 and the further need to update the population count before determining the baseline status of the species.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-5

### **Summary:**

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

- it fails to take the legally required 'hard look' at impacts that cause surface disturbance by underestimating recovery time to become functioning habitat;
- 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. There is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions;
- the Agencies failed to provide the environmental baseline information regarding impacts of phosphate mining on GRSG;
- the Boardman to Hemingway and Gateway West transmission projects would be exempted from GRSG protections (FEIS at 2-50) and is arbitrary and capricious and an abuse of discretion;
- there are no valid existing rights associated with projects in the planning stage;
- the plan amendment does not provide direction for forage reserves nor analyze the impact of designing forage reserves on GRSG and their habitats; and

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** As with predators, West Nile Virus, a disease, is specifically to be considered by the Agencies in determining whether to list GRSG under the Endangered Species Act, 16 USC § 1533(a)(1)(C). In its comments on the draft plan, Y-3 II expressed concern about the lack of discussion on the impact of disease on GRSG populations. The LUPA/FEIS fares no better. Reduced risk of West Nile Virus is a goal (p.2-15) and, while there is no chapter 4 analysis of the virus, there are 18 RDFs to control West Nile Virus. The FEIS/LUPA continues, however, to fail to explain or provide information on the effects of West Nile Virus to determine its impacts on the species. Nor is there any explanation why the information could not be obtained or was too expensive to obtain and how the lack of information affects the FEIS, all required by NEPA and its implementing regulations. See 42 USC § 4332(2)(C); 40 CFR § 1503.1(a)(1).

- the PLUPA/FEIS fails to explain or provide information on the effects of West Nile Virus to determine impacts on the species.

**Response:**

NEPA directs that the data and analysis in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and the 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 the potential environmental impact of adopting the Idaho and Southwestern Montana GRSG PLUPA/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing amount and the degree of change (impact) caused by the proposed actions and alternatives ( BLM Handbook – H-1790, section 6.8.1.2). The BLM need not speculate about all the conceivable impacts, but it must evaluate the reasonably foreseeable significant effect of the proposed action

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.

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 Drill). This analysis focuses on the direct, indirect, and cumulative impacts that could potentially result for the on-the ground changes. Impacts relating to industrial activities, livestock grazing, and fire and vegetation restoration are found in Chapter 4, Environmental Consequences.

Specifically in relation to the rate of recovery for GRSG habitat; the recovery time for habitat to become functional will depend on local or site conditions. The monitoring plan in Appendix E provides the framework that will be used to evaluate progress toward meeting desired resource conditions and objectives identified the PLUPA for sagebrush. The effectiveness of these decisions on changes in GRSG populations will be evaluation based on criteria in the monitoring plan (see Appendix E the Idaho and Southwestern Montana GRSG PLUPA/FEIS).

In Chapter 4 of the Idaho and Southwestern Montana 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 include 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 impacts associated with phosphate mining are addressed under leasable minerals (Chapter 4 Section 4.12, Page 4-259). Chapter 3 of the Idaho and Southwestern Montana GRSG PLUPA/FEIS address the affected environment for phosphate minerals. Alternative A represents the current environment, existing management and impacts associated with phosphate mining. The impacts of mineral leasing on GRSG, which includes phosphate mineral, are covered in chapter 4 Alternative A in the PLUPA/FEIS.

The Boardman to Hemingway and Gateway Project are not exempt from GRSG protections. The issuance of site-specific right-of-way grants and authorizations is an implementation planning decision. BLM is analyzing GRSG mitigation measures through the projects specific NEPA review process.

The PLUPA/FEIS includes analysis of livestock grazing (which includes reserve allotments) on GRSG and their habitats (see management actions RM-7 on page 2-45, and Chapter 4 page 2-202). The designation and management criteria for future reserve allotments are implementation planning level decisions to be made based on needs and resource objectives. Management actions specifically to manage predators is outside the scope of the amendment, the BLM and the Forest Service have authority to manage the habitat and have provided numerous management actions across the range of alternatives. Despite concerns over impacts of the West Nile virus on GRSG, actual prevalence of the virus in wild populations remains unknown (Walker et al. 2007). The spread of the West Nile virus and impacts to GRSG in the planning area are speculative at this time and, therefore, was not included in the scope of the cumulative impact analysis in the PLUPA/FEIS. However, the BLM and Forest Service understand there is a potential threat to GRSG from the West Nile virus and have made reference to it in the impact analysis for wildlife and fish in the PLUPA/FEIS and added RDFs to address this concern (PLUPA/FEIS, Appendix B).

The PLUPA/FEIS in conjunction with the Biological Evaluation disclose the outcome for GRSG under the various alternatives on Forest Service lands in the determination statements. As indicated on page 84 of Appendix CC, “Under the Proposed Plan, conservation measures would limit many, but not all impacts to GRSG and GRSG habitat. Therefore, the Idaho and Southwestern Montana GRSG PLUPA/FEIS may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the GRSG in the plan area”. The evaluation supporting this determination considered 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 an understanding of the suite of plan components in the proposed action.

### *Impacts – Air Quality*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-15

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** This failing has been incorporated by the agencies in their plan amendment by specifying that noise limits

will be measured at the edge 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. In its Required Design Features, BLM proposes a limit of 10 dBA within 2 miles of a lek during early morning hours. FEIS at B-2. The Forest Service proposes, “During lekking (March 1 to April 30) restrict surface disturbing and disruptive

activities, including 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 2-59. 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, federal agencies fail to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

**Summary:**

The LUPA violated NEPA by failing to adequately evaluate the effects 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 Idaho and Southwestern Montana 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). 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 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), 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS used the best available information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB. The Idaho and Southwestern Montana GRSG PLUPA/FEIS discusses noise from industry activities in Chapter 4 citing several studies and reports used in the analysis. Many studies assessing impacts of energy development on GRSG have found negative effects on populations and habitats (Naugle et al. 2011; Taylor et al. 2012). 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, see Appendix DD of this EIS) (FEIS Chapter 4 p. 4-15).

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 Idaho and Southwestern Montana GRSG PLUPA/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 Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS includes a bibliography and reference section in Chapter 7 of the FEIS, which lists information considered by the BLM and the Forest Service in preparation of the Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort.

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

### *Impacts – Oil and Gas*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-14

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 8,365,000 of lands, and imposes new compensatory mitigation requirements, new lek buffers, and new density and disturbance caps. The measures, when combined with the extensive limitations on new leases, including NSO stipulations in SFAs, PHMA, and IHMA, and Controlled Surface Use (CSU) and timing limitation (TL) stipulations in General Habitat Management Areas (GHMAs), will cumulatively stymie oil and gas development on federal lands within the planning area.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-16

**Summary:**

The FEIS does not adequately analyze the impacts of the proposed decisions regarding buffers, ROW allocations, mitigation, and density and disturbance on oil and gas development.

**Response:**

The CEQ regulations require an environmental impact statement to "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues" (40 CFR 1502.15). The BLM and FS complied with these regulations in the 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS is

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 8,365,000 acres as right-of-way avoidance areas and 1,013,700 acres as right-of-way exclusion areas. At the same time, the Proposed LUPA states 69,200 acres of public and National Forest System minerals in the planning area are currently under lease for oil and gas. Proposed LUPA/FEIS at 4-229. To the extent individual leases, or even groups of leases or potential development areas are isolated from roads or transportation infrastructure, lessees will be unable to develop the resources present. The Agencies must ensure that access is allowed to both existing and newly issued oil and gas leases in the planning area. Accordingly, the Agencies must analyze the impacts of the right-of-way avoidance and exclusion areas in the Proposed LUPA.

sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the Proposed LUPA/FEIS.

Page 4-226 of the FEIS provides, generally, the nature and type of effects that could impact oil and gas development as a result of approving the Proposed LUPA. Potential decisions that could impact fluid mineral development include land use allocation decisions; such as NSOs or CSUs for fluid mineral leasing, or exclusions/avoidance areas for ROWs. In addition, the application of RDFs or bonding requirements may impact oil and gas development.

Impacts from lands and realty management on fluid minerals are discussed thoroughly in Section 4.9.1 of the Proposed Plan. In regards to the effects of ROW avoidance areas, “because all acres in PHMA and IHMA would be either closed to leasing or open subject to NSO stipulations, no oil and gas activities on future leases within these areas would require new rights-of-way. Therefore, oil and gas activity in PHMA and IHMA would not be impacted by management of ROW avoidance areas under the Proposed Plan,” (p. 4-235).

Additionally, the potential effects of applying “RDFs, BMPs, buffers, and seasonal timing restrictions to ROW construction in all GRSG habitat would also limit construction of new ROWs for oil and gas development. If these limitations made it uneconomic to develop a ROW for oil and gas development, development of federal oil and gas resources in the planning area could decrease,” (p. 2-235).

In regards to potential impacts of the proposed density and disturbance cap, “[a]pplication of the 3 percent disturbance cap in PHMA and IHMA and lek buffers in GHMA could impact both new and existing fluid mineral activities by preventing or restricting new surface development. New fluid mineral activities and new surface development on existing leases could be affected or temporarily delayed if the cap were exceeded. Applying lek buffer distances when approving actions could also restrict development of infrastructure related to fluid mineral development,” (p. 4-236).

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.

### *Impacts – Socioeconomics*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-01-3

**Organization:** Owyhee County Commission

**Protestor:** Joe Merrick

**Issue Excerpt Text:** The Decision proposes to prevent energy extraction on 2.9 million acres, yet the analysis of social and economic impact, as addressed in Chapter 5, so minimizes the impacts as to fail to adhere to the intent of NEPA to accurately identify and analyze the impacts of proposed

decisions. The analysis contends that since there has been little such activity in the past, the elimination of future activity will be minimal and acceptable. That position ignores the natural gas development that is occurring in adjoining counties such as Canyon and Payette. It incorrectly minimizes an economic positive to our county from the growing demand for natural gas.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-3

**Organization:** State of Idaho

**Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violated NEPA by failing to consider and adequately analyze social and economic impact of the potential energy extraction on 2.9 million acres, the positive economic benefits to the county from the growing demand for natural gas, and does not provide adequate details on the economic impacts of SFAs on individual producers.

**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 Idaho and Southwestern Montana 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 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), 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

**Protestor:** CL “Butch” Otter

**Issue Excerpt Text:** The SFAs and the acreages involved in these special management areas do not provide adequate details on the economic impacts this new regulatory layer will have on individual producers, the communities where they live, and the larger industry in Idaho. Management Actions associated with SFAs will have a significant impact on private industry in Idaho.



result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS discusses and analyzes the socioeconomics of the planning area in Chapter 3, Section 3.22 page 3-164 to 3-196, Chapter 4, Section 4.15, page 4-290 to 316, and Chapter 5, Section 5.3.13 page 5-174 to 5-177. The FEIS describes the methods, tools, and assumptions used to evaluate the socioeconomic resources for the planning area. Appendix AA contains the Economic Impact Analysis Methodology which describes the methods and data that underlie the economic impact modeling analysis. This 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 inputs required to run the IMPLAN model are described in Appendix AA. The resulting estimates from the IMPLAN model, by alternative, are in Chapter 4, Environmental Consequences, Section 4.15, Social and Economic Conditions. 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 model provides estimates of how a specific economic activity translates into jobs and income for the region. (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Appendix AA). In Chapter 4, Section 4.15, page 4-290, social and economic impacts from proposed GRSG management actions related to other resources and resource uses is discussed. Existing social and economic conditions are described in Section 3.22, Social and Economic Conditions (Including Environmental Justice). Section 4.15, also addresses environmental justice impacts and the differences among alternatives for the social and economic impacts identified. In Chapter 4, page 4-313, Table 4-88, Economic Impacts Relative to Alternative A, provides a summary of potential economic effects of management alternatives in the study area with Alternative A representing impacts associated with current management. On page 4-314, Table 4-89 Social Impacts Relative to Alternative A, provides a summary of the social impacts of the management alternatives.

In Chapter 3, Section 3.12.2, page 3-112-117, Trends, the PLUPA/FEIS considered and discusses the potential for gas leasing in the planning area. Chapter 4, Section 4.15, pages 4-299 to 4-301 of the PLUPA/FEIS discusses and analyzes the socioeconomic effects from the management of oil and gas leases in the planning area for each of the alternatives.

Specifically concerning the SFA areas, this designation is discussed in the PLUPA/FEIS, Chapter 2, pages 2-2 and 2-3 including the conclusion that "management of these areas as SFAs and the impacts of the associated management decisions was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed." The SFAs and their relationship with leasable, locatable, and salable minerals management for the Proposed Plan is discussed on pages 4-84 to 4-87. Additionally on page 4-292 under "nature and types of effects" the socioeconomics section recognizes that "the Proposed Plan designates SFA, representing recognized strongholds for GRSG that have the strongest level of protection." The effects of a No Surface Occupancy stipulation (as recommended for SFAs for fluid mineral leasing) are analyzed in the socioeconomics section on pages 4-299-301. The withdrawal recommendation in SFAs for locable minerals is covered on page 4-303 and in Table 4-88 on page 4-313".

By using IMPLAN the Idaho and Southwestern Montana GRSG PLUPA/FEIS complied with NEPA by considering social science activities, effects to the local economy from oil and gas development in the planning area and used the best available references and resources to support conclusions. References for the Idaho and Southwestern Montana GRSG PLUPA/FEIS are found in Volume II, Chapter 7, References.

The agencies complied with NEPA's requirement to consider and analyze the environmental consequences/impacts to socioeconomics in the Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort.

### Impacts – Grazing

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-28

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In the proposed plan, BLM erroneously prescribes livestock grazing as a means to reduce or control cheatgrass infestations. 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-IDSOUTHWESTMT-GRSG-15-11-4

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The impacts of the last-minute inclusion of livestock grazing in the SFA management regime are not adequately disclosed in violation of NEPA's "hard look" mandate.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-6

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** The COT Report and the 2010 Listing Decision may provide a foundation for the SFA restrictions on new fluid mineral leasing in the eastern portion

of the species' range, but the rationale for including of livestock grazing as an established "secondary threat" in this management regime does not exist. Failure to articulate a basis for this decision, especially in light of the departure from the underlying record, renders the Proposed Plan arbitrary and capricious under the APA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-2

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** The BLM further states imder impacts of Alternative D (the co-preferred alternative to the Governor's Alternative E) that with implementation of grazing systems or permit modifications to meet habitat objectives in areas that are not meeting objectives, results would be "moderate declines inpermitted grazing over time as permits are modified to incorporate GRSG objectives at renewal." FEIS at 4-192. It seems clear that BLM is taking a pre-decisional approach here in already projecting reductions in Animal Unit Months (AUM) based on their claims of declines in permitted grazing. Without any data collection, results of Rangeland Health Assessments, Allotment Photos and Information, or other necessary monitoring data, the BLM in Alternative D is anticipating reductions in livestock grazing.

While Alternative D is considered a co-preferred alternative to the Governor's Alternative E, the State does not support

pre-decisional declines in permitted grazing. This is a violation of NEPA.

**Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violated NEPA by failing to adequately analyze and disclose the impacts of livestock grazing. Specifically the FEIS:

- failed to take a hard look at the impacts of grazing on cheatgrass;
- failed to analyze the impacts of the inclusion of livestock grazing in the SFA management regime; and
- violated NEPA with its pre-decisional approach in already projecting reductions in AUMs without the results of Rangeland Health Assessments and other monitoring data.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violated the APA because the COT Report and the 2010 Listing Decision do not provide rationale for including of livestock grazing as an established “secondary threat” and failure to articulate a basis for this decision renders the Proposed Plan arbitrary and capricious under the APA.

**Response:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS fully assesses and discloses the environmental consequences of livestock grazing on upland plant communities and invasive plant species in a number of locations, including Section 4.2.2, Nature and Types of Effects – Vegetation and Habitat Restoration (p. 4-10 to 4-11), Section 4.2.2, Nature and Types of Effects – Livestock Grazing Management (p. 4-11 to 4-12), Section 4.2.11 Proposed Plan – Impacts from Livestock Grazing (p. 4-88 to 4-89), Section 4.3.2. Nature and Type of Effects – Livestock Grazing (4-96 to 4-97), Section 4.3.10 Proposed Plan – Impacts from Livestock Grazing Management (p. 4-139), Section 4.6 Livestock Grazing/Range Management, specifically Section 4.6.2 Nature and Type of Effects (p. 4-174 to 4-178) and 4.6.10 Proposed Plan – Impacts from Livestock Grazing Management (p. 4-200 to 4-203).

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 Idaho and Southwestern Montana 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.

With regard to the protest statement that “In the proposed plan, BLM erroneously prescribes

livestock grazing as a means to reduce or control cheatgrass infestations. 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" the protester simply disagrees with the science supporting the BLM's assertion that "properly managed grazing may be compatible with GRSG habitat, does not preclude healthy rangelands, and may reduce wildfire in GRSG habitat by reducing fuel loads in certain circumstances (Strand and Launchbaugh 2013; Svejcar et al. 2014; NTT 2011, p. 14)" (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p.4-12).

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

The effects analysis must demonstrate that the BLM and Forest Service took a "hard look" at the impacts of the action. The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (40 CFR 1502.1). The protestor asserts that BLM and Forest Service "failed to analyze the impacts of the inclusion of livestock grazing in the SFA management regime".

Impacts from the Proposed Plan to livestock grazing were analyzed and disclosed in a number of places in the Idaho and Southwestern Montana GRSG PLUPA/FEIS, including 4.2.3 Impacts on GRSG and GRSG Habitat Common to All Alternatives - Impacts from Livestock Grazing Management (p. 4-21, 4-29, 4-30), 4.2.11 Proposed Plan - Impacts from Livestock Grazing Management (p. 4-88 to 4-89), 4.6 Livestock Grazing/Range Management (p. 4-173 to 4-203), specifically Section 4.6.10 Proposed Plan (p. 4-196 to 4-203). Socio-Economic impacts specific to grazing are disclosed in Section 4.15 Social and Economic Conditions (Including Environmental Justice), Section 4.15.3 Economic Impacts - Impacts from Management Actions Affecting Grazing Allotments (p. 4-293 to 4-299).

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 Idaho and Southwestern Montana 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.

NEPA Section 102(C) mandates disclosure of "any adverse environmental effects which cannot be avoided should the proposal be implemented." These are impacts for which there are no mitigation measures or impacts that remain even after the implementation of mitigation

measures. In section, 4.18 Unavoidable Adverse Impacts (Idaho and Southwestern Montana GRSG PLUPA/FEIS p. 4-320), the PLUPA/FEIS disclosed that “proposed restrictions on some activities, such as OHV use, energy development, and livestock grazing intended to protect sensitive resources and resource values, would result in unavoidable adverse impacts on some users, operators, and permittees by limiting their ability to use BLM-administered and National Forest System lands and potentially increasing their operating costs.

The PLUPA/FEIS has adequately analyzed and disclosed the effects to livestock grazing.

Livestock grazing permit modification for permits issued by BLM must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. The protestor is concerned “that BLM is taking a pre-decisional approach here in already projecting reductions in Animal Unit Months ("AUMS") based on their claims of declines in permitted grazing. Without any data collection, results of Rangeland Health Assessments, Allotment Photos and Information, or other necessary monitoring data, the BLM in Alternative D is anticipating reductions in livestock grazing.”

Actual evaluation of specific conditions and or exclusions and an analysis of effects will be addressed at the implementation level, based on policy and regulations. Livestock grazing permit modification for permits issued by BLM must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR subpart 4100. Livestock grazing permit modifications for permits issued by the Forest Service must be in accordance with the Range Management Regulations found at 36 CFR 222.

Under the Idaho and Southwestern Montana GRSG PLUPA/FEIS, immediate changes to grazing are not required and prioritization of permit modification is provided for under a number of management actions. For example, under MA-10, the BLM would “Designate Sagebrush Focal Areas (SFA) as shown on Figure 2-3. SFAs will be managed as PHMA, with the following additional management” - as related to grazing, “Prioritized for management and conservation actions in these areas, including, but not limited to review of livestock grazing permits/leases (see livestock grazing section for additional actions)” (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. 2-27); and, “AM-13: If an adaptive regulatory trigger is tripped and livestock grazing is identified as a probable limiting factor then adjustments would follow the Adaptive Grazing Management Response described in Appendix G” (p. 2-29); and “RM-16: 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 Sagebrush Focal Areas (SFAs) followed by PHMAs outside of the SFAs. 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; however, the BLM may use other criteria for prioritization to respond to urgent natural resource concerns (ex., fire) and legal obligations” (p. 2-46).

Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits issued by BLM are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions.

Administrative Remedies detailed in 43 CFR 4160 (BLM) and 36 CFR 214 (Forest Service) are still available to the affected parties. BLM and Forest Service have not taken a pre-decisional approach because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made.

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

Similarly, the National Forest Management Act of 1976 (NFMA) directs the Forest Service to periodically amend its land and resource management plans which guide management of National Forest System lands. The Forest Service's Land Management Planning Handbook, 1909.12 and particularly section 21.3 addresses that plan amendments are intended to be an adaptive management tool to keep plans current, effective, and relevant between required plan revisions. Amendments help Responsible Officials adapt an existing plan to new information and changed conditions. USDA Departmental Regulations (9500-4) include "Avoid actions which will cause a species to become threatened or endangered. The Forest Service also has parallel objectives to species management, guided primarily by Forest Service Manual (FSM) 2670. Direction includes "Develop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions. (FSM 2670.22).

The background introduction to this RMP Amendment, Section 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. The background introduction section 1.1.1. details the Forest Service involvement as a cooperating agency.

The Idaho and Southwestern Montana 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 USFWS and the COT report both identified grazing as a threat to the GRSG and its habitat (Table 2-1 USFWS Threats to GRSG and Their Habitat, Applicable BLM and Forest Service Proposed Plan Resource Program Areas Addressing these Threats, p. 2-11). 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 using the best available science.

The Proposed Plan incorporates adjustments to the NTT report (NTT 2011) based on interdisciplinary team and cooperating agency input, and addresses local ecological site variability to provide a balanced level of protection, restoration, enhancement, and use of

resources and services to meet ongoing programs and land uses. During development of the PLUPA/Final EIS, the BLM and Forest Service continued to work with the USFWS to ensure the proposed plan meets the COT objectives to the extent possible, although none of the alternatives in the PLUPA/FEIS are exclusively based on the COT report recommendations.

The elements of the Idaho and Southwestern Montana GRSG PLUPA/FEIS are a valid exercise of the land use planning process dictated by FLPMA, federal regulation, and BLM Director-approved planning guidance. The PLUPA/FEIS properly identified grazing as a GRSG secondary threat under certain scenarios and used the best available science for evaluating proposed changes in guidance for livestock grazing.

### Impacts – Other

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-23

**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-IDSOUTHWESTMT-GRSG-15-15-4

**Organization:** Avian Powerline Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The Idaho/Southwest Montana LUPA states, “In PHMA, guy wires will be avoided where feasible or where guy wires are necessary and appropriate without causing human safety risk, bird collision diverters will be required (Idaho and Southwestern Montana Chapter 2 Page 2-183). Additionally, “In PHMA, IHMA, GHMA, and SFAs, require protective stipulations (e.g., noise, tall structure, guy wire removal, perch deterrent installation) when issuing new authorizations or during renewal, amendment, or reissuance of existing authorizations that authorize infrastructure

(e.g., high- voltage transmission lines, major pipelines, roads, distribution lines, and cellular towers).” (Idaho and Southwestern Montana Chapter 2 Page 2-62). The Utah, Wyoming, Colorado and Oregon LUPAs state “In PHMA, existing guy wires are determined to have a negative impact on GRSG or its habitat; they should be removed or appropriately marked with bird flight diverters to make them more visible to GRSG in flight.” (Because guy wires extend from a structure to the ground, there is theoretically a potential for GRSG collisions. However, data from APLIC-member utilities indicates that GRSG collisions with guy wires on electric utility structures have not been documented. The structures themselves may serve as a visual cue and flying birds may be avoiding guy wires because they are seeing the associated towers. Because of the lower risk of collision, large-scale marking of power pole guy wires in sagebrush habitats is not likely to provide a measurable conservation benefit. However, if collisions are documented on a particular structure or section of line, appropriate line marking methods could be implemented as part of a company’s APP. In addition to marking guy wires, 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 structures, potential replacement of structures, and potentially more surface disturbance.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-19-1

**Organization:** BlueRibbon Coalition

**Protestor:** Don Amador

**Issue Excerpt Text:** The Proposed LUPA/FEIS failed to disclose site-specific effects/impacts. The Proposed LUPA/FEIS does not make clear whether any existing

route will be closed to continuing (or future) motorized use. Instead, the documents present a confusing mix of concepts, some new, such as "sagebrush focal areas," "anthropogenic disturbance" thresholds within "biologically significant units," and general prescriptions for lek buffers. It seems likely that some of these concepts will be applied, or already have been determined, to restrict or prohibit continuing motorized use of some route(s). The documents fail to disclose such determinations or the future prospect of such determinations.

### **Summary:**

The LUPA violated NEPA by failing to take a 'hard look' at the effectiveness of proposed mitigation measures and the impact analysis of cheatgrass invasion in determining patterns of rangeland fire; the impacts of removing or marking guy wires; and did not identify which existing routes would be closed to future motorized use.

### **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 Idaho and Southwestern Montana 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). 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 the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).



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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS complied with NEPA by considering the use/removal or marking of guy wires in determining to require the use free standing structures where possible or to limit the use of guy wires. Where guy wires are necessary and appropriate bird collision diverters would be used, if doing so would not cause a human safety risk. (FEIS, Required Design Features, #61, page B-7). Removal of guy wires from existing infrastructure was not analyzed in the 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.

It is not necessary to incorporate the data from Avian Power Line Interaction Committee (APLIC) into the Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort. The BLM has reviewed the suggested APLIC report to determine if the information is substantially different than the information considered and cited in the Idaho and Southwestern Montana GRSG PLUPA/FEIS. The APLIC report does not provide additional information that would result in effects outside the range of effects already discussed in the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

In Chapter 4, Section 4.7, Travel Management, page 4-205, the FEIS states the designation of individual routes is an implementation-level process and typically follows the planning process. Travel systems are dynamic and will be changed through subsequent implementation-level planning. Therefore, site-specific route designations and limitations on routes are not included in this planning process and will be conducted in the future on a site-specific basis. (FEIS, Chapter 4). Further discussion regarding Travel Management can be found in Chapter 4, Section 4.7 beginning on page 4-203.

The FEIS, Chapter 4, Section 4.2, GRSG and GRSG Habitat, cheatgrass is discussed throughout the Chapter and included in the impact discussion. Cheatgrass is also included in the impact discussion in Chapter 4 under each resource and specifically in Section 4.5, Wildland Fire Management. Mitigation is discussed in Chapter 4 under Section 4.1.3 and under the Proposed Plan in Section 4.3.10. For additional information on mitigation and cheatgrass see the Fire Section of this Report.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort used the best available references and resources to support conclusions. References for the Idaho and Southwestern Montana GRSG PLUPA/FEIS are found in Volume II, Chapter 7, References.

The BLM and Forest Service complied with NEPA's requirement to consider and analyze the environmental consequences/impacts of guy wires, impacts from cheatgrass, mitigation, and travel routes in the Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort.

### *Endangered Species Act*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-4

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Contrary to IMA's requests in its comments on the Draft LUPA/DEIS, the LUPA/FEIS does not address possible ESA Section 7 reasonable and prudent measures, suggesting that the

GRSG conservation measures provided in the LUPA presumably would remain in effect even if the Service lists GRSG in the future. The Final LUPA should have recognized that, if the GRSG is listed, the conservation measures identified through the ESA Section 7 consultation process will replace the conservation measures in the LUPA and no new LUPA is required for the same.

#### **Summary:**

The PLUPA/FEIS does not address ESA Section 7 reasonable and prudent measures that would remain in effect if the GRSG is listed, and should recognize that if listed conservation measures identified through the ESA Section 7 consultation will replace conservation measure in the LUPA.

#### **Response:**

Section 7(a)(2) of the ESA provides that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The GRSG is not a listed species under the ESA, thus the BLM/FS is not required to do Section 7 consultation for this species for this amendment. The BLM/FS in this PLUPA/FEIS appropriately developed a purpose and need to identify and incorporate appropriate conservation measures into its land use plans within the range of the GRSG, and analyzed a reasonable range of alternatives. Once approved, the decisions in this amendment will remain in effect until the BLM/FS undertakes a new land use plan amendment or revision to make new land use plan decisions for this planning area. If the GRSG is listed under the ESA in the future, the BLM will take appropriate action at that time to comply with its section 7 responsibilities, including section 7 consultation for site-specific activities

### *GRSG-General*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-29

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** 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-IDSOUTHWESTMT-GRSG-15-10-11

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** Lek buffer distances (Appendix DD in the FEIS) are arbitrary and capricious and do not reflect best science. The FEIS imposes the lower "interpreted

range" suggested by Manier et al 2014, and does so universally within all GRSG habitat (GHMA, IHMA, PHMA) See Appendix DD, p.DD-2.3 Yet in Wyoming<sup>4</sup>, significantly smaller buffer distances are being applied, and are differentially applied within PHMA as opposed to outside PHMA. The agencies cannot simultaneously state that a 3.1 mile buffer zone is the "best science" in Idaho and Southwest Montana, while stating that a 0.25 mile buffer zone is the "best science" in Wyoming.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-9

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The FEIS conflicts with the same document for Nevada and Northern California with each other as to what constitutes "suitable" sagebrush cover. The Nevada/California FEIS, for example, provides that for nesting cover to be suitable, sagebrush must constitute 20% or greater cover, and total brush cover must cover 30% or more (citing Kolada 2009a, Coates and Delehanty 2010 and Lockyer (in press). In contrast, the Idaho/Montana FEIS requires 15-25% sagebrush and no additional brush cover (citing Connelly et al 2000, Connelly et al 2003, and Hagen et al 2007). It is not explained why different authors are the best science in the two documents. It is also not explained why greater than 20% sagebrush cover (and presumably up to 100% sagebrush cover) is suitable in Nevada, but is "marginal" or "unsuitable" in Idaho. These unexplained differences are arbitrary.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-6

**Organization:** State of Idaho

**Protestor:** CL "Butch" Otter

**Issue Excerpt Text:** The BLM's Proposed Plan implements a lower "interpreted range" suggested by the USGS Report, and do so universally within all GRSG habitat management areas in Idaho. See FEIS Appendix DD at DD-2. Yet in Wyoming, significantly smaller buffer distances are applied, and are differentially applied within PHMA as opposed to outside PHMA. The BLM cannot simultaneously state that a 3.1 mile buffer zone is the "best science" in Idaho, while stating that a 0.25 mile buffer zone is the "best science" in Wyoming.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-1

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** Rationale for Protest: The State Director's decision is wrong for the following reasons:

1. As currently proposed, multiple grazing allotments will be under management direction from two different RMPs that are not compatible.
2. Proposed triggers and BSUs from those two different RMPs have adverse effect impact different portions of allotments that are managed as one unit.
3. The PLUPA is in direct conflict with the management area of the Proposed Jarbidge RMP, which includes these Nevada lands within the management area. The boundary extends from the Bruneau River on the west to Salmon Falls Creek on the east, and from the Snake River on the north to the northern boundaries of the BLM Elko Field Office and the Humboldt-Toiyabe National Forest on the south (Map 1). It includes parts of Elmore, Owyhee, and Twin Falls Counties in south-central Idaho and Elko County in Northern Nevada

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-18-2

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** The Proposed Plan in the South Dakota FEIS depicts GRSG wintering areas on a map (SD FEIS: Map 2-9). It would generally prohibit surface occupancy associated with fluid minerals development prohibited in wintering areas in both priority and general habitat (SD FEIS: 95, Table 2-5; 143, Table 2-6, Action 14) (the authorizing officer is granted discretion to .allow modifications and exceptions to the restriction on surface occupancy (1349, Appendix E.4)-the Idaho/SW Montana 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-IDSOUTHWESTMT-GRSG-15-18-4

**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) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-18-6

**Organization:** Defenders of Wildlife  
**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.

**Summary:**

Protests identified inconsistencies among the various Sub-regional GRSG Land use plan amendments and revisions. These differences reveal a capricious approach and may lead to arbitrary decisions in each sub-region.

**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 modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level.

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, others 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-IDSOUTHWESTMT-GRSG-15-06-13

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The Final EIS does not adequately analyze the effects of the

surface disturbance cap on oil and gas development and other land uses.

Specifically, the Agencies did not disclose the current status of BSUs within which surface disturbance caps will be calculated. Proposed LUPA/Final EIS at 2-29 – 2-30, AD-1; see id. at 3-5 – 3-23. Without this information, the Trades have no way of

assessing the potential impacts of the surface disturbance caps because there is no information showing how much disturbance remains within the cap in each BSU.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-39

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Additionally, the Agencies must clearly define and publish maps of BSUs within which the disturbance caps apply in Idaho. See Proposed LUPA/Final EIS, app. G; Glossary at 8-7. The public has no way of knowing which areas constitute BSU and therefore cannot assess how impacts will be evaluated.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-16

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure to prescribe consistent management among types of disturbance. The plan does not include grazing as a surface disturbance subject to the disturbance cap. PLUPA/FEIS at 2-58. 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 structural range improvements that disrupts vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. PLUPA/FEIS at 4-96, 4-97. 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-IDSOUTHWESTMT-GRSG-15-10-15

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** Disturbance caps and mapping (FEIS Appendix G) are arbitrary and capricious, for a number of reasons, including at least the following. First, if they are founded in Manier et al 2014, they exceed the radius (3.1 miles) that is applied to lek buffers by applying a four mile radius. Second, the mapping protocols effectively create an eight-mile radius "disturbance area" that is not rationally based; this potentially means that a surface disturbing activity that is 4 miles from a number of leks could be assessed as creating "disturbance" to 200 square miles ( $8 \times 8 \times 3.14 = 200.96$ ), or over 128,614 acres of land. There is not scientifically rational, particularly when the surface disturbance direct area of influence itself may be as small as 5.0 acres, such as such as an oil or gas well. See FEIS Appendix G, Table G-1.5. Likewise, an oil or gas pipeline of for example, 20 miles could potentially be deemed to disturb up to 320 square miles (204,800 acres) of "habitat" even though its direct area of influence is 100 feet by 20 miles, or 0.38 square miles (240 acres). In fact even this acreage significantly overstates the impact. Average well pad sizes during recent development in Southwest Idaho have been 250' x 250', or closer to 1.5 acres. This information was readily available to the BLM in well permit applications on file with the Idaho Department of Lands. There exists no rational scientific basis for this presumption by the agencies.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-13-1

**Organization:** Hagenbarth Livestock  
**Protestor:** Jim Hagenbarth

**Issue Excerpt Text:** When one puts a disturbance cap of 3% in a BSU into play, responsible, productive and sustainable management of these particular mountain big sagebrush communities is impossible and counterproductive to the viability of the sagebrush community and the productivity of the GRSG that use these areas. I protest

these components of the FEIS because they are not based in sound science, nor responsible management protocols and have not considered the research by Moffett, Taylor and Booth that fills the gaps that exist in regard to manipulation of mountain big sage in similar ecological sites throughout the west.

**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. Without such, the BLM has not disclosed to the public how 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 Proposed RMPA that address the threat and impacts from grazing (Table 2-10 and Table 2-11).

Regarding the lack of disturbance mapping in the RMPA:

Appendix G (specifically G.1 through G.3) 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.

Density and disturbance caps do not include disturbance caused by grazing; however, these management actions do include discrete disturbances. Additionally, there are other management actions in the PRMP that more appropriately address the impacts of livestock grazing on GRSG habitat.

Mapping and calculations associated with the density and disturbance caps will occur as site-specific projects are proposed and analyzed by the BLM and will therefore provide for disclosure of the current condition of the BSUs.

**GRSG-Adaptive Management**

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-38

**Organization:** Montana Petroleum Association



**Protestor:** Dave Galt

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-11

### **Summary**

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

### **Response:**

Applying specific responses at a land use plan level would not be appropriate as such may not address the site-specific issues or causal factors that initiated the tripped soft trigger. The RMPA provides for various implementation level responses that will more appropriately address the causal factors in these situations. Appendix G discusses and identifies the various triggers and responses necessary to meet the objectives of the LUP Amendment. Additionally, the LUP Amendment provides for various implementation level responses that will more appropriately address the causal factors in these situations.

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

### **GRSG-Habitat Objectives**

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-01-4

**Organization:** Owyhee County Commission

**Protestor:** Joe Merrick

**Issue Excerpt Text:** The Decision attempts to apply one size all solutions across a very wide swath of landscape when such an approach is not a reasonable, science based approach on much smaller geographic area. For example, the proposed use of a uniform

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** The PLUPA/FEIS only contains some “adaptive management” mechanisms for dealing with livestock grazing once hard or soft triggers are “tripped” at the Conservation Area scale. PLUPA/FEIS at 2-27. This plan cites to the actions specified as an “Adaptive Grazing Management Response” in Appendix G.

stubble height standard is not defensible across the area impacted by the Decision.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-21

**Organization:** WildEarth Guardians  
**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM proposes a Desired Habitat Condition of 7-inch grass height in nesting, and early brood-rearing habitats, which is appropriate. FEIS at 2-20.

However, BLM applies no grass height objective for late brood-rearing habitats. FEIS at 2-21. The BLM Desired Habitat Condition for late brood-rearing habitats is therefore in conflict with the best available science.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-8

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The FEIS establishment of management objectives based upon the authors cited at Idaho Table 2.3, is erroneous for at least the following reasons:

1) First, Hagen et al 2007 reports a number of significant problems with application of the listed objectives, among which is the very large standard deviations found in many of the studies upon which Hagen et al 2007 and Connelly et al 2000 rely. See Hagen et al 2007, Table 1 and Table 2. For example, relative to grass heights at nest sites, Aldridge 2005 (cited in Hagen et al Table 1) found a mean (average) grass height at the nest bush of 33.94 centimeters, but that mean had a standard deviation of 20.25 centimeters. What this means is that 68% (one standard deviation) of the samples were within the range of 13.69 to 54.19 centimeters ( $33.94 - 20.25$  to  $33.94 + 20.25$ ). These heights are statistically the same as the mean within one standard deviation. Also, by definition, this means that 32% of the data observed by Aldridge 2005 were outside one standard deviation. To achieve a 95% confidence level, a generally accepted scientific degree of certainty, the data needs to be within two standard deviations of the mean. This range means that the data measured in Aldridge 2005, in order to be statistically meaningful at the 95% confidence level, included grass heights of 0 (zero) to 74.44 centimeters ( $33.94 -$

$2 \times 20.25$ ) to  $33.94 + (2 \times 20.25)$ . This means that a vegetative height of zero inches under the nest bush was no different than a vegetative height of 74.44 centimeters, with 95% confidence. The same huge range of variation occurs in much, if not most, of the data relied upon by Hagen et al 2007 (and previously relied upon by Connelly et al 2000).

2) Second, Hagen et al 2007 also reports that the amount of sagebrush cover was not a selection factor for late brood-rearing or pooled brood data; the amount of grass cover was not a selection factor at nests, for late-brood rearing, or for pooled brood data; the amount of forb cover was not a selection factor for nests or for pooled brood data; and grass height was not a selection factor for late brood-rearing; and early brood-rearing selected for lower sagebrush cover than at random locations. See Hagen et al 2007, Figure 1. Hagen et al 2007 also shows the extreme variation in post-hatch cover.

3) Third, Hagen et al 2007 also reports that the studies analyzed all occurred generally over a 30-meter distance. As stated by Hagen et al 2007, "identifying the appropriate proportions of these vegetative characteristics in a larger landscape is paramount (Bates et al 2004)." These authors went on to state that "most studies have not quantified the spatial distribution of or juxtaposition of these vegetative communities. Understanding the optimum mix and special arrangement of these communities and their effects on demographic rates in a landscape could substantially enhance management of the GRSG." Therefore, Hagen et al 2007 did not recommend their findings of nest-bush parameters to be applied across the landscape, as the FEIS decides to do (Idaho Table 2.3).

4) Fourth, the many of the successful nest sites relied upon by Hagen et al 2007 would have been deemed to be in less than

"suitable" brush cover under the FEIS for sagebrush alone (15% or more), and many successful nest sites would not meet the

25% total shrub cover requirement under the FEIS (assuming sagebrush was the only species on the site).

**Summary:**

The BLM failed to use the best science to develop habitat objectives and habitat objectives should not apply uniformly across the landscape.

**Response:**

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)) and "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).

The BLM developed and analyzed alternatives, including habitat objectives, in the Idaho and Southwestern Montana GRSG PLUPA/FEIS using the best available information in compliance with applicable law and policies.. The Livestock Grazing Management and Habitat Management Objectives are supported by high quality scientific studies; scientific references are provided for each habitat management objective, see Table 2-3 Seasonal Habitat Desired Conditions for GRSG on BLM-Administered Lands, p. 2-20 through 2-22.

Habitat management objectives are discussed in Section 2.6.2 BLM Proposed Plan Amendment (p. 2-14 to 2-58). Table 2-3 (p. 2-20 through 2-22), Seasonal Habitat Desired Conditions for GRSG on BLM-Administered Lands, details each scientifically-referenced habitat objective. As stated in HM-OBJ-2 (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p.2-19), "Incorporate GRSG Seasonal Habitat Objectives (Table 2-3, Seasonal Habitat Desired Conditions for GRSG on BLM-Administered Lands) into the design of projects or activities, as appropriate, based on site conditions and ecological potential". The values for the indicators were derived using a synthesis of current local and regional GRSG habitat research and data and reflect variability of ecological sites. The habitat cover indicators are consistent with existing indicators used by the BLM. As stated in Table 2-3, apply late brood rearing/summer habitat desired conditions locally as appropriate, as late brood-rearing areas, such as riparian, meadows, springs, higher elevation mesic uplands, etc. may occur within other mapped season habitat areas (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p.2-21).

Habitat objectives would not be applied in a one-size-fits-all approach, particularly when: "A specific objective is not applicable to the site-specific conditions of the project or activity; an alternative objective is determined to provide equal or better protection for GRSG or its habitat

(based on appropriate scientific findings); or analysis concludes that following a specific objective would provide no more protection to GRSG or its habitat than not following it, for the project being proposed” (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. 2-19). As stated in HM-OBJ-2, “These habitat objectives in Table 2-3 summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in this sub-region. Thus, the habitat objectives provide the broad vegetative conditions we strive to obtain across the landscape that indicate the seasonal habitats used by GRSG. These habitat indicators are consistent with the rangeland health indicators used by the BLM” (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. 2-22).

In response to the GRSG management objectives described in the 2006 WAFWA GRSG Comprehensive Conservation Strategy, many reports have been prepared for the development of management recommendations, strategies, and regulatory guidelines. The NTT report (NTT 2011), Conservations Objectives Team (COT; USFWS 2013), and the Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of GRSG (also referred to as the BER; Manier et al. 2013) are the most widely used reports that have been incorporated that addresses the effects of implementing GRSG conservation measures on public lands. Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The BLM and Forest Service relied on high quality information and the best available data, including local science and monitoring data, in preparation of the Idaho and Southwestern Montana GRSG PLUPA/FEIS. Habitat objectives will be applied as appropriate based on site conditions and ecological potential.

### [GRSG-Livestock Grazing](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-10

**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 2-58, 2-59. 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. 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,

but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover GRSG, the PLUPA/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a serious oversight.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-19

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The proposed plan's closures are mostly concentrated on Forest Service lands and/or were already closed for other reasons. Table 4-5, PLUPA/FEIS at 4-29. There is no true analysis of the beneficial impacts of removing livestock grazing from GRSG habitat entirely, or seasonally in accordance with the best available science.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-8

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated. In order to conserve, protect, and enhance GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. WWP Comments at 23. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-09-1

**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-IDSOUTHWESTMT-GRSG-15-14-3

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** BLM grazing regulations via 43 CFR 4180.2(c) already requires BLM to make management changes in order for allotments determined to not be meeting rangeland health standards to move towards meeting. Additional language

covering this is not legally required or rational.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-9

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** The PLUPA intends to trump the grazing rules by stating/suggesting that the claimed non-achievement of a GRSG objective would be/could be a means for a full force and effect decision. This statement/suggestion violates the criteria for FFE decision, as prescribed by 43 CFR 4110.3-3(b). As related to livestock grazing, it is obvious the U.S. Fish and Wildlife Service relied very little, if any, on the federal grazing regulations, especially 43 CFR Subpart 4180, in making their determination that BLM lacked an adequate regulatory mechanism to protect GRSG. The law is very specific in stating "The authorized officer shall take appropriate action...as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist....(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species." Because of the clarity of the law in providing a regulatory mechanism to insure perpetuation of GRSG habitat, the need to include matters relating to grazing within any of the action alternatives is not warranted.

Summary: While perhaps there could be a legitimate interest to prioritize permit renewals or permit modifications within certain GRSG habitat areas, there is not any legal basis or rational basis to immediately

implement changes therein, absent the requisite findings under 43 CFR 4110.3-3(b).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-16-2

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Action RM-19 seems to encourage the Agencies to opportunistically retire grazing permits or leases that are voluntarily relinquished. See also p.4-20 I. Not only is this bad public policy, it contravenes clear statutory requirements on the Secretary of the Interior to maintain grazing land that is chiefly valuable for grazing. Direction to the BLM has been provided by the Solicitor on this very topic. See Solicitor Opinion M-27008 (Oct. 4, 2002) and as clarified by the Solicitor's Memorandum dated May 13, 2003. Any decision to retire livestock grazing on federal lands is not permanent unless made permanent through congressional action. Short of congressional action, any such decision is subject to reconsideration and reversal. Y-3 II appreciates the Agencies' quote of Solicitor Myers's M-Opinion No. 37008 to this effect. "It is subject to reconsideration, modification, and reversal in subsequent land use plan decisions". The M-Opinion also cites the Tenth Circuit decision in *Public Lands Council v. Babbitt*, 167 F.3d 1287 (10th Cir. 1999), aff'd on other grounds, 529 U.S. 729 (2000), that the Secretary has established grazing districts comprised of public lands that are chiefly valuable for grazing, consistent with the Taylor Grazing Act, 43 USC § 315. As the court noted, the presumption is that when range conditions permit, grazing levels will be maintained or even rise. "Congress intended that once the Secretary established a grazing district under the [Taylor Grazing

Act], the primary use of that land should be grazing." Id. at 1308. Y-3 II protests Action RM-19 to the extent that it counters the court-sanctioned, Congressional mandate

that the primary use of the land should be grazing.

### **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.
- Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.
- The Idaho and Southwestern Montana GRSG PLUPA/FEIS violates 43 CFR 4110.3-3(b).
- The Idaho and Southwestern Montana GRSG PLUPA/FEIS violates the Taylor Grazing Act when it considers the retirement of livestock 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 BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). Likewise the Forest Service is guided by CEQ (40 CFR 1500-1508) and Forest Service Handbook 1909.15 on NEPA implementation.

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 of improper grazing are assessed and there are provisions and management actions proposed in the NTT Report and incorporated in the Idaho and Southwestern Montana GRSG PLUPA/FEIS that address these impacts.

GRSG Seasonal Habitat Objectives (Table 2-3, Seasonal Habitat Desired Conditions for GRSG on BLM-Administered Lands) will be incorporated into the design of projects or activities, as appropriate, based on site conditions and ecological potential (p. 2-20 to 2-22); scientific references are provided for each habitat objective in this table. As related

to grazing, all BLM use authorizations will contain terms and conditions regarding the actions needed to meet or progress toward meeting the habitat objectives. If monitoring data show the habitat objectives have not been met nor progress being made towards meeting them, there will be an evaluation and a determination made as to the cause. If it is determined that the authorized use is a cause, the use will be adjusted by the response specified in the instrument that authorized the use (HM-OBJ-2, bullet # 6, 2-22 and 2-23). The agencies did not fail to use the best available science in the Idaho and Southwestern Montana 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS and that address resource issues identified during the scoping period. The Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzed seven alternatives, which are described in Chapter 2, Proposed Action and Alternatives (p. 2-1 through 2-224). The Proposed Plan Amendment is detailed in Section 2.6 (p. 2-10 through 2-73) and Alternatives A through F are detailed in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-79 through 2-82), 2.9 Summary Comparison of Proposed Plan Amendment and Draft Alternatives (p. 2-82 through 2-100), and 2.10 Detailed Description of Draft Alternatives (p. 2-101 through p. 2-199).

The agencies have considerable discretion through grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands and National Forest System lands in an RMP/LMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in this 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 analyses. 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.



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

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

- Individual livestock grazing permit modification for permits issued by BLM must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, administrative process, and site-specific NEPA, occurs. Reductions to livestock grazing permits for permits issued by BLM are still required be in accordance with 43 CFR 4110.3-3(b), Implementing Reductions in Permitted Use. 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.

Administrative Remedies detailed in 43 CFR 4160 (BLM) and 36 CFR 214 (Forest Service) are still available to the affected parties where applicable. The agencies have not taken a pre-decisional approach and are not violating 43 CFR 4100 or 36 CFR 222, because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis and range decisions in conformance with the regulations at 43 CFR 4160 (Administrative Remedies) have been made.

4. FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43USC 1711 Sec 201 (a)). The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 grants similar authority to the Secretary of Agriculture for National Forest System lands (16 USC 1600 et seq.) . . 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. 36 CFR 222 provides that the Forest Service shall manage livestock grazing on National Forest system lands in accordance with land

management plans. Further, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). The Forest Service may identify lands as “suitable” or “unsuitable” for livestock grazing through the land management planning process (36 CFR 219).

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

The Taylor Grazing Act does not apply to National Forest System lands. The Idaho and Southwestern Montana GRSG PLUPA/FEIS complies with the FPLMA, NFMA, Multiple-Use Sustained-Yield Act of 1960 and Taylor Grazing Act, which do not preclude the agencies from identifying some public and National Forest System lands as not available to livestock grazing for the duration of the land use plan.

### *GRSG-Data and Inventories*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-24

**Organization:** Idaho Mining association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** It appears from Appendix DD that the lek buffers will be applied to lek locations determined to be active or occupied pursuant to state wildlife agency data. See p.DD-1. An "occupied lek" is defined in the glossary as a lek that has been active during at least one breeding season within the prior ten years. As recently as 2013, BLM was using the Idaho Department of Fish and Game definition of an occupied lek as one that had been active during at least one breeding season within the last five years, citing Idaho Department of Fish and Game, Status Designations and Definitions for GRSG and Sharp-Tailed GRSG (2012). It is not enough, then, for BLM to use state wildlife agency data on lek

locations. BLM must also accept the state wildlife agency's definition of occupied leks. The five year difference in the definitions, without justification, is arbitrary and capricious

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-16

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The FEIS errs in not applying state and transmission models of the Ecological Site Descriptions in the delineation of at least sagebrush potential (which also has ramifications for present-day GRSG habitat capability). Many locations within the boundaries of what the FEIS determines to be GRSG habitat have crossed ecological thresholds. While Ecological Site Descriptions will purportedly be used to make decisions

regarding post-fire restoration and other "restoration" actions, they should have been used to define and describe the present-day setting.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-5

**Organization:** Idaho Petroleum Council  
**Protestor:** John Peiserich

**Issue Excerpt Text:** Expanding previous habitat designations simply by adding a several kilometer buffer, irrespective of whether the added area actually includes GRSG habitat, is obviously lacking in any scientific basis and is arbitrary.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-6

**Organization:** Idaho Petroleum Council  
**Protestor:** John Peiserich

**Issue Excerpt Text:** Habitat designations in the FEIS continue to include areas characterized by BLM and Service has having "potential" for "rehabilitation" to GRSG habitat. Of course, this is a tacit admission that such large-scale perennial or annual grasslands to allegedly "natural" shrub-dominated conditions. As a consequence, designation of such areas as habitat, whether PHMA, IHMA or GHMA, lacks scientific basis and is necessarily arbitrary as a result.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-9

**Organization:** WildEarth Guardians  
**Protestor:** Erik Molvar

**Issue Excerpt Text:** This policy required BLM to complete a series of Ecoregional Assessments. Id. at 11. The Northern Basin and Range and Snake River Plain ecoregional assessment publication ("NBR SRPEA")<sup>7</sup> was completed in 2009,

and BLM should reference the findings of this report as they apply to the planning area in order for the BLM has not met its obligation to "use the best available science" including publications specifically mandated under the Strategy.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-18-3

**Organization:** Defenders of Wildlife  
**Protestor:** Mark Salvo

**Issue Excerpt Text:** Identifying winter habitat in the planning area is critical to conserving GRSG, as well as establishing baseline conditions for understanding the Proposed RMP A's impacts on the species. The BLM should immediately complete mapping of winter habitat, as it is uncertain, and perhaps unlikely, that these areas will be protected from disturbance in the meantime. Winter habitat "could be difficult to restore to original conditions [once disturbed] ... due to the composition and size of sagebrush in these areas" (Bighorn Basin PEIS: 4-315). The plan also should not assume that designated priority habitat includes all winter habitat. Priority habitat areas, based on Doherty et al. (2010) and similar data and mapping, are generally established around GRSG leks. Connelly et. al. (2004: 4-19) (unpublished) noted that females migrate an average of 9.9 km between summer and winter habitat. Pedy (2012: 1066) reported average summer-to-winter migration of 21.18 and average nest-to-winter migration of 12.55 km in north-central Wyoming. Manier et al. (2013: 26) summarized that a majority of GRSG move 10 km from summer to winter locations with movements of up to 90 mi (145 km) documented.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-18-5

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** Does the plan include specific, downscaled climate projections for the area (including data from relevant Rapid Ecological Assessment(s), where available)? The planning area falls within an area covered by the Middle Rockies Rapid Ecological Assessment and the Northern Great Basin Rapid Ecological Assessment, which have both produced downscaled climate projections for the area. The plan does not use this information in the "Climate Change" section, relying instead on general regional projections. The plan does cite a peer-reviewed source for its regional projections, but does not present these with much detail (3-164).

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-20-2

**Protestor:** Robert Schweigert

**Issue Excerpt Text:** Coates et al 2014, like all models based upon remote sensing, cannot be considered a reliable model until and unless it has not been ground-truthed. As stated herein above, very large areas of "priority" and "general" (and presumably Coates' "core") habitat are not dominated by sagebrush. Additionally, Coates et al 2014 admittedly added perhaps millions of acres of sagebrush and non-sagebrush habitats that are outside the range of known GRSG habitat and occupation, by their exercise to include areas outside PMUs identified by the States.

### **Summary:**

The Idaho and Southwestern Montana 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:

- Not using the Idaho Department of Fish and Game's definition of occupied leks
- Incorrectly identifying habitat and failing to identify GRSG winter habitat
- Failing to use the Northern Basin and Range and Snake River Plain Rapid Ecological Assessment

### **Response:**

The Idaho and Southwestern Montana PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater GRSG—A Review: USGS Open File Report 2014-1239 (Mainer et al. 2014) during NEPA analysis at the implementation stage. As stated in Appendix DD, "In determining lek locations, the BLM will use the most recent active or occupied lek data available from the state wildlife agency." As such, BLM and the Forest Service have considered the appropriate information and developed a mechanism to continue to work with the Idaho Department of Fish and Game in the future.

In preparing the PLUPA/FEIS, BLM, Forest Service, USFWS and the State of Idaho worked together to refine the GRSG Habitat Management Area map. BLM and Forest Service worked closely with field personnel to provide more recognizable boundaries of Habitat Management Areas on the ground in December 2013. During the winter and spring of 2014, BLM and Forest Service also worked closely with the State of Idaho and USFWS (Idaho Fish and Wildlife Office, Boise) in re-evaluating the Core, Important or General Management Zone designations of

Alternative E, in order to move forward with a map for the Proposed Plan that met BLM and Forest Service objectives for habitat and State of Idaho and USFWS objectives for populations.

More information of this effort can be found on pages 2-2 and 2-3 of the PLUPA/FEIS. As a result of this collaboration, the BLM and FS delineated GRSG occupancy in Idaho to the extent possible, as reflected in the boundaries of the Priority, Important, and General Habitat Management Areas (PHMAs, IHMAs, and GHMAs, respectively) identified in Idaho and Southwestern Montana PLUPA/FEIS. PHMAs have been identified as having the highest conservation value to maintaining sustainable GRSG populations. These areas would include breeding, late brood rearing, and winter concentration areas (p. 8-18). In addition, Appendix F of the Idaho and Southwestern Montana PLUPA/FEIS outlines a process for updating habitat information based on progress toward conservation and habitat restoration, vegetation succession or new information arising from scientific studies or targeted surveys (p. F-1). As such, the Idaho and Southwestern Montana PLUPA/FEIS has obtained information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives. Because the Northern Great Basin Rapid Ecological Assessment was published in June 2013, it was not available during the development of the Idaho and Southwestern Montana DLUPA/EIS. The document was incorporated into the Idaho and Southwestern Montana PLUPA/FEIS in a variety of locations including the methods and assumptions for impacts to GRSG (p. 4-7) and description of nature and type of effects to vegetation and habitat restoration (p. 4-10). As such the BLM and Forest Service considered information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives.

### [GRSG-Mitigation](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-22

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** A robust discussion of mitigation must be included in the FEIS. A promise of mitigation strategies within a year does not suffice. Specifically, 40 CFR § 1502.14(f) requires inclusion of "appropriate mitigation measures not already included in the proposed action or alternative" in the alternatives section that "is the heart of the environmental impact statement." 40 CFR § 1502.14. Additionally, the FEIS section on environmental consequences must include a discussion of "means to mitigate adverse environmental impacts (if not fully covered under section 1502.14(f))." Id. at 1502.16(h). Chapters 2 and 4 of the FEIS fail to include these requirements and the aspirational

Appendix J did not suffice.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-23

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Appendix J and the FEIS are devoid of any discussion of mitigation by rectification, reduction, or elimination of impacts.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-10

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** Habitat Mitigation Requirements May Not Reflect Achievable Conditions. The PLUPA has several requirements (for both on BLM and USFS

lands) that require that mining reclamation meet specified standards: 18 MIT-5: Consistent with regulations for mineral activities, require a full reclamation bond specific to the site when surface disturbing activities are proposed. Ensure reclamation bonds are sufficient to cover costs to fully rehabilitate lost GRSG habitat. Base the reclamation costs on the assumption that contractors for the BLM will perform the work. Areas are considered fully rehabilitated when they meet the conditions described in Table 2-3. [PLUPA, page 2-35] GRSG-GEN-DC-003-Desired Condition: In all GRSG seasonal habitats, including all seasonal habitats, 70 percent of lands capable of producing sagebrush have 10 to 30 percent sagebrush canopy cover and less than 10 percent conifer canopy cover. In addition, within breeding and nesting habitat, sufficient herbaceous vegetation structure and height provides overhead and lateral concealment for nesting and early brood rearing life stages. Within brood rearing habitat, wet meadows and riparian areas sustain a rich diversity of perennial forb species relative to site potential. Within winter habitat, sufficient sagebrush height and density provides food and cover for GRSG during this seasonal period. Specific desired conditions for GRSG based on seasonal habitat requirements are in Table 2-6, Seasonal Habitat Desired Conditions for GRSG on National Forest System Lands. [PLUPA, page 2-59] GRSG-M-MM-ST-104-Standard: In PHMA, IHMA, GHMA and SFA, any permit for existing mineral material operations must include appropriate requirements for operation and reclamation of the site to restore, enhance, or maintain desired habitat conditions (Table 2-6). [PLUPA, page 2-73] These referenced elements require that all reclamation associated with mining achieve the habitat conditions listed Tables 2-3 and 2-6. However, these habitat conditions are a

"one-size fits all" approach to the landscape which does not match the reality of varied environments including topography, climate, elevation and other natural factors which influence what conditions are achievable.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-15

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

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

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-30

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The terms of federal leases do not authorize BLM to require compensatory mitigation. Existing federal leases do not contain any express requirement to provide compensatory mitigation. See, e.g., BLM Form 3110-11, Offer to Lease and Lease for Oil and Gas (Oct. 2008). Although lease rights are

subject to “applicable laws, the terms, conditions, and attached stipulations of [the] lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance,” see BLM Form 3110-11, neither BLM’s planning regulations nor its leasing regulations contain any requirement to provide compensatory mitigation and do not authorize BLM to require compensatory mitigation.<sup>23</sup> 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-IDSOUTHWESTMT-GRSG-15-16-4

**Organization:** Y-3 II Ranch

**Protestor:** Christopher Clark

**Issue Excerpt Text:** Appendix J, Mitigation, speaks only in terms of potential future mitigation through avoidance, minimization, and compensation of impacts. The CEQ definition of mitigation includes these three and also includes rectifying the impact by repairing, rehabilitating, or restoring the affected environment, *id.* at 1508.20(c), and reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. *Id.* at 1508.20(d). Appendix J and the FEIS are devoid of any discussion of mitigation by rectification, reduction, or elimination of impacts. These errors and omissions are significant flaws. As the Supreme Court has emphasized, “[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effect.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352, 371 (1989).

### **Summary:**

The 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; may require reclamation to conditions that are not achievable on certain sites, due to local variation; 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; and

- mitigation measures, as defined by 40 CFR 1508.20(d), and as directed by 40 CFR 1502.14(f) and 1502.16(h).

**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 Idaho and Southwestern Montana GRSG PLUPA/FEIS, which is to identify and incorporate appropriate conservation measures into LUPs to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (p. 1-14) and accounts for uncertainty associated with the effectiveness of mitigation.

Chapter 4, Section 4.13 Mitigation (Vol. 2, p. 4-5) 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 and Forest Service management actions. In undertaking BLM and Forest Service 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 and Forest Service will require mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Given that impacts 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.

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

BLM's mitigation terminology (avoid, minimize, and compensate for) includes, and is the same as, CEQ's five-part definition. The Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses, and minimizes other potential future impacts by restricting certain uses on the public lands. Although the Idaho and Southwestern Montana GRSG PLUPA/FEIS uses different terminology, it considered a full spectrum of mitigation opportunities—including all five forms of mitigation identified by CEQ.

Lastly, HM-OBJ-2 explains that GRSG Seasonal Habitat Objectives (Table 2-3, Seasonal Habitat Desired Conditions for GRSG on BLM-Administered Lands) will be incorporated "into the design of projects or activities, as appropriate, based on site conditions and ecological potential..." (p. 2-19). The habitat objectives will be part of the GRSG habitat assessment to be used during land health evaluations (see Monitoring Framework, Appendix E). These habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas. Therefore, the determination on whether the objectives have been met will be based on the specific site's ecological ability to meet the desired condition identified in the table (p. 2-22).

The Idaho and Southwestern Montana GRSG PLUPA/FEIS complies with FLPMA and other applicable law, including 43 CFR 1600 and 3100 by requiring compensatory mitigation to

achieve a “net conservation gain” of GRSG habitat. The Idaho and Southwestern Montana 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. Additionally, the Idaho and Southwestern Montana GRSG PLUPA/FEIS complies with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP and properly recognizes that habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas.

### Administrative Procedure Act

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-4

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 exceptions, modifications, and waivers of NSO stipulations in PHMA, IHMA, and SFAs because they improperly amend a BLM regulation without completing the formal rulemaking procedures.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-5

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 the Idaho Department of Fish and Game or the Montana Fish, Wildlife, and Parks Department. These direct contradictions reflect that BLM is attempting to alter its regulations through the LUPA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-10

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The Proposed Plan’s withdrawal of millions of acres - 3,842,900 acres in SFAs alone - conflicts with Section 22 of the General Mining Law, and the Mining and Minerals Policy Act and cannot be implemented through the land use planning process. The maximum number of acres within Notices and Plan of Operations boundaries in the entire state of Idaho is only 10,635 acres, some of which are not co-located within GRSG habitat. As noted, the proposed withdrawals within SFAs are over 3.8 million acres. Therefore, the proposal to withdraw million acres of land in Idaho from mineral entry is grossly out of

proportion with the maximum potential impact that mineral activities might have on GRSG and its habitat.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-11

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** Agencies have not documented the rationale for their decisions

regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures” (BLM Handbook H-1601-1 at 7).

### **Summary:**

The BLM and Forest Service acted arbitrarily and capriciously, and in violation of the Administrative Procedures 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;
- Made changes to existing regulations without first completing a formal rulemaking process; and
- Failed to document rationale for withdrawal and “de facto” withdrawal decisions.

### **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 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 Idaho and Southwestern Montana 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. And 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 Idaho and Southwestern Montana 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.

For further discussion in this protest report regarding withdrawals and "de facto" withdrawals, please see Sections 1.1, 1.2, and 27.

### [Energy Policy Act of 2005](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-06-32

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 LUPAs developed pursuant to FLPMA are subject to valid existing rights. See *Colo. Env't'l Coal., et al.*, 165 IBLA 221, 228 (2005). At most, BLM may count development on these leases toward the density and disturbance caps but, once these caps are reached, BLM may only defer or deny development on new leases. BLM should revise the Proposed 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-IDSOUTHWESTMT-GRSG-15-06-35

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** The requirement that lessees mitigate impacts to GRSG to provide a “net conservation gain” is more restrictive than necessary. 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-IDSOUTHWESTMT-GRSG-15-06-36

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**Issue Excerpt Text:** Likewise, the lek buffer distances are more restrictive than necessary. The 3.1 mile buffers are not scientifically defensible, as explained in Section X.B, *infra*. Furthermore, in the Final EIS, the Agencies did not analyze whether alternative buffer distances would offer substantially similar protection to the GRSG. See Proposed LUPA/Final EIS, Table 2-13 at 2-220. 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-IDSOUTHWESTMT-GRSG-15-06-37

**Organization:** Montana Petroleum Association

**Protestor:** Dave Galt

**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 2-59. 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, EPAct required the Agencies to consider and adopt less restrictive measures.

### **Summary:**

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

### **Response:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS does not propose deferring

approvals of Applications for Permit to Drill. Proposed management for fluid minerals can be found in Section 2.6.2 of the PLUPA/FEIS beginning on page 2-51.

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 USC section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval (COA), and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing. (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Idaho and Southwestern Montana GRSG 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (Idaho and Southwestern Montana GRSG 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS.

On November 21, 2014 the USGS published “Conservation Buffer Distance Estimates for GRSG—A Review” (USGS 2014). The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The Proposed Alternative in the Idaho and Southwestern Montana GRSG PLUPA/FEIS included a management action to incorporate the lek buffer-distances identified in the USGS during NEPA analysis at the implementation stage. Applying these buffers was addressed in the Draft LUPA/EIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternatives B, C, D, E, and F) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for locatable mineral withdrawal, elimination of grazing, saleable mineral restrictions, and ROW avoidance and exclusion. Alternatives B and C were the most restrictive. The following were analyzed in the DEIS: 1) closing PHMA to fluid minerals development (Alternatives B and C); 2) recommending withdrawal of PHMA to locatable minerals (Alternatives B and C); 3) closing occupied GRSG habitat to livestock grazing (Alternatives C and F); and 4) closing PHMA to saleable minerals (Alternatives B, C, and F) and applying a 3 km buffer restriction for saleable minerals around leks (Alternative B). In addition to specific management actions designed to protect GRSG habitat, the DEIS included a Required Design Features and Best Management Practices Appendix D that applies protective measures during project implementation. However, the No Action was still the least restrictive of all alternatives analyzed. Accordingly, the management decision to require lek buffers for development within certain habitat types is

within the range of alternatives analyzed. The impacts of the lek buffers on GRSG are disclosed in Section 4.2 of the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

Similarly, a range of alternatives was developed around noise restrictions, with most alternatives not containing any noise restrictions. The impacts of noise restrictions on GRSG are disclosed in Section 4.2. of the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

Based on the impacts analysis performed, the BLM and FS determined that the stipulations, conditions of approval, and best management practices and RDFs considered are not overly restrictive, are necessary to meet the goals and objectives of the PLUPA/FEIS, and do not violate the Energy Policy Act.

The guidance in the Idaho and Southwestern Montana 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 as a response in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. In addition, as stated on page 2-77 of the PLUPA/FEIS:

“Consistent with the proposed plan's goal outlined in Goal SSS 1, the intent of the Nevada and Northeastern California GRSG Sub-region Proposed LUPA/Final EIS is to provide a net conservation gain to the species. This will happen in all GRSG habitat, in undertaking BLM management actions, and consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. The BLM will achieve this by avoiding, minimizing, and compensating for impacts and by applying beneficial mitigation actions. This is also consistent with BLM Manual 6840—Special Status Species Management, Section .02B, which states “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of the need for listing of these species under the ESA,” (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.

### *Areas of Critical Environmental Concern*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-30

**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 PLUPA/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs. The PLUPA/FEIS fails to adequately evaluate and protect relevant and important values. BLM created Sagebrush Focal Areas, which are 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 Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Idaho and Southwestern Montana GRSG PLUPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Pages, 2-98, 2-99, and 2-199 detail the range of alternatives considered for ACEC designations. Additionally, Section 2.6.1

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-08-21

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** FLPMA requires BLM to ‘give priority’ to the designation of ACECs in the planning process and that has not happened here. The agencies failure to designate a system of ACECs and Zoological Areas - the most powerful land use conservation tool in the toolbox - to protect sage- GRSG and their habitats in this plan amendment process is especially troubling given that the proposed management standards do not comply with best available science.



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. This approach would implement land use allocations in the Proposed Plan would limit or eliminate new surface disturbance in PHMA, while minimizing disturbance in GHMA. In addition to establishing protective land use allocations, the Proposed Plan Amendment would implement a suite of management tools such as disturbance limits, GRSG habitat objectives and monitoring, 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/FS will manage activities in GRSG habitat.

The BLM adequately considered the protection of relevant and important values in the Idaho and Southwestern Montana GRSG PLUPA/FEIS.

## Fire

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-24

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM's proposed plan fails to provide adequate controls on prescribed fire. Currently, there is an almost total absence of reliable protections. In fact, BLM direction appears to encourage prescribed fire in Wyoming big sagebrush habitats, the very habitats that the science states should be protected from this type of vegetation alteration.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-25

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** According to the best available science, prescribed fire should not be permitted in GRSG habitats with less than 12" annual precipitation.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-31

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM's proposed plan fails to provide adequate controls on prescribed fire. Prescribed fire is explicitly permitted under the proposed plan amendment after a series of procedural steps have been undertaken. FEIS at 2-24. According to the best available science, prescribed fire should not be permitted in GRSG habitats with less than 12" annual precipitation.

## **Summary:**

The Idaho and Southwestern Montana GRSG PLUPA/FEIS violates NEPA by:

- failing to consider the effects of cheatgrass invasion on proposed fuel treatment success and patterns of rangeland fire

- failing to identify limits on the use of prescribed fire.

**Response:**

Effects of Cheatgrass

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 Idaho and Southwestern Montana 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). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Chapter four of the Idaho and Southwestern Montana GRSG PLUPA/FEIS (P. 4-92 thru 4-94) discusses the effects of vegetation treatments and wildland fire management on Cheatgrass (invasive annuals) examples of these effects include:

“Managing vegetation to protect GRSG would alter vegetation communities by promoting diversity, healthy reproductive native grasses, and sagebrush productivity and vigor. Treatments designed to prevent encroachment of nonnative species or conifers would alter the condition of native vegetation communities.”

“Fire suppression may be used to maintain habitat for GRSG (NTT 2011, pp. 25-26). When management reduces wildland fire frequency the indirect impact is that vegetation ages across the landscape, and early successional vegetation communities are diminished. Fire suppression may preserve the condition of some vegetation communities, as well as habitat connectivity. This is particularly important in areas where fire frequency has increased as a result of invasive annual grass invasion and where landscapes are highly fragmented. Fire suppression can also lead to increased fuel loads, which can lead to more severe or larger fires in the long term. Fire also increases opportunities for invasive species, such as cheatgrass, to expand (Brooks et al. 2004); fire suppression can indirectly limit this expansion.”

Prescribed Fire

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 the response to comments appendix for the Idaho and Southwestern Montana GRSG PLUPA/FEIS it is noted that “Before using prescribed fire, the BLM assesses local conditions for potential invasive plant invasion. Section 4.6.2, Nature and Types of Effects, notes that while

prescribed fire does have beneficial uses, the presence of invasive plants and the potential for invasive plants to spread after a prescribed fire would need to be evaluated on a site-specific basis. Alternatives B and E specifically note that prescribed burns should occur at higher elevation in the absence of cheatgrass. If the BLM were to use prescribed fire, the area would be evaluated on a site-specific basis with the intention of preventing cheatgrass invasion. The Proposed Plan includes a suite of fire management decisions to address fuels management described in Section 2.6, including implementation of the FIAT, supporting development and implementation of the RFPAs, utilizing a full range of fire management strategies and tactics through strategic wildfire suppression planning, and use of targeted grazing as a fuels treatment.” (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. T-34, 35).

Additionally, FM 15 (p. 2-43) requires that:

“If prescribed fire is used in GRSG habitat, the NEPA analysis for the Burn Plan will address:

- why alternative techniques were not selected as a viable options;
- how GRSG goals and objectives would be met by its use;
- how the COT Report objectives would be addressed and met; and
- a risk assessment to address how potential threats to GRSG habitat would be minimized.”

For the Forest Service, GRSG-FM-ST-044-Standard provides: “In PHMA, IHMA, GHMA and SFA, do not use prescribed fire, except for pile burning, in 12-inch or less precipitation zones unless necessary to facilitate site preparation for restoration of GRSG habitat consistent with desired conditions in Table 2-6” (LUPA/FEIS at 2-66).

The BLM and Forest Service complied with NEPA’s requirement to analyze the environmental consequences/impacts to vegetation and wildland fire management in the Idaho and Southwestern Montana GRSG PLUPA/FEIS. The BLM considered a reasonable range of alternatives in the Idaho and Southwestern Montana GRSG PLUPA/FEIS in full compliance with NEPA. Additionally, implementation level NEPA compliance would be completed subsequent to application of prescribed fire treatments.

### *Fluid Minerals*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-17

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** The conclusion in the FEIS that the vast majority of Idaho, particularly most of the southern Snake River Basin, has "low" potential for fluid mineral development, lacks any scientific basis. This conclusion is used, for example, to justify management action FLM-1. The FEIS, and the fact sheet distributed by BLM entitled Idaho Facts and Figures for BLM-

USFS Conservation Plans for Greater GRSG, make clear that this conclusion is not based on actual data, but mostly on an "extrapolation model." Moreover, it is based on the 2008 USGS EPCA Phase III Inventory, which is itself based on even older data from other areas. Consequently, it ignores abundant evidence of potential in the state for fluid mineral development.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-10-18

**Organization:** Idaho Petroleum Council

**Protestor:** John Peiserich

**Issue Excerpt Text:** Most of the technological development in exploration and drilling (e.g., 3D seismic, horizontal drilling advances, hydraulic fracturing advances) that has resulted in dramatic expansion in unconventional resource

development across the country was put into use after the 2008 Phase III Inventory, but neither the DEIS nor the FEIS includes any discussion of this or takes it into account at all in its conclusion regarding the potential for fluid mineral development in Idaho.

**Summary:**

The best available information was not utilized in the analysis of potential fluid mineral development, particularly the development of new technology for fluid mineral recovery such as hydraulic fracturing, and subsequently underestimates the development potential within the planning areas.

**Response:**

Projections of the potential for oil and gas development in the planning area were generated using a Reasonably Foreseeable Development Scenario (RFD). The RFD for GRSG Habitat in the Idaho and Southwestern Montana Sub-Region is based on the known geology of the planning area and information gathered from oil and gas leaseholders during the planning process. The RFD was prepared in accordance with the BLM Washington Office Instruction Memorandum 2004-089, Policy for Reasonably Foreseeable Development Scenarios for Oil and Gas. The PLUPA/FEIS contains only a summary of the RFD report, as directed by Attachment 1 of Instruction Memorandum 2004-089. The RFD is based on a review of geological factors that control the potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity. The RFD specifically considered petroleum engineering principles and practices, such as recovery and finishing technologies, as well as economics associated with discovering and producing oil and gas. It projects a baseline scenario of activity assuming that all potentially productive areas are open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation, or executive order. In addition, the RFD assumes a conventional oil and gas field, as unconventional fields have not been discovered nor are they anticipated to be discovered in Idaho. Under these conditions, the RFD provides a maximum development scenario and the effect of the alternatives on potential development is included in this scenario (Appendix O, p. O-1). These scenarios developed in the RFD offer the basic information needed in the analysis of alternatives in the EIS.

In the development of RFDs, the BLM acknowledges that development may exceed that of which was originally projected, and requires that a program be established to track and compare these projections made in the selected alternative. “It is possible that exceeding the number of wells projected in the selected alternative may not result in exceeding the predicted level of environmental effects. Mitigation of environmental effects through successful reclamation, clustering wells on shared well locations, and minimizing pad and road construction can prevent the level of impacts from substantially exceeding the impacts analyzed in the original RMP/EIS,” (BLM Washington Office Instruction Memorandum 2004-089, Attachment 1-2). In addition, active monitoring of oil and gas development enables the BLM to anticipate increases in activity

and to initiate new RFDs, NEPA documents, and plan amendments proactively.

### *Solid Minerals – Including Mining Law of 1872*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-16

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Section 4.10.2 briefly describes the negative impacts to U.S. citizens from withdrawal of locatable mineral entry lands from the effects of the General Mining Law of 1872. It further states that valid mining claims in areas withdrawn from mineral entry would be considered valid existing rights but then adds that the determination of the validity of those existing rights would be required. Specifically, validity examinations would be required for claims in recommended withdrawals. The regulation at 43 CFR § 3809.100(a) requires a mineral examination report after an area is withdrawn, not when it is merely recommended for withdrawal. This new requirement, not found in the regulation, would greatly accelerate and add to the burden on BLM and Solicitor's Office staff at a time when they are already unable to prepare timely validity determinations after a withdrawal. IMA protests the requirement of a validity determination for all mining claims in recommended withdrawal areas.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-17

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** Moreover, it is unclear how the Agencies intend to apply the 3% disturbance cap to mining activities authorized under the Mining Law of 1872. BLM's land use planning process "cannot be used to preclude mining or restrict certain

types of mining activities." BLM Surface Management Handbook, H-3809-1, at 8-14 (Sept. 17, 2012). Specifically, land use plans "cannot be used to 'zone' areas where open pit mining is not allowed ... or generally place limits on the type or size of an operation." Id. If the Agencies intend that the disturbance cap will be used to preclude locatable minerals activities in certain areas once the threshold is met, the disturbance cap would create de facto mineral entry withdrawal "zones" in violation of the Agencies' mineral entry withdrawal regulations and policy. See Sw. Res. Council, 96 IBLA 105, 120 (1987); BLM Surface Management Handbook, at 8-14. IMA protests the lack of clarity that the 3% disturbance cap would not apply to locatable minerals activities in a manner to interfere with mining activities authorized under the Mining Law of 1872.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-20

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** The stated assumptions for phosphate leasing contain contradictory statements; specifically, the statement that there are no phosphate leases in GHMA followed immediately by the statement that there ten leases surrounded by GHMA. The GHMA maps for phosphate leases do not make this odd distinction and include leases in GHMA.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04 -1

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** Prohibition and restrictions on Non-Energy Mineral Leasing (Phosphate) are inconsistent with existing Land Management statutes, Threats to GRSG and were not adequately analyzed. PLUPA Elements Protested: The Proposed Land Use Plan Amendment (PLUPA) to address the management of GRSG on federal lands may have significant adverse effects on the development of the non-energy mineral phosphate.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04 -2

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** These restrictions and prohibitions are not proportional to the threat that leasable mineral mining poses to GRSG. Though the PLUPA does provide for leasing of KPLA within GHMA, the application of the criteria in AD-1 and AD-4 will greatly limit any such development. The totality of these PLUPA requirements and restrictions is that the future availability of phosphate ore will be significantly reduced and accessing current, leased phosphate reserves may be more costly. Such costs and restrictions will reduce the viability of mining phosphate in southeastern Idaho

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04 -4

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** The PLUPA/FEIS is markedly deficient in two aspects related to phosphate. First, the PLUPA/FEIS fails to account for the cumulative effects of withdrawals, prohibitions and restrictions to access phosphate ore in the West. The PLUPA for Idaho removes 4,870 acres from potential leasing for phosphate. This area is 25% of the unleased KPLA in southeastern

Idaho. Further restrictions (proposed plan elements AD-1 and AD-4) will add additional acres that are not available for mining. The Utah PLUPA withdraws 186,700 acres from phosphate mining, including almost 43,000 acres of high potential phosphate developments. The comments from JRS Co. specifically addressed the need for a cumulative analysis of the impacts from closing of over 190,000 acres from phosphate mining.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04 -5

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** Second, the PLUPA/FEIS does not discuss how the loss of access to phosphate ore will impact American agriculture. Specifically, JRS Co. comments stated that the FEIS needs to answer the following questions: This statement of "consequences" is wholly deficient and fails to disclose the following:

- Minerals can only be developed where they exist; the development will only occur where it is economically possible to do so. The development of any mineral resource is very capital intensive and entails significant financial risk. If a resource cannot be economically developed, the resource simply will not be developed. The draft LUPA/FEIS needs to disclose the millions of tons of minerals (such as phosphate) that will not be available for development as a consequence of the alternatives.
- The consequences of the loss of these minerals needs to be discussed including: (a) where additional phosphate will come from to make fertilizer for American agriculture, (b) the significance of the loss of fertilizer to nutrient availability in America; (c) potential impacts to fertilizer and food costs; and (d) Implications for food security for the nation as a whole.

The FEIS contains no discussion of these questions and issues which are of national strategic interest.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-14

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The Agencies have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions

associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation's need for domestic sources of minerals. The BLM is in violation of the MMPA, and for the reasons described herein, the PLUPA is illegal; it cannot be implemented and is thus, a fatal flaw that can only be cured by publishing a Revised PLUPA and a Supplemental FEIS BLM.

**Summary:**

The Proposed LUPA/FEIS incorrectly requires validity examinations for mining claims in areas recommended for withdrawal.

The Proposed LUPA/FEIS does not clearly describe how the disturbance cap will be applied to locatable mineral development.

General Habitat Management Area maps for phosphate leasing incorrectly show leases within GHMA.

Extensive land use restrictions included in the Proposed LUPA/FEIS constitute an illegal de facto withdrawal without completion of the steps required to establish a withdrawal under FLPMA.

**Response:**

The BLM has the discretion to institute a validity examination at any time; therefore, the assertion that the BLM may require a validity exam on lands recommended for withdrawal is not a proposed decision, subject to protest, but merely a statement of legal fact (43 CFR 4.451-1). Under 43 CFR 3809.100, approval by the BLM of certain levels of operations on lands withdrawn from operation of the mining law requires that the BLM first conduct a validity exam. The BLM may also, by policy, require validity exams under certain circumstances. If the plan were to propose adoption of such a policy, that would be a protestable proposal. However, the Idaho and Southwestern Montana GRSG PLUPA/FEIS does not propose such a policy. Rather, some confusion may have been engendered by the fact that the impacts analysis for this section was based on the methods and assumptions detailed in 4.10.1, "Methods and Assumptions" that stated "this analysis is based on [the assumption that] areas recommended for withdrawal would be withdrawn. To the extent that any ambiguity remains, it is clear that even if the description of Alternative B, found at page 2-195, where the following language appears, "Make any existing claims within the withdrawal area subject to validity exams or buy out," is not included in the Idaho Proposed LUPA, which is explicitly a combination of Alternatives D and E, modified, as

indicated in Chapter 2. And, indeed, no policy requirement (i.e., proposed RMP decision) identifies a requirement for validity exams for areas simply recommended for withdrawal. FLPMA requires the Secretary of the Interior to provide notice to Congress when making certain decisions regarding land use planning. Specifically, Section 202(e)(2) states “[a]ny management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate.” Upon approval of the PLUPA, the BLM will comply with the applicable reporting requirements set forth in FLPMA Section 202 as necessary and appropriate.

The proposed plan does not withdraw any lands that would trigger the reporting requirements of section 204 of FLPMA. There is no “de facto” withdrawal. The Proposed LUPA does recommend withdrawal of approximately 3.8 million acres of SFA from mineral entry. This recommendation, if followed through by the Secretary of the Interior, would be carried out pursuant to all applicable requirements in law, regulation, and policy.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS recommends the withdrawal of public land from mineral entry (see Table 2-13, p. 2-222), but does not use the 3 percent disturbance cap as a method of controlling development under the Mining Law of 1872. Appendix G, Disturbance and Adaptive Management, Appendix H, Anthropogenic Disturbance Calculation, and Appendix E, GRSG Final Monitoring Framework give more information on how mining activities will be counted under the overall disturbance calculation when analyzing other actions.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS states in objective NEL-1 (page 2-54) that Known Phosphate Leasing Areas (KPLAs) would be open to prospecting and subsequent leasing in IHMAAs and GHMAAs subject to standard stipulations. Maps do not show existing phosphate mines are part of GHMAAs.

### [Special Status Species](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-02-10

**Organization:** Idaho Mining Association

**Protestor:** Jack Lyman

**Issue Excerpt Text:** By not considering BLM Manual 6840-Special Status Species Management as part of the existing management structure pursuant to Alternative A, the Agencies' analysis did not include all reasonable alternatives that would address the purpose and need. Additionally, the LUPA/FEIS fails to provide an "apples-to-apples" comparison of alternatives because the level of analysis of

Alternative A was limited without consideration of the management directions provided in Manual 6840. For these reasons, the NEPA environmental review in the LUPA/FEIS is flawed.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-13

**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-IDSOUTHWESTMT-GRSG-15-05-4

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In the Idaho and Southwestern Montana GRSG LUPA/FEIS, BLM has failed to apply in its preferred Alternative D 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 Sensitive Species Policy and will result in both unnecessary and undue degradation of GRSG Priority Habitats and result in GRSG population declines in these areas, undermining the effectiveness of the Core Area strategy as an adequate regulatory mechanism in the context of the decision.

#### **Summary:**

- BLM is tasked with ensuring that land use and implementation plans fully address conservation of BLM Special Statue species.
- Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of BLM Sensitive Species Policy.
- The BLM failed to uphold its responsibilities outlined in its Sensitive Species policy. BLM's failure to apply adequate lek buffers to conserve GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.
- BLM fails to apply its preferred alternative D which violates directives of BLM Sensitive Species Policy.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-7

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**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-IDSOUTHWESTMT-GRSG-15-05-8

**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, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act.

- The Agencies did not include all reasonable alternatives that address the purpose and need. Alternative A did not include consideration of management direction provided in Manual 6840.

**Response:**

Contrary to the protest issues raised, the proposed land use plan revision for Idaho and Southwestern Montana GRSG PLUPA/FEIS 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 Special Status Species is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual 6840.02. B). Manual 6840 directs the BLM to "address Bureau sensitive species and their habitats in land use plans and associated NEPA documents" when engaged in land use planning with the purpose of managing for the conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM multiple use mission as specific in the FLPMA. (Manual 6840.2). The BLM's Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that "result in a reasonable conservation strategy for these species," and "should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans." (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions "may include identifying stipulations or criteria that would be applied to implementation actions." (Handbook 1601-1, Appendix C at 4). The BLM did consider measures that conserve the Greater-GRSG as contemplated in the policies (See Alternative B Chapter 2, page 2-80).

As described and analyzed in the Idaho and Southwestern Montana GRSG PLUPA/FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis (See FEIS at 2-80). Specifically, the BLM incorporated conservation measures identified in the NTT Report, and COT Report starting on page 2-83, Table 2.9.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the FEIS. For example, conservation measures in PHMAs that apply NSO stipulations would protect vegetation from removal and degradations and fragmentation ( See page 4-127). 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, Idaho and Southwestern Montana GRSG PLUPA/FEIS provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in Idaho and Southwestern Montana GRSG PLUPA/FEIS, the management proposed in the Idaho and

Southwestern Montana GRSG PLUPA/FEIS satisfies BLM's intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Additionally, Alternative A represents the current environment, existing management for special status species. Contrary to the Protestor's claim, the direction in Manual 6840 does apply to current management of BLM lands as reflected in Alternative A. Special status species are also included in the management common to all alternatives. This provided the basis for the analysis in Idaho and Southwestern Montana GRSG PLUPA/FEIS.

### *Lands and Realty*

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-6

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** Restrictions on Anthropogenic Disturbances and Land Realty Transactions/Exchanges Interfere with Existing Mineral Rights PLUPA Elements Protested: The Proposed Land Use Plan Amendment (PLUPA) to address the management of GRSG recognizes that existing rights have to be honored. However, it is not clear that the PLUPA provides for the infrastructure and auxiliary features necessary for the development and extraction of phosphate minerals. This includes the ability to conduct land realty transactions and exchanges.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-7

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** To successfully develop a mineral resource requires the ability to access the deposit (roads), have electrical power (transmission lines),

#### **Summary:**

The LUPA fails to adequately provide for future infrastructure for the development and extraction of phosphate minerals, including processing proposed realty actions (ROWS and exchanges).

develop water sources (wells, pipelines), manage waste materials (such as tailings in a tailings pond) and transport ore (such as through a pipeline). All of these mine features require an anthropogenic disturbance. Also, the conditions in LR-14 conflict with a proposed project that has been in progress for a number of years: the Dairy Syncline Mine Project and Land Exchange/Realty Action.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-04-8

**Organization:** Simplot Livestock

**Protestor:** Alan Prouty

**Issue Excerpt Text:** Rationale for Protest: The State Director's decision erred and is not supported by the record before BLM for the following reasons:

1. Elements AD-1 and AD-2 need to provide for the infrastructure needed to develop and utilize existing rights. This includes existing mine infrastructure (such as an ore pipeline) that runs through GHMA.
2. The PLUPA needs to accommodate the Dairy Syncline realty transaction that has been underway since 2010.

**Response:**

Under the Proposed Plan, land tenure adjustments would include retaining lands with GRSG habitat with exceptions for when there would be no impact or a net conservation gain for GRSG. Exchanges would be allowed if they were to increase the extent or provide for connectivity of habitat. Retention of areas with GRSG would reduce the likelihood of habitat conversion to agriculture, urbanization, or other uses that would remove sagebrush habitat and potentially impact sensitive plants. (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Chapter 4, page 4-81).

Land tenure actions would be allowed in PHMA and IHMA if it can be demonstrated there is a net conservation gain to GRSG. Allowing certain land tenure actions could create a more contiguous decision area and increase short- and long-term land management efficiency, as described in the Nature and Types of Effects. Land exchanges or disposal to remove low quality habitat from BLM-administered land and National Forest System land would also increase efficiency where those lands are isolated and difficult to manage. Each land tenure proposal would be analyzed in a separate site specific NEPA document. (Idaho and Southwestern Montana GRSG PLUPA/FEIS, Chapter 4, Section 4.8.10, page 4-223). Under LR-14, it states, "In allowing for new infrastructure development exemptions, the project proponent must demonstrate that the project would provide a high-value benefit to meet critical existing needs or important societal objectives to the State of Idaho. Coordinate exemptions with the State Implementation Commission" The proposed Dairy Syncline project is not specifically mentioned in the PLUPA/FEIS. The proposed project does contain GRSG habitat and the decisions resulting from the LUPA will apply to the project. The final decision to dispose of the public land would take into consideration whether or not an exemption would apply...

The Idaho and Southwestern Montana GRSG PLUPA/FEIS complied with NEPA by considering and analyzing effects of infrastructure and land tenure projects in the planning area and used the best available information and reference resources to support conclusions. References for the Idaho and Southwestern Montana GRSG PLUPA/FEIS are found in Volume II, Chapter 7, References.

The BLM and Forest Service complied with NEPA's requirement to consider and analyze the environmental consequences/impacts of infrastructure and land tenure projects in the Idaho and Southwestern Montana GRSG PLUPA/FEIS planning effort.

### [Travel Management](#)

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-16

**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.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-17

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In order to bring the Idaho – Southwest Montana RMP amendment up to scientific standards for road location and development, BLM must apply NTT (2011) recommendations as well as road density limits in accord with the best available science.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-6

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located. These travel and transportation management restrictions are unlawful because they conflict with the rights granted by Section 22 of the General Mining Law and 30 USC Section 612(b) (Surface Resources Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with

ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan, BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands. Similarly, the Agencies' proposal to authorize new roads only for administrative access, public safety or access to VERs (see GRSG-RT-ST-069-Standard), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, the Agencies fail to maintain access and thus, conflict with § 22 of the General Mining Law and violate FLPMA § 302(b). Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, the Agencies have not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-07-7

**Organization:** American Exploration and Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The travel and transportation restrictions described under the Proposed Plan create de facto withdrawals and thus, violate § 22 of the General Mining Law and the Surface Resources Act. As previously discussed, the misuse of the term "Valid Existing Rights"

in the context of the travel and transportation restrictions does not ensure pre-discovery access to public lands with or without mining claims.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-14-6

**Organization:** Simplot Livestock

**Protestor:** Darcy Helmick

**Issue Excerpt Text:** It is critical that permittees have the ability to have administrative use of off-road vehicles for livestock management and improvement maintenance. Permittees are legally required by the grazing regulations and by their Grazing Permits to manage their livestock and to maintain their range improvements. Permittees need access to do both.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-19-3

**Organization:** BlueRibbon Coalition

**Protestor:** Don Amador

**Issue Excerpt Text:** The documents suggest that motorized activities, including OHV use, are expected to have a larger footprint on the landscape. They are anticipated to have the greatest level of impact due to noise levels, compared to non-motorized uses, such as hiking or equestrian use.

### **Summary:**

The LUPA violates NEPA by:

- failing to utilize best available science to identify limits on road location and density; and
- failing to analyze the economic impact of preventing access for exploration and development of mineral deposits.

The LUPA fails to:

- provide access for permittees to manage livestock and maintain range improvements; and
- include an OHV Noise Management Standard.

The LUPA violates section 22 of the General Mining Law and the Surface Resources Act by creating de facto withdrawals and affecting rights of ingress and egress.

BRC submitted the following OHV noise management prescription in our comment letter, Consider adopting a defensible standard, such as the 2003 California State OHV Sound Law which states, "Sound emissions of competitive off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Sound emissions of all other off-highway y vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 d BA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Link to CA Sound Law: <http://ohv.parks.ca.gov/?page id=23037>. Notwithstanding our comments and the vague threat that failure to address vehicle noise could be used to justify restrictions, the Proposed LUPA/FEIS fail to meaningfully address this factor. We ask that this oversight be addressed in a supplemental analysis.

**Response:****Best Available Science**

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 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).

The Idaho and Southwestern Montana GRSG PLUPA/FEIS considered Alternative B, which was based on "A Report on National GRSG Conservation Measures" (NTT, 2011). Consistent with p. 11 of the NTT report this alternative would "Limit off-highway vehicle travel within...BLM Field Offices to existing roads, primitive roads, and trails in areas where travel management planning has not been completed or is in progress." (FEIS, p. 2-56).

The BLM and Forest Service utilized Holloran's 2005 findings, 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.

As described in responses to comments, the BLM and Forest Service have not added a restriction that would limit road densities to less than 0.09 km per km<sup>2</sup> (Wisdom et al. 2011) in GRSG habitat because the threshold established by Wisdom used coarse road data. When taking into consideration actual road density information, use of this threshold is not appropriate. Based on the GRSG Monitoring Framework, the Proposed LUPA includes surface disturbance direct areas of influence when calculating acreage for the disturbance cap, which would include consideration of existing disturbance (e.g., existing roads) when determining whether a project should be deferred or permitted.

As discussed under the NEPA—Range of Alternatives Section, of this report, the BLM and Forest Service complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM and Forest Service regulations, policy, and guidance. The management actions in the Proposed RMPA/Final EIS fall within the range of alternatives for protecting GRSG related to travel management, including travel limitations, road maintenance, and road construction.

The Idaho and Southwestern Montana GRSG PLUPA/FEIS includes a list of references (Chapter 7), which lists information considered by the BLM and Forest Service in preparation of the FEIS.

**Economic Impacts**

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 LUPA.

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 FEIS states in the Social and Economic Impacts section that “Alternatives A, D, and E do not recommend any new withdrawals from locatable mineral development. Alternatives B, C, and F recommend withdrawing PHMA from locatable mineral development. These would be the most under Alternative C. The Proposed Plan recommends withdrawing SFA from locatable mineral development, resulting in more withdrawals or recommended withdrawals than Alternatives A and D, but less than B, C, and F. Under Alternatives B, C, and F and the Proposed Plan, withdrawals could have adverse economic impacts on specific communities to the extent that they reduce mineral development in the future. The extent of these economic impacts is not possible to estimate, given the information available. Withdrawal recommendations for areas over 5,000 acres are subject to congressional control, and a number of statutory requirements would need to be satisfied. (p4-303)” Additionally it concludes that “Economic activity associated with management of phosphate, locatable minerals, and salable mineral materials would be the same for Alternatives A and E, slightly lower under Alternative D (due to reduced exploration activity), lower still under Alternatives B and F, and lowest under Alternative C. The Proposed Plan would have impacts similar to Alternatives A and E for phosphate development, to Alternatives B and F for locatable mineral development, and Alternative to B for salable mineral development. Any adverse impacts on mining under Alternatives B, C, and F and the Proposed Plan would most likely be felt in counties such as Caribou, where the mining industry is an important economic contributor, and Cassia, where mineral activity overlaps GRSG habitat.” (p. 4-304).

#### Access for Livestock Grazing

FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, areas of critical environmental concern, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 USC 1711 Sec 201 (a)). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans.

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



The Idaho and Southwestern Montana GRSG PLUPA/FEIS complies with the Taylor Grazing Act, which does not preclude the BLM from identifying some public lands as closed to cross-country motorized travel to manage livestock grazing.

Forest Service Travel Management Policy states; written authorizations issued under federal law or regulations or legally documented rights-of-ways held by State, county or other local public road authorities are exempt from travel management regulations as prohibited within 36 CFR 261.13.

#### “De facto” Withdrawals

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

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

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

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

BLM H-3809-1 States:

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

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access

placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.”

The Idaho and Southwestern Montana GRSG PLUPA/FEIS is consistent with BLM direction to balance mining claimant’s right and requirement to access claims with FLPMA’s requirement to prevent unnecessary or undue degradation.

#### Noise Management Standard

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14) if it is determined not to meet the proposed action’s purpose and need; (BLM Handbook H-1790-1, Section 6.6.3). Comment response in the plan notes (p. T-49) that “During subsequent implementation-level travel management planning new travel management plans would evaluate vehicle routes and determine the need for permanent or seasonal road closures, and mode of travel (e.g. motorcycle, ATV, and UTV) restrictions, including noise levels and speed. The route designation process will be completed as subsequent implementation level planning using current travel management policies and will include public and local agency involvement. Addressing these issues at the implementation level allows the BLM and Forest Service to take new information into account as it becomes available.”

While noise management standards themselves would be an individual action within an alternative, the BLM and Forest Service appropriately dismissed the suggested action because it would not respond to the plan’s purpose and need of “identify and incorporate appropriate conservation measures into LUPs to conserve, enhance and restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (Idaho and Southwestern Montana GRSG PLUPA/FEIS, p. 1-14)”.

As part of the Forest Service site specific travel management analysis the criteria in § 212.55, effects of sound, could be considered as part of the analysis prior to a travel management decision.

#### Clarifications and Clerical Errors

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-05-12

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** BLM states in its Action that buffer distances are contained in Appendix B (Id., and see FEIS at 2-34), but they are not (this appears to be an important typographical error); they are contained in Appendix DD.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-11-9

**Organization:** Idaho Cattle Association

**Protestor:** Wayne Prescott

**Issue Excerpt Text:** Tables 2-7 in Appendix G is that type of missing information. In Appendix G, the FEIS notes Tables 2-7 “describe the acreages associated with the BSUs by Conservation Area for the Idaho and Southwestern Montana Subregion.” The tables contain values for the entire BSU (Priority and Important),

including all ownerships, acres of effective habitat within the BSUs and acres of anthropogenic disturbance within the BSUs.” After an extensive search, these referenced Tables cannot be found in Appendix G.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-12-7

**Organization:** Governor of Idaho

**Protestor:** CL “Butch” Otter

**Issue Excerpt Text:** Additionally, there are internal inconsistencies with the FEIS as lek buffer distances are listed as 3.1 miles in Appendix DD, whereas in the description of disturbance caps and mapping of

disturbance, as expressed in Appendix G, they are listed as 4 mile buffers.

**Issue Number:** PP-IDSOUTHWESTMT-GRSG-15-15-2

**Organization:** Avian Power Line Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** In addition, the definition of ROW disturbance area for the anthropogenic disturbance calculations is different between Appendix H (p. H-1) and Appendix G (Table G-1; p. G-6). It is unclear why these two disturbance definitions are inconsistent and which is being used in the calculation.

#### **Summary:**

- PLUPA/FEIS at 2-26. BLM states in its Action that buffer distances are contained in Appendix B. However they are actually contained in Appendix DD.
- There are internal inconsistencies as lek buffer distances are listed as 3.1 miles in Appendix DD, whereas in the description of disturbance caps and mapping of disturbance, as expressed in Appendix G, they are listed as 4 mile buffers.
- The definition of ROW disturbance area for the anthropogenic disturbance calculations is different between Appendix H (p. H-1) and Appendix G (Table G-1; p. G-6).

#### **Response:**

The buffer distances are contained in Appendix DD. This will be corrected in the ARMPA.

The lek buffer distances in Appendix DD were derived from the USGS report using the best available science to preclude potential project disturbance around leks. The Appendix G 4 mile circle is used to calculate the disturbance cap at the project scale and is not a buffer.

Appendix H is included in Appendix G. Appendix H does not include calculations rather it discusses the disturbance categories that would be used in the calculations described in Appendix G.