

Director's Protest Resolution Report

**Chokecherry and Sierra
Madre Visual Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

October 5, 2012



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CA-ESD-08-0020-10
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

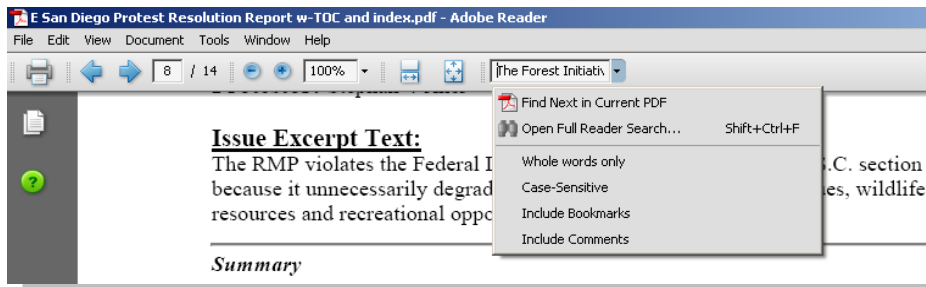
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

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

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IM	Instruction Memorandum
BA	Biological Assessment	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CCSM	Chokecherry-Sierra Madre	NRHP	National Register of Historic Places
CDNST	Continental Divide National Scenic Trail	NSO	No Surface Occupancy
CEQ	Council on Environmental Quality	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CFR	Code of Federal Regulations	RFDS	Reasonably Foreseeable Development Scenario
COA	Condition of Approval	RMP	Resource Management Plan
CSU	Controlled Surface Use	ROD	Record of Decision
CWA	Clean Water Act	ROW	Right-of-Way
DEIS	Draft Environmental Impact Statement	SHPO	State Historic Preservation Officer
DM	Departmental Manual (Department of the Interior)	SO	State Office
DOI	Department of the Interior	SRMA	Special Recreation Management Area
EA	Environmental Assessment	T&E	Threatened and Endangered
EIS	Environmental Impact Statement	USC	United States Code
EO	Executive Order	USGS	U.S. Geological Survey
EPA	Environmental Protection Agency	VRI	Visual Resources Inventory
ESA	Endangered Species Act	VRM	Visual Resource Management
FEIS	Final Environmental Impact Statement	WA	Wilderness Area
FLPMA	Federal Land Policy and Management Act of 1976	WHMA	Wildlife Habitat Management Area
FO	Field Office	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		
IB	Information Bulletin		

Protesting Party Index

Protester	Organization	Submission Number	Determination
Nancy L. Seymour and Major D. Kollin		PP-WY-Chokecherry-12-01	Dismissed—Comments only—
John R. Johnson		PP-WY-Chokecherry-12-02	Dismissed—Comments only
Gary L. White		PP-WY-Chokecherry-12-03	Dismissed—Comments only
James M. Ling		PP-WY-Chokecherry-12-04	Dismissed—Comments only
David Gaffney		PP-WY-Chokecherry-12-05	Dismissed—Comments only
Jeff Streeter	Voices of the Valley	PP-WY-Chokecherry-12-06	Denied—Issues, Comments
James R. Wolf	Continental Divide Trail Society	PP-WY-Chokecherry-12-07	Denied—Issues, Comments
Alex Daue Katie Umekubo Brian Rutledge	The Wilderness Society Natural Resources Defense Council Audubon	PP-WY-Chokecherry-12-08	Denied—Issues, Comments
Jack Berger	Saratoga-Encampment-Rawlins Conservation District	PP-WY-Chokecherry-12-09	Denied—Issues, Comments
Sophie Osborn	Wyoming Outdoor Council	PP-WY-Chokecherry-12-10	Denied—Issues, Comments
Erik Molvar Kelly Fuller Jonathan B. Ratner	Biodiversity Conservation Alliance American Bird Conservancy Western Watersheds Project*	PP-WY-Chokecherry-12-11	Denied—Issues, Comments
Gregory Buppert Sarah Friedman	Defenders of Wildlife Sierra Club	PP-WY-Chokecherry-12-12	Dismissed—Comments only
Kathleen Zimmerman Joy Bannon	National Wildlife Federation Wyoming Wildlife Federation	PP-WY-Chokecherry-12-13	Denied—Issues, Comments
Frederick J. Harrison, P.C.		PP-WY-Chokecherry-12-14	Dismissed—Filed Late

*Table amended 10/17/12 to include Kelly Fuller (American Bird Conservancy) and Jonathan B. Ratner (Western Watersheds Project); and on 10/19/12 to clarify that David Gaffney submitted his protest as an individual rather than on behalf of an organization.

Issue Topics and Responses

Section 6 - NEPA

Section 6.1 - Public Participation

Issue Number: PP-WY-Chokecherry-12-07-6

Organization: Continental Divide Trail Society

Protester: James Wolf

Other Sections: 35.2

Issue Excerpt Text:

So far as we are aware, the 2011 Otak VRI has never been subject to public comment procedures under NEPA, and this is the first occasion for its conclusions to be applied in arriving at VRM decisions. If BLM is going to rely on the VRI under such circumstances, a disagreement as to its facts and conclusions is not at all out of scope and must be addressed.

Protester: Erik Molvar et al

Issue Excerpt Text:

INADEQUATE TIME FOR PUBLIC COMMENT:

We also protest the brevity of the comment period. The Cover Letter for the Final EIS states that a 30-day comment period would be provided. But regardless of when the Notice of Availability published, the actual Final EIS itself was not available to us in any form (either hardcopy or electronically on the internet) until July 3'd. A 30-day comment period from that date would run until August 2nd BCA petitioned BLM for an extension of time for the FEIS protest period but to date have received no reply. Given the significant amount of travel and other responsibilities that have taken our time since the FEIS was released, the lack of a full 30-day comment period has impaired our ability to review and comment on this voluminous EIS to the extent we feel warranted. This appears to represent an additional violation of NEPA's public notice and comment procedures.

Issue Number: PP-WY-Chokecherry-12-11-38

Organization: Biodiversity Conservation Alliance et al

Summary:

The Proposed Plan Amendment/Final Environmental Impact Statement (PPA/FEIS) violates the National Environmental Policy Act (NEPA) because:

The Visual Resources Inventory was not subject to public comment procedures under NEPA; and

The FEIS was not available to the public when the Notice of Availability was published in the *Federal Register*.

Response:

The BLM has fully complied with public participation requirements provided in BLM planning regulations (43 CFR §§ 1601-1610), and NEPA regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR §§ 1500-1508).

The BLM is not required to provide an opportunity for the public to comment during the visual resources inventory (VRI) process. Preparing and maintaining the visual resources inventory is a BLM responsibility separate from the BLM's consideration of visual resources (e.g., designating Visual Resource Management (VRM) classes) through the land use planning process; it does not, of itself, change or prevent change of the management or use of the public lands (43 U.S.C. § 1711(a)).

To the extent that the BLM considers the VRI to make a land use plan decision (e.g., designate VRM classes), the public may raise protest issues regarding the compliance of the land use planning decision with applicable law, regulation, or policy. All protest issues regarding the VRI for the planning area are addressed in the Visual Resources section of this protest report.

The length of the protest period is established by regulation and cannot be extended. (BLM Handbook 1601-1, p. 24). 40 CFR 1610.5-2 stipulates that "the protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the date the final environmental impact statement containing the plan or amendment in the Federal Register." The Notice of Availability for the PPA/FEIS was published by the Environmental Protection Agency on June 29, 2012 and the protest period concluded on July 30, 2012 accordingly.

The BLM responded to the protesting party's request for an extension of the protest period in a letter dated July 27, 2012. As explained in the BLM's response to the protestor, the PPA/FEIS was made available to the public at the time the Notice of Availability was published by the Environmental Protection Agency: "You indicate that the FEIS was not made available to the public in any form until July 3, 2012. This is incorrect; the compact disc's (cds) of the document were distributed on June 27, resulting in delivery beginning on June 29. We were prepared to forward hard copies of the document beginning on June 29; no communication was received from your organization, or any other party, requesting copies of the document on June 29, 2012. The document was posted on the BLM website...on July 2, 2012. Your office requested a hard copy on July 2 and we complied immediately." (Letter from Donald Simpson, BLM Wyoming State Director to Erik Molvar, Biodiversity Conservation Alliance, dated July 27, 2012).

Section 6.2 - Cumulative Effects

Issue Number: PP-WY-Chokecherry-12-06-5

Organization: Voices of the Valley

Protester: Jeff Streeter

Issue Excerpt Text:

In particular, this approach does not allow evaluation and comment upon the cumulative impacts of other wind development projects now known to be under consideration in the area of responsibility for the Rawlins RMP. We believe this to be a fatal flaw in the BLM's response to public comments in the FEIS. The public must be given the information and opportunity to consider the cumulative effects of this project the context of other projects currently being contemplated within the context of the new VRM plan amendment and its associated criteria, maps, and BLM analyses. Under NEPA guidelines, this should be done within the scope of the Final EIS or a supplemental analysis provided for public comment prior to the Record of Decision.

Issue Number: PP-WY-Chokecherry-12-07-13

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

A Cumulative Effects Analysis Is Needed. The Society raised the prospect that wind energy projects proposed on public lands in Wyoming may have a profound impact on the experience of users of the CDNST. The FEIS does provide some additional information for the planning area, but not for the remainder of the Rawlins Field Office or other parts of the State. Within the planning area, some areas of high wind potential (along with areas of potential oil and gas development) are identified. Section 5.0.5 of Volume II advises that "development of other wind projects could occur ..., but none are far enough along in the planning process to define the location, scale, and impacts of their potential development." However, if such projects are "reasonably foreseeable," and are likely to have an impact on enjoyment of the CDNST, they should be described to the extent practicable. Future developments may be speculative, but they certainly give rise to concern that, taken as a whole, they place the values of the CDNST in serious jeopardy. Other reasonably foreseeable projects in the Rawlins Field Office, as well as other parts of Wyoming, should also be discussed if they may impact the CDNST; if there are no such projects, the cumulative effects analysis should expressly declare that to be the case.' Projects (other than the CCSM) that are not addressed by BLM provide no support for decision-making and ought not to be relied upon in establishing higher VRM classifications.

Summary:

The PPA/FEIS fails to adequately analyze cumulative effects because it did not consider the cumulative effects of reasonably foreseeable wind energy projects in the Rawlins Field and the State of Wyoming.

Response:

The PPA/FEIS adequately analyzed the cumulative effects of the proposed plan amendment in Section 4.15 of the PPA/FEIS. The cumulative effects analysis in the PPA/FEIS considered the

present effects of past actions, to the extent that they are relevant, as well as effects of current and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. 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 PPA/FEIS established an appropriate geographic scope for the cumulative effects analysis: “the cumulative impact analysis addresses the Planning Area consisting of a nominally 30-mile buffer from the CCSM project.” (PPA/FEIS, p. 4-22). The geographic scope of cumulative effects considers how widespread the effect may be, and “will often extend beyond the scope of the direct effects, but not beyond the scope of the direct and indirect effects of the proposed action and alternatives.” (BLM NEPA Handbook, p. 58). The Planning Area for the PPA/FEIS is “sufficient to provide a complete and accurate assessment of the day and nighttime impacts of the CCSM project on RFO [Rawlins Field Office] area visual resources and future management considerations.” (PPA/FEIS, p. 1-4).

The PPA/FEIS utilized this geographic scope to provide a cumulative projects scenario. The cumulative projects scenario was comprised of relevant past, current, and reasonably foreseeable projects within the geographic scope. Specifically, the cumulative projects scenario included current wind energy development occurring on private lands in the eastern portion of the Planning Area and pending wind energy applications, including the CCSM Wind Energy Project. (PPA/FEIS, p. 4-22). The cumulative projects scenario was the basis for the cumulative impact analysis presented in Section 4.15.3 of the PPA/FEIS.

The BLM is “not required to speculate about future actions. Reasonably foreseeable future actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” (BLM NEPA Handbook, p. 59). Therefore, wind energy projects that are not far enough along in the planning process to define the location, scale, and impacts of their potential development were not included in the cumulative projects scenario. For a detailed table of wind energy projects that were included in the cumulative projects scenario please see Table 5.0-1 in Volume II of the FEIS.

Section 6.3 - Impact Analysis

Issue Number: PP-WY-Chokecherry-12-06-8

Organization: Voices of the Valley

Protester: Jeff Streeter

Issue Excerpt Text:

Socioeconomics: The BLM response to paraphrased comment #0483-002 does not adequately address the comment. "The visual impact of the industrial wind

energy development will have major detrimental effects on tourism and recreation." In response, the BLM stated, "Both Highways 71 and 130, as well as the town of Saratoga and Encampment are in areas of checkerboard and fragmented landownership." While parts of Highways 71 and 130 are in checkerboard, the towns of Saratoga and Encampment are not in checkerboard. Upon review of response General Comment Response (GCR)-5 it is stated VRM should not be used as a tool to preclude activities, but to

minimize impacts and enhance project design characteristics. Considering the towns of Saratoga and Encampment in checkerboard is not accurate and does not minimize impacts nor enhance project design characteristics.

Issue Number: PP-WY-Chokecherry-12-09-10

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

- Tourism -This document does not address economic impacts to tourism. It merely provides a discussion of the types of recreation available and that tourism occurs. There is no analysis of the economic impacts of the VRM alternatives on tourism. Tourism is important to the North Platte Valley and the economic impacts of the VRM alternatives should be addressed.

Issue Number: PP-WY-Chokecherry-12-09-15

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

The impacts of VRM designations on socioeconomics should be addressed in this document.

Issue Number: PP-WY-Chokecherry-12-09-9

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

Socioeconomic -GCR-9: This comment response states "...the impacts resulting from the proposed VRM plan amendment alternatives would not change the analysis previously conducted in the RMP for several reasons." The reasons are not stated. "Therefore, information from the 2008 RMP FEIS

regarding these resources, including air quality, paleontology, socioeconomics, soils, wild horses, wildlife and fish, that would not change from the previous analysis have been incorporated by reference." We feel that socioeconomic impacts from VRM decisions would be significant. There will be impacts to recreation and tourism from VRM decisions and their impacts on the North Platte Valley have not been considered. The towns of Saratoga, Encampment, and Riverside will be impacted by the VRM designation. These towns are not in the checkerboard. Highways 71 and 130 provide access to these small communities. The view entering the Valley from the North will provide the first impression to Valley visitors.

Issue Number: PP-WY-Chokecherry-12-11-10

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

While the FEIS lists a handful of sites where setting contributes to NRHP eligibility (FEIS Vol. I at 3-2), there is no complete catalog of NRHP-eligible sites in the planning area. This lack of key baseline information prevents BLM from making determinations of impacts that are likely to result from implementation of the VRM Plan Amendment, in violation of NEPA. This is a geographically circumscribed area, and under FLPMA the BLM is required to maintain an ongoing inventory of the resources under its management. NRHP-eligible sites are the most important of cultural resources in this category, the most sensitive to impacts, and the ones that carry legal requirements under the NHPA to protect their settings in the context of all federally managed activities (which would include VRM planning). Yet the agency has not cataloged even a list or even an enumeration of these sites (of which it MUST have already developed a catalog), never mind providing at least general map locations indicating which lands fall within their viewsheds. For the sites and trails that are listed, there also is no baseline viewshed analysis provided, showing which lands are visible from these sites/trails, necessary baseline information and a prerequisite to a hard look at impacts. Indeed, BLM 1M 2009-043 directs BLM to do just this. Such viewshed analysis is readily achievable using GIS technology, and such analyses

are routinely included in BLM EISs (see, e.g., Attachment 2), so the BLM's failure to include such analysis in the VRM Plan Amendment EIS is an inexcusable omission and a violation of NEPA's hard look requirements.

Issue Number: PP-WY-Chokecherry-12-11-12

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The Proposed Plan impact analysis contains no discussion of the efficacy of proposed management in maintaining visual resources for the North Platte SRMA. See FEIS Vol. I at 4- 14. There appears to be no effort made to take a 'hard look' at the degree to which resulting management will affect visual resources along this SRMA.

Issue Number: PP-WY-Chokecherry-12-11-30

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

Under current management, the CDNST and the

Summary:

The PPA/FEIS fails to adequately analyze the impacts of the proposed plan amendment because:

- it does not provide a complete catalog of NRHP-eligible sites;
- it does not analyze the economic impacts on tourism;
- it does not accurately analyze impacts on the towns of Saratoga, Encampment, and Riverside;
- it does not adequately analyze impacts on the North Platte River SRMA; and
- it does not provide an adequate baseline viewshed analysis.

Platte River SRMA will occur within VRM Class II and III areas. FEIS Vol. I at 4-13. However, Figure 2-5 clearly shows the lands surrounding these features as being managed as VRM Class IV (with the exception of a very narrow band of VRM Class II, less than 1 mile in width in most places, around the Platte River SRMA) under the Proposed Plan. BLM asserts that this band of VRM Class II will result in "minimal disturbance to the recreational setting" (FEIS Vol. I at 4-14), but where is the analysis to back up this statement.

Issue Number: PP-WY-Chokecherry-12-11-40

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

BLM's failure to map the viewsheds of these important and sensitive features (North Platte SRMA, CDNST, and Overland Trail being most notable) represents a failure to include important baseline information necessary to conduct a credible impacts analysis. BLM also fails to quantify the proportion of the trail expected to be subject to industrial degradation under the Proposed Plan or any other alternative.

Response:

The BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in the RMP/EIS. The BLM analyzed the available data that led to an adequate disclosure of the potential environmental consequences of the preferred alternative and other alternatives. As required by NEPA, the BLM has taken a “hard look” at the environmental consequence of the alternatives to enable the decision maker to make an informed decision.

Section 3.2 of the PPA/FEIS acknowledges the presence of NRHP-eligible sites in the planning area: “Of greatest concern are visual effects to cultural resource sites in which site setting contributes to their eligibility to the NRHP. These include, but are not limited to, the Rawlins Historic District, Parco/Sinclair Historic District, Rawlins to Baggs Road, Rawlins to Fort Washakie Road, Overland Trail, Lincoln Highway, and Fort Fred Steele, as well as to sites of traditional, cultural, or religious significance to Native Americans.” (PPA/FEIS, p. 3-2). Additionally, Section 3.2 incorporates by reference Sections 3.3 and 3.13.2 from Chapter 3.0 of the 2008 Rawlins RMP Final EIS which provides an overview of cultural resource sites and subregions found in the RFO area, including the current planning area.

The PPA/FEIS adequately analyzes the socioeconomic effects from impacts to tourism. The PPA/FEIS discusses tourism as part of the affected environment in Section 3.9 of the PPA/FEIS, and analyzes the potential impacts to tourism from the alternatives in Section 4.9 of the PPA/FEIS. The BLM determined that impacts would not change from the previous analysis of VRM class alternatives included in the 2008 Rawlins RMP for socioeconomic impacts. The PPA/FEIS incorporated by reference the analysis of socioeconomic impacts, which includes those from tourism, from VRM class alternatives from the 2008 Rawlins RMP. While the towns of Saratoga, Encampment, and Riverside are not in the checkerboard, they are in areas of fragmented land ownership. When analyzing the effects of alternatives, the BLM considered that “visual quality can be difficult to manage in areas with checkerboard (see Glossary) or fragmented landownership patterns.” (PPA/FEIS, p. 2-5).

The PPA/FEIS analyzes the impacts on the visual setting of the North Platte River SRMA. Currently, the area that contains and immediately surrounds the North Platte River SMRA is VRI Class II. (PPA/FEIS, pg. 2-4). By managing the North Platte River SRMA as VRM Class I, and the VRI Class II lands that surround the North Platte SRMA as VRM Class II, there would be little impact to the visual setting of the North Platte River SRMA: “Most of the North Platte River SRMA would be within designated VRM Class II areas, resulting in minimal disturbance to the recreational setting and disruptions to recreation use.” (PPA/FEIS, p. 4-14).

The designation of VRM classes is a land use planning-level decision, which are broad in scope and do not require an exhaustive gathering and monitoring of baseline data. Although the BLM realizes that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM would conduct subsequent project-specific NEPA analyses for projects proposed for implementation

under the land use plan (40 CFR 1502.20, 40 CFR 1508.28). As required by NEPA, the public would have the opportunity to participate in the NEPA process for site-specific actions.

The VRI completed by OTAK, Inc. in February 2011 was conducted for the entire Rawlins Field Office area and served as the baseline information for this plan amendment. (PPA/FEIS, p. M1-2). The VRI analyzed the scenic quality and sensitivity for the planning area, including for the North Platte SRMA, the Continental Divide National Scenic Trail, and the Overland Trail. A complete description of the methodology the VRI used, including how Geographic Information Systems (GIS) and other modeling tools were used throughout the process, can be found in Appendix D of the VRI.

Section 6.4 - Range of Alternatives

Issue Number: PP-WY-Chokecherry-12-11-22
Organization: Biodiversity Conservation Alliance et al
Protester: Erik Molvar et al

Issue Excerpt Text:

The Range of Alternatives is legally inadequate

An examination of the range of alternatives in the VRM Plan Amendment indicates that not one single alternative (including the No Action Alternative and Alternative 3 (Emphasis on Protection of Resources) provides adequate protection for Visual Resources. See FEIS Vol. I Section 2.2.5. No alternative offers an adequate buffer of at least 5 miles with VRM Class 2 (or more stringent) to protect the Continental Divide National Scenic Trail. Id. No alternative provides a buffer of at least 5 miles with VRM Class II or higher for the Overland Historic Trail, nor does any alternative prescribe the buffers to protect visual resources found in the Lander RMP for historic trails. Id. No alternative considers at least a 5-mile buffer of VRM Class 2 or more stringent for the Platte River SRMA. Id. The alternatives are clearly reasonable and well within BLM's scope of authority to implement. They have been sought by commenters during the NEPA process. In each alternative, these important buffer zones, representing the foreground-middleground areas for these features according to the agency's own Visual Resource Inventory, are to be managed as VRM Class III or IV, the least protective classifications that allow intensive industrial development that can significantly alter the character of the landscape. BLM offers no explanation of why more protective management, in some cases required by law and in other cases required for RMP conformity under FLPMA, would be unreasonable.

Response:

The purpose and need for the proposed action (i.e., the proposed plan amendment) defines the range of alternatives considered in an EIS. The purpose and need for the PPA is to "establish new VRM class designations based on the VRI completed in 2011". (PPA/FEIS, p. 1-3).

The PPA/FEIS describes and fully evaluates four alternatives for VRM class designations in the decision area. These four alternatives represent different approaches to meeting the purpose and need, and are "intended to be consistent with law, regulation, and policy while providing for varying levels of compatible resource use and development opportunity." (PPA/FEIS, p. 2-7). According to CEQ guidance for implementing NEPA, "when there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS." (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981, Question 1b). Table ES-1 of the PPA/FEIS provides a summary of VRM class by acreage for each alternative.

As stated above, the purpose and need of the PPA/FEIS is to designate VRM classes. The designation of a VRM class is a land use plan level decision. (BLM Handbook 1601-1, p. C-11). The PPA/FEIS properly described the role of land use plan decisions: "Land use plan decisions ordinarily are made on a broad scale and customarily guide subsequent site-specific implementation" (PPA/FEIS, p. 1-3) (also see BLM Handbook H-1601-1, p. 13). As such, VRM classes do not prescribe management actions, such as buffers, to protect site-specific visual resources.

BLM Handbook 1601-1 describes types of implementation level decisions for visual resources (e.g., "utilize visual resource design techniques and best management practices to mitigate the potential for short-and long-term impacts.") (BLM Handbook 1601-1, p. C-11). Buffers to protect site-specific visual resources, such as those associated with a trail or SRMA, is one example of a design technique and best management practice that will be considered during implementation planning and subsequently analyzed as required by the NEPA.

Section 12 - Cultural Resources

Issue Number: PP-WY-Chokecherry-12-11-24

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The BLM's assumption that "The setting of historic properties, including historic trails, would be protected regardless of VRM class in accordance

with the Wyoming State Protocol and BMPs as noted in the 2008 Rawlins RMP" (FEIS Vol. I at 4-3) is demonstrably false. Attachment 4 shows a Google Earth screenshot (derived from satellite imagery) of the Overland Trail as it crosses Wyoming Highway 789 as well as its visible path westward from the highway. The Historic Trail is clearly visible running west from the labeled parking pulloff and traversing the center of the screenshot from east to west. In the northwest quadrant of the screenshot is a natural gas wellpad in T17N R92W Section 8, a BLM section in

the Rawlins Field Office (and within the Chokecherry VRM Plan Amendment area), which was permitted by BLM a distance of 0.28 mile from the Overland Trail (measured using Google Earth) with no intervening topography. This well complies with the Rawlins RMP direction and yet has resulted in degradation of the historic setting of the trail. This well is clearly visible from the parking pulloff on Highway 789 with its interpretive sign, one of the three primary spots in the state where casual visitors view the Overland Trail (the others are on State Highway 130 and State Highway 70). The setting of the Trail is degraded by the view of this well from the highway, even though the trail passes through checkerboard in this area.

Issue Number: PP-WY-Chokecherry-12-11-25

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

Attachment 5 shows a screenshot of the Overland Trail where it crosses the Wamsutter Road (BLM 701), showing two gas wells in its northeast quadrant within T17N R93W section 9, a BLM section managed by the Rawlins Field Office; the western well by Google Earth measurement is within 0.32 mile of the Trail and the eastern well is 0.26 mile from the trail, on flat topography. Once again, consistent with the Rawlins RMP, once again, degrading the historic setting of the Trail. These satellite images demonstrate definitively how a 0.25-mile buffer is inadequate to protect the historic setting of an NRHP-eligible site in the face of development. Failure to provide adequate buffers

through the VRM Plan Amendment will directly result in unnecessary or undue degradation to the settings of historic trails and sites through the approval of piecemeal industrial projects such as individual well pads that rely on the RMP and its Amendments for their NEPA analysis with minimal additional analysis in the approval process. This creates attendant violations of the National Historic Preservation Act (NHPA) as well.

Issue Number: PP-WY-Chokecherry-12-11-27

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The FEIS concedes for Alternative I that Historic Trails and Properties sited in VRM Class III and IV areas would "continue to be at risk from potential development...." FEIS Vol. I at 4-4. The Proposed Plan (Alt. 4), as well as Alternatives 2 and 3, "allows for a higher degree of alternation of cultural resource settings in the northern portion of the Decision Area...." FEIS Vol. I at 4-5. The BLM uses once again the illogical rationale that in checkerboard areas, uses on private lands cannot be controlled (id.), but this excuse has no bearing here because the NHPA requires federal agencies to protect historic settings of NRHP-eligible properties on federal land without providing loopholes in cases where actions on adjacent private lands could have impacts of their own. With this in mind, all alternatives analyzed in detail violate the NHPA with regard to protecting the historic settings of the Overland historic trail and other NRHP-eligible sites.

Summary:

Protestors contest that the VRM Plan Amendment violates the National Historical Preservation Act (NHPA) because:

The setting of historic properties, including historic trails, would not be protected in accordance with the Wyoming State Protocol and BMPs.

Failure to provide adequate buffers through the VRM Plan Amendment will directly result in unnecessary or undue degradation to the settings of historic trails and sites; and

The BLM's rationale that uses on private lands (specifically in areas of checkerboard land ownership) cannot be controlled, has no bearing because the NHPA requires Federal agencies to protect historic settings of NRHP-eligible properties on Federal land without providing loopholes in cases where actions on adjacent private lands could have impacts of their own.

Response:

The FEIS does recognize that visual impacts to historic properties where setting is an aspect of integrity could occur as a result of introducing visual elements out of character with a property located within or adjacent to the amendment area. However, the BLM is required by the NHPA to address adverse effects to these historic properties through proper mitigation. This mitigation could in fact include the best management practices (BMPs) which are referenced in the Rawlins RMP and ROD (2008). The use of mitigation measures are typically project-specific and would be analyzed in the environmental consequences section of the proposed project. Adverse effects to the integrity of the Overland Trail would be mitigated through implementation of BMPs and applicant-committed protection measures. Proposed mitigation measures to reduce visual impacts associated with the proposed project are listed under "Visual" in Appendix C, Table C-4, Proposed Mitigation Measures. If adopted, these measures also would reduce adverse effects to the Overland Trail and other historic properties where setting contributes to the property's NRHP eligibility. Compensatory mitigation, or compensating for an impact by replacement or providing substitute resources or environments, would be considered after application of other forms of on-site mitigation has been exhausted.

In regards to buffers, the BMPs for Standard Measures to Reduce Visual Contrast (discussed in Appendix E) does mention that "protection measures would be carried out similarly to other historic properties if any project were found to be located within 0.25 mile of a contributing portion of the historic trail." However, it also states that "if a proposed project is outside of the 0.25 mile buffer of the trail, but found to be within the viewshed that contributes to NRHP eligibility, analyses of potential impacts to the integrity of the setting would be carried out in the same way as other properties where setting is an aspect of integrity." If the integrity of the trail is jeopardized by the proposed action, the BLM is still required to work with the SHPO and the tribes to establish a set of agreed upon mitigation measures (which could include the same protection measures used for protecting sites within the .25 buffer) to resolve any adverse impacts the proposed project might have the trail, which includes protecting the viewshed from the trail. Therefore, regardless of the size of the buffer, if the integrity of the trail is jeopardized, the appropriate actions to preserve the integrity will be taken.

The BLM's rationale that uses on private lands (specifically in areas of checkerboard land ownership) cannot be controlled has some bearing because the BLM may not always be able to avoid, minimize, or mitigate adverse effects to the property settings on private lands. Like NEPA, Section 106 of the NHPA provides a process for considering the effects of the BLM's actions and weighing them in the decision. Section 106 has a project management focus, not a

land management focus. Therefore, the agency is responsible for potential impacts wherever they may be – Federal, private, state, tribal lands. That these off-Federal lands may be vulnerable to other potential impacting agents out of Federal control is not relevant – what is relevant for the FEIS is what the proposed Federal agency action poses. The BLM needs to assess the effects of its actions on historic properties wherever they occur, to the best of its ability, and do what may be necessary to avoid, minimize, or mitigate adverse effects. Setting is a critical component contributing to the significance of an historic property and would be considered in the process of evaluating impacts regardless of land ownership for the specific proposed project. While it is true the BLM does not manage or control actions on private lands, it is within the BLM’s purview to work with a willing landowner to protect critical components of a historic property, dependent on case-specific details of the proposed project.

Section 25 - National Trails

Issue Number: PP-WY-Chokecherry-12-07-15

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The CDNST Must Be Treated as a Special Designation Management Area. Our first observation under this heading expressed concern that the Planning Issues failed to address the CDNST adequately. The modified language with respect to Issue 8 (recreation resource management) expressly refers to scenic trails and now appropriately asks whether VRM class designations support trails management including the setting of scenic (as well as historic) trails.

A much more troubling matter, however, was the failure to recognize the Trail (a unit of the National Landscape Conservation System) as a SD/MA and to broaden the questions under Issue 2 to deal with the consistency of VRM class designations with the underlying (i.e. statutory and regulatory) criteria for protection and management.

Issue Number: PP-WY-Chokecherry-12-07-18

Organization: Continental Divide Trail Society

Society

Protester: James Wolf

Issue Excerpt Text:

Moreover, tiering the current action to the existing RMP is insufficient because it fails to amend Section 2.3.10.1 (CDNST SRMA) to conform to the 2009 CDNST Comprehensive Management Plan. We emphasize this matter because the management direction for a SD/MA requires that it "comply with the purposes and objectives of the ... act of Congress regardless of any conflicts with the FLPMA's multiple-use mandate" and the Field Office should ensure that the RMP illustrates how the objects and resources for which the area was designated are protected by the plan. (Refer to our 2011 letter for a fuller statement.) In our judgment -discussed more fully below -the Proposed VRM Plan Amendment fails to meet this standard.

Issue Number: PP-WY-Chokecherry-12-07-19

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

BLM Should Consider CDNST Relocations That May Alleviate a Conflict of Values. We noted that "the topography of the planning area provides

opportunities for relocating sections of the CDNST to areas that are largely shielded from view of the CCSM wind turbines." (Taking advantage of topographic features can assist BLM to adequately manage the visual resource -as in the case of the North Platte River SRMA, GCR-8.) We identified two potential relocations that might reduce adverse impacts upon the Trail: (1) Coal Creek to Bridger Pass via the headwaters or Separation Creek,' and (2) from the southeast extremity of BLM 3306 up the Muddy Creek headwaters. Adoption of one or both of these options might support a VRM Class IV designation in some areas no longer traversed by the CDNST.

We have found no acknowledgment of this comment.

Issue Number: PP-WY-Chokecherry-12-07-2

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

BLM Has Based Its Analysis on an Erroneous Location of the CDNST. Although Volume I contains no maps depicting the CDNST, Section 2.2.4 declares that all alternatives incorporate "the correct alignment of the CDNST." We observed that the realignment (which included separation from WY 71) "completely changes the character of users' appreciation and enjoyment of the landscape." The new route from Rim Lake to the Bridger Pass Road merited a fresh look at visual quality inventory and management. The Final EIS did not acknowledge the significance of this enhancement.

Issue Number: PP-WY-Chokecherry-12-11-32

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The VRM Plan Amendment and Wind Farm approval violate CDNST organic legislation. As noted above, impacts from industrial development near the CDNST could be severe. The BLM's proposed management of lands bordering the CDNST violates

the intent of the legislation establishing national scenic trails.

Issue Number: PP-WY-Chokecherry-12-11-34

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

Under the Policy section, BLM is directed to "Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities." CDNST Comprehensive Plan at 15. VRM Class IV is completely incompatible with this direction for "high quality scenic" values. BLM's assertion that "[t]he CMP is clear that human modifications may dominate views from the trail" (FEIS Appendix M 1-4) is off base. The Plan direction clearly states that routing the trail through primitive and semiprimitive Recreation Opportunity Spectrum (ROS) classes is preferable and more developed ROSs are to be avoided, and notes that passing through urban settings and altered landscapes is allowable; it does not state that modification of currently primitive and semiprimitive ROS classes to industrial landscapes is acceptable. The BLM-referenced section of the Comprehensive Plan appears to apply only to rights-of-way across private land, in any case. CDNST Comprehensive Plan at 16, 18. BLM's empty assertion that it complied with the Plan, lacking in supporting evidence, fails to show compliance. Under NEPA's hard look requirement, BLM should at least have examined compliance with this legislation.

Issue Number: PP-WY-Chokecherry-12-11-35

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The NSTA itself also provides, "Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail." P.L. 90-543 § 7(c). Further, with specific reference to the CDNST, "Other uses along the

historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail."

lei, emphasis added. This is a National Scenic Trail. Industrial activities as described under VRM Class IV, and wind farms and other industrial uses in particular, do in fact substantially interfere with the scenic nature and recreational purpose of the CDNST.

Summary:

Protestors state that the VRM Plan Amendment:

 Fails to address concerns with the Continental Divide National Scenic Trail (CDNST) in relation to the VRM class designations in the planning issues section and should treat the CDNST as a special designation management area;

 Does not conform to the 2009 CDNST Comprehensive Management Plan (CMP);

 Fails to meet the intent of PL 90-543 (legislation that establishes the CDNST);

 Should consider relocating segments of the CDNST to alleviate any potential conflicts with other uses and values.

Response:

While the CDNST is not specifically identified as a Special Designation Management Area (SD/DA) planning issue within the Executive Summary of the FEIS, the trail is discussed as an SD/MA issue within Section 1.8-Issues identified for purposes of this Plan Amendment. This section of the Proposed VRM plan amendment clearly states that "There are unique areas or sensitive lands and resources in the Planning Area that met the criteria for protection and management under special designations/management areas (SD/MAs)... there are two special recreation management areas (SRMA CDNST and North Platte River) containing recreation values that require special management attention." The protestor is correct, as the CDNST is also mentioned within Issue 8, which is related to recreation, cultural resources, and paleontological resource management. Within Issue 8, the plan poses a question to be analyzed within the FEIS, which asks "will VRM class designations support trails management including the setting of historic and scenic trails?"

Regardless of the location of the issue and its relation to the proposed class designation, the impacts from the proposed plan amendment are accurately analyzed within the FEIS. The rationale for discussing impacts to the CDNST within the Recreational and Visitor Services sections of the plan is due to the fact that the CDNST lies fully within its own SRMA, which contains specific management prescriptions (discussed in the Rawlins RMP) that protect and enhance a targeted set of activities, experiences, benefits, and desired recreation setting characteristics.

As pointed out in Appendix M and in Section 3.9 of the FEIS, “The 2009 CDNST Plan (USFS 2009) management direction for visual resources states that the visual resource as seen from the trail must be considered in Land and Resource Management Planning and in specific project planning and design. The 2009 Plan does not specify the level of protection for CDNST visual resources in the Visual Resource guidance section; however, guidance for recreation resources states that the CDNST is to be managed to provide high-quality scenic, primitive hiking, and pack and saddle stock opportunities.”

The protestor points out that the BLM failed to meet the intent of PL 90-543 7(c) (law establishing the trail) which states that “Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail.” The BLM feels that the FEIS fully considered the nature and purpose of the trail while developing VRM Class alternatives and the amendment is consistent with the 2009 CDNST CMP visual resource management approach (IV, B, 4). The project specific analysis portion of the FEIS (Volume II, Section 4.12) provides a comparison of effects to the CDNST by analysis of impacts to visual quality from three Key Observation Points (KOPs) - KOPs 11, 12, and 13 - along the CDNST; four KOPs (KOPs 1, 9, 14, and 16) near the CDNST that are representative of views from the CDNST; photographic simulations of KOPs 1 and 12; and viewshed analyses of wind turbine generator alternatives.

Analyzing the relocation of the CDNST is not germane to the Plan Amendment process. However, as the project specific analysis in Volume II of the FEIS points out, “the turbine-level viewshed analysis found that there were very few locations, such as the Sage Creek Basin east of Miller Hill, where turbines could be shielded from view of most roads, trails, and recreation sites. Volume II, Section 4.7 evaluated the overall visibility of project alternatives.

Section 35 – Visual Resources

Section 35.1 - Visual Resource Management (VRM)

Issue Number: PP-WY-Chokecherry-12-06-4

Organization: Voices of the Valley
Protester: Jeff Streeter

Issue Excerpt Text:

General; NEPA Process; Alternatives, VRM Amendment; Visual Resources; Cumulative Impacts, General:

Substantial commentary was made by reviewers to the effect that the VRM Plan Amendment needs to visually address the areas of responsibility for the Field Office as a whole rather than "piecemeal" and that preparation of a VRM plan amendment to the Resource Management Plan (RMP) in parallel with

preparation of the EIS contributes to a whole host of problems with analysis and review of visual resource impacts. The BLM's response at GCR-I basically argues that this approach is "allowed" under its planning regulations in 43 CFR 1600 and other guidance and that BLM will ensure consistency by applying the same guidance and direction to both efforts. This is fundamentally non-responsive to a basic concern we share with those other reviewers that this approach makes it difficult or impossible for the public to fully understand and therefore to independently assess the potential impacts to perhaps the most important environmental issue posed by the proposed project, that of potential impacts to the entirety of this critically important viewshed.

Issue Number: PP-WY-Chokecherry-12-07-10

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

Instead of examining the extent to which the visual quality of high sensitivity Congressionally designated travel routes should be maintained, it appears that under the proposed action, "wind energy development projects would primarily be compatible with VRM Class IV designations only, as wind turbine height and prominence on the largely open landscapes could not be adequately mitigated" (Section 4.1.3). This is putting the cart before the horse -it presupposes that the wind turbine project should be approved and that the CDNST setting must therefore be VRM IV, whereas the evaluation of the proposed project is supposedly a subject for the subsequent evaluation in Volume II.

Issue Number: PP-WY-Chokecherry-12-07-11

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

With further reference to the checkerboard issue, we take exception to BLM's blanket statement that "VRM should not be used as a tool to preclude activities, but to minimize impacts and enhance project design characteristics" (GCR-5). From our perspective, it is entirely as legitimate to preclude obtrusive developments that would conflict with the values of a national scenic trail as it is for BLM to approve a project that precludes the desired recreational and scenic enjoyment of the CDNST. "In fact, the value of the visual resource may be the driving force for some management decisions" (BLM Manual 8410 V.A.2). To the extent feasible, the goal should be for all project designs to be enhanced and all adverse impacts upon conflicting uses to be minimized. Further, we take exception to the suggestion that a VRM Class III would necessarily "preclude" a wind development project, though the project design would need to be enhanced (from the

CDNST perspective) to limit changes to moderate levels that would not "dominate" the view of the casual observer (Table 2-1).

Issue Number: PP-WY-Chokecherry-12-07-12

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The VRM amendment deals with the management of the public lands within the checkerboard. There is no reason why (in the absence of an approved CCSM project) they cannot continue to be managed as VRM Class 11 or 111 as shown on Figure 2-2 and Figure 2-4. There may be future uses on private lands that may necessitate a reexamination (although none have been identified as reasonably foreseeable). (certain public lands are to be placed in VRM Class IV, this should result only from a careful balancing of the policies in FLPMA and the National Trails System Act, not because of the peculiar land tenure pattern of the checkerboard.

This change seems to be in error. BLM Manual 84 JO V.A. states that one purpose of the assignment of visual resource classes is "a management tool that portrays the visual management objectives." The FEIS simply provides no justification for assigning a VRM Class IV rating to the public lands in the checkerboard as depicted in Figure 2-5.

Issue Number: PP-WY-Chokecherry-12-07-25

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

As explained above, VRM decisions should result only from a careful balancing of the policies in FLPMA and the National Trails System Act, not because of the peculiar land tenure pattern of the checkerboard.

Issue Number: PP-WY-Chokecherry-12-07-8

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The Checkerboard Land Tenure Does Not Mandate Class IV VRM. We noted the CDNST Comprehensive Plan's calling for the Trail to be inventoried on the basis that it is a high sensitivity route. BLM apparently agrees with this, designating the route in the Decision Area as VRI Class 11 (Figure 2-1). Although we recognize that some VRI II areas may have a different VRM classification, the mere fact that the Trail is passing through the checkerboard does not dictate that the setting should be characterized as VRM IV. As we pointed out, the DEIS itself understood that VRM Class II and III may be appropriate in the checkerboard. (See Figures 2-2 and 2-4.)

Issue Number: PP-WY-Chokecherry-12-09-3

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

Checkerboard -Comment GCR-5: The fact that the preferred alternative assigns VRM Class IV to most of the checkerboard is not in agreement with your General Comment response regarding the checkerboard where you say "The VRM management classes, therefore, do not apply to any private or state lands." The Project and the checkerboard have been the deciding factor in the VRM IV designation on public lands shown in Alternative IV (the proposed alternative). Alternative IV (the proposed alternative) totally ignores the identified impacts on public lands. The impacts on public lands should be the determining factor in designating the VRM class.

Issue Number: PP-WY-Chokecherry-12-09-5

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

North Platte River -Comment GCR-9: The Proposed Alternative should reflect a VRM designation, for the N. Platte River, which extends beyond the designated X mile from the River. When the Rawlins RMP was developed, wind turbines were not at the forefront of the discussions. Wind turbines bring new impacts to the NEPA process. This document should assign a specific VRM Class to the public lands along the N. Platte River. The VRM class should ensure that turbines are not visible from the River. While the BLM says that they are "...able to adequately manage the visual resource on public lands viewed from the river surface within the SRMA", the proper management designation needs to be designated as part of this FEIS

Issue Number: PP-WY-Chokecherry-12-09-7

Organization: Saratoga-Encampment-Rawlins Conservation District

Protester: Jack Berger

Issue Excerpt Text:

Highway 130 -Comment 0203-002: Highway 130, which is the gateway to Saratoga, was not addressed except to refer the reader to comments regarding Elk Mountain. Highway 130 should have a designation that protects the viewshed on both sides.

Issue Number: PP-WY-Chokecherry-12-11-15

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

BLM also states that checkerboard lands are not conducive to VRM Class II because BLM has no control over private lands. FEIS Vol. I at 4-3. This "assumption" is arbitrary and capricious because ownership of private lands has no effect on BLM management of visual resources on public lands.

Issue Number: PP-WY-Chokecherry-12-11-20

Organization: Biodiversity Conservation Alliance et al
Protester: Erik Molvar et al

Issue Excerpt Text:

The checkerboard ownership pattern cannot dictate VRM class applied; BLM has just as much responsibility to manage its checkerboard lands as it does any other parcel of public land within its jurisdiction.

Issue Number: PP-WY-Chokecherry-12-11-3

Organization: Biodiversity Conservation Alliance et al
Protester: Erik Molvar et al

Issue Excerpt Text:

A five-mile setback for visually intrusive projects is necessary to protect the foreground-middleground areas, restricting permitted activities that could potentially degrade the historic settings of NRHP-eligible sites and trails and/or the scenic values of SRMAs, National Scenic Trails, and other visually sensitive lands. The FEIS lists several sites where setting contributes to NRHP eligibility. FEIS Vol. I at 3-2.

Issue Number: PP-WY-Chokecherry-12-11-5

Organization: Biodiversity Conservation Alliance et al
Protester: Erik Molvar et al

Issue Excerpt Text:

Under the FEIS, surface-disturbing activities will not be allowed within 0.25 miles of a cultural property or the visual horizon, whichever is closer. FEIS Vol. I at 2-7. This means that the maximum buffer for a historic feature is a quarter mile. This is a woefully inadequate buffer to protect the historic settings of NHPA-eligible features. As noted above, a 5-mile buffer would cover the foreground-middleground zone.

Issue Number: PP-WY-Chokecherry-12-11-7

Organization: Biodiversity Conservation Alliance et al
Protester: Erik Molvar et al

Issue Excerpt Text:

For SRMAs, Alternative 4 is likewise less protective than the current management. FEIS Vol. I Table 2-6 at 2-18. The Platte River is commonly floated from the Colorado border all the way to Seminole Reservoir. This float corridor is scenic in its own right, with steep canyons where the river passes through the western foothills of the Medicine Bow Mountains, bluffs and flats populated with cottonwoods farther north, and steep escarpments farther north still. The area is used for recreational rafting, canoeing, and float fishing, and has been established as a SRMA in the Rawlins RMP. Protection of the viewshed for the SRMA in the VRM Plan Amendment is not adequate to meet the objectives in the Rawlins RMP.

Issue Number: PP-WY-Chokecherry-12-13-11

Organization: National Wildlife Federation and Wyoming Wildlife Federation
Protester: Kathleen C. Zimmerman and Joy Bannon

Issue Excerpt Text:

Alternative 4 or the Proposed Plan for the VRM reclassifications needs to include the following recommendations. The proposed VRM class designations are drastic and they remove Class II visual protections within the southern portion of Sierra Madre Planning Area. Of particular note is the VRM change from Class II to Class III within the Red Rim – Grizzly Wildlife Habitat Management Area (WHMA) and the Upper Muddy Creek Watershed WHMA. WWF and NWF do not support a Class III designation for these WHMAs. A VRM Class II designation is supported and is appropriate given the sensitive and valuable wildlife, fisheries and recreation resources that exist within those land and waterscapes. A Class III designation opens the door for intense development that is not suitable for the long term benefit of the habitat, ecosystem, wildlife, fisheries and recreation opportunities.

Issue Number: PP-WY-Chokecherry-12-13-12

Organization: National Wildlife Federation and Wyoming Wildlife Federation

Protester: Kathleen C. Zimmerman and Joy Bannon

Issue Excerpt Text:

The Red Rim-Grizzly WHMA and the Upper Muddy Creek WHMA need to remain in a Class II Visual Resource Management designation.

Crucial wildlife habitat areas should also not have a class designation change to protect the integrity of the habitat and wildlife species that exist in these areas. For instance, the Chokecherry portion of the proposed project includes crucial winter range for mule deer. Adjusting the VRM class designation to a Class IV will allow a great degree of development which won't allow for conservation of wildlife or habitat. The class designation change for the Red Rim-Grizzly WHMA, the Upper Muddy Creek WHMA, and crucial wildlife habitat areas are not acceptable for balancing Wyoming's energy development with the state's wildlife, habitat, and sporting heritage.

Summary:

The BLM's VRM decisions were flawed for the following reasons:

Failure to make VRM decisions that would adequately protect sensitive resources.

Having project needs drive the protection of visual resources.

Failing to protect the visual resources of Highway 130, the North Platte River corridor, and CDNST when passing through checkerboard lands.

Failing to assign a VRM class that would protect viewsheds along the North Platte River and both sides of Highway 130.

Failure to assign five-mile setback for visually intrusive projects that would degrade historic settings of trails, SRMAs, NRHP-eligible sites and other visually sensitive lands.

Making VRM Decisions that would open crucial wildlife habitat areas to development.

Response:

Failure to address potential impacts to the entirety of this critically important viewshed

The Volume I plan amendment alternatives provided a range of VRM class objective protections with each being analyzed for impacts to the inventoried visual values. Viewsheds were considered within the context of the visual resource inventory with the layering of the three visual values, Scenic Quality, Sensitivity and Distance Zones. The CDNST viewshed was

assigned VRI Class II and VRI Class III along various segments. The variable affecting the VRI Class outcome is Scenic Quality. The CDNST segments routed through Scenic Quality B that are combined with Distance Zone - Foreground/Middle-ground and Sensitivity Level - High assigns a VRI Class II outcome. The VRI Class shifts to VRI Class III with the Sensitivity Level and Distance Zone remaining the same, but the Scenic Quality changes to C. Additionally, the BLM adequately disclosed and analyzed the impacts to the CDNST viewshed. As noted in the response to comment GCR-11 on FEIS p. M.1-4, "Effects within the CDNST viewshed are described in the CCSM DEIS Volume II, Section 4.12, and mitigation measures were proposed to mitigate the impacts to the degree practicable.

Specifically, a comparison of effects to the CDNST is provided by analysis of impacts to visual quality from three KOPs (KOPs 11, 12, and 13) along the CDNST; four KOPs (KOPs 1, 9, 14, and 16) near the CDNST that are representative of views from the CDNST; photographic simulations of KOPs 1 and 12; and viewshed analyses of wind turbine generator alternatives. The corrected location of the CDNST was added to the wind turbine generator (WTG) Viewshed Analysis figures in 4.12, and additional viewshed analyses for each alternative from the correct location of the CDNST have been incorporated in the FEIS." The analysis based on the KOPs identified on or adjacent to the CDNST therefore represent an accurate assessment of the trail through the decision area. Additional mitigation measures, as outlined in FEIS Volume II, will address any impacts from future actions along the setting of the CDNST.

Putting the "cart before the horse" by having the need for the project drive the VRM classification.

As stated in the response to comment 0313-005 on FEIS p. M.2-2, "The Draft Plan Amendment EIS was prepared in accordance with FLPMA and NEPA and provided for a 90-day public review and comment period. A ROD will not be issued until after the release of the Proposed Plan and Final EIS, and associated public protest period in accordance with FLPMA and NEPA after consideration of public input. While the plan amendment is being implemented concurrently with the CCSM project, the two efforts are provided as two separate volumes to ensure that there is no overlap and a stand-alone analysis is provided for each action. The BLM will issue two RODs, independent of the decisions approved in the other volume." The CCSM project thus did not "drive" the BLM's decision regarding visual management classes. As noted elsewhere in this response, the VRM decisions in the Proposed Plan lie between the other FEIS alternatives, achieving a balance between resource protection and resource use allocations, one of which is development of clean, alternative energy supplies for the American public.

Inappropriately ruling out VRM Class III designation in areas of turbine placement

Due to the height, blade length and visual contrast of modern WTGs, it is difficult (though not impossible) to mitigate visual impacts so as to achieve turbine placement within a VRM Class III

viewshed. As noted in the response to comment 0212-006 on FEIS p. M.2-12, “While VRM Class III in itself does not preclude wind energy development, current professional judgment indicates that known current technology generally does not provide for adequate mitigation to allow commercial-scale wind development [to meet the management objective required for VRM] in Class III areas. However, if a project were proposed where visual impacts could be mitigated or adequate mitigation is developed in the future, it is possible that wind energy development may be determined to be compatible with VRM Class III.”

One of the critical factors allowing for effective mitigation for wind energy facilities is locating projects an adequate distance away from where people would typically observe the landscape. Recent research by Argonne National Laboratory indicates that while not common, there may be circumstances where VRM Class III conformance could be attainable when WTGs are set back 7 to 10 miles. Meeting the VRM Class III objective would be more commonly attainable; however, at distances over 12 miles. The VRI assessment of Distance Zones placed the entire planning area within the Foreground/ Middle-ground Distance Zone (3 – 5 miles).

Improperly classifying checkerboard lands automatically as VRM IV, instead of having impacts to public lands determine the VRM class designation. Ownership of private lands has no effect on BLM management of visual resources on public lands.

As noted in the response to comment GCR-5 on FEIS p. M.1-2: “One of BLM’s challenges is to develop effective land management under the FLPMA multiple-use mandate. Since resource management is often limited in the checkerboard and in other public and private intermingled land ownership areas, BLM resource management is constrained when the goals of private landowners conflict with public land multiple-use goals and objectives.” In determining VRM classes for public lands, visual inventory classes, existing management direction, as well as manageability of public lands are considered. In the case of checkerboard lands, manageability of lands is a strong factor in considering appropriate management prescriptions for the visual setting. As BLM does not control what development may or may not occur on adjacent privately owned lands, there is the ability for some of these landowners to modify their lands as they see fit, in turn affecting the visual setting of the public lands. A VRM IV classification does not mean that development would specifically occur, as other management direction from the 2008 Rawlins RMP would still be in place.

Additional clarification about visual resource management in checkerboard land ownership was added to the Proposed Plan Amendment/FEIS (Volume I), Section 2.2.1, and to the impact analysis assumptions in Volume I, Section 4.1.3. The FEIS adds language regarding how known management prescriptions for private lands in some areas may change BLM’s thought process on making VRM designations in checkerboard lands: “The checkerboard landownership pattern along the original UPRR [Union Pacific Railroad] ROW is generally not conducive to VRM Class II because the BLM has no control over actions on private surface ownership as discussed in Section 2.2.1. Notable exceptions include areas where resources on landownership surrounding public lands are protected through local or private management methods, such as

zoning, special designations, conservation easements, or topography. The BLM will mitigate developments on public lands in the VRM Class II checkerboard landownership pattern as best it can and encourage proponents to apply comparable mitigation to adjacent private surface ownership.” (FEIS Section 4.3.1, p. 4-3, third bulleted phrase).

As further noted in the response to comment 0304-009 on FEIS p. M.2-17, “While the objective of VRM Class IV is to provide for management activities which require major modification of the existing character of the landscape and the level of change to the characteristic landscape can be high, the class objectives specifically state: ‘However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance, and repeating the basic elements’ (BLM Manual 8431, Appendix 2).” This is also emphasized in the response to comment 0477-002, FEIS p. M.2-22: “The purpose of VRM is not to exclude projects, but rather to protect the quality of scenic values. Wind energy development is compatible in VRM Class III when the VRM class objectives are met based on a project-specific analysis.”

Designating CDNST lands in VRI class II as VRM Class IV when trails pass through checkerboard. The Class IV designation should not be dictated by the checkerboard.

As stated in the response to comment GCR-4 on FEIS page M.1-2, “VRI classes are informational in nature and provide the basis for developing alternatives during the RMP process. They do not establish management direction and should not be used as a basis for constraining or limiting surface disturbing activities. The VRM class designations are based on a VRI and consideration of: 1) managing the public lands and their various resources so that they are used in the combination that will best meet the present and future needs of the American people in accordance with FLPMA 103(c); 2) managing public lands in a manner that will protect the quality of scenic values in accordance with FLPMA 102(b); 3) the impacts resource uses may have on scenic values; and 4) the impacts VRM class designations may have on other resources and uses.”

As explained in FEIS Section 4.13.4, p. 4-21, the Proposed Plan “would be more restrictive on potential future landscape altering activities and visual contrast than Alternative 2, but less restrictive than Alternatives 1 and 3. In Alternative 2, more VRM Class IV areas than Alternative 1 and 3 would allow for more opportunities for landscape altering activities and visual intrusions that modify the form, line, color, and texture of the landscape character that dominate the viewshed in the Decision Area, which alter scenic quality and the natural setting.” For northern lands in the Decision Area, the Proposed Plan does allow “a higher degree of alteration of visual resources”, this can be explained largely by the interspersed State and private lands the management of which is beyond the BLM’s jurisdiction (FEIS 4-21).

Failing to assign a VRM class that would protect viewsheds along the North Platte River and both sides of Highway 130.

As noted in the response to comment GCR-8 on FEIS p. M.1-3, “The [2008 Rawlins] RMP also includes one management action for the North Platte River Special Recreation Management Area (SRMA) specifically related to management of the visual resource, ‘surface disturbing activities on public lands within one-quarter mile on either side of the river will be intensively managed to maintain the quality of the visual resource’ (BLM 2008b, p. 2-27). Due to the depressed nature of the floodplain, the BLM is able to adequately manage the visual resource on public lands as viewed from the river surface within the SRMA. While VRM classifications will only apply to BLM-administered lands and not to other dispersed land ownership, the topography of the area allows the BLM to effectively manage the visual resource in this area as opposed to other checkerboard ownership areas where there is relatively little topographic relief.”

Please see the response for GCR-4 (VRI Ratings Consistency) and GCR-6 (Elk Mountain). Both Highways 71 and 130 are in areas of checkerboard and fragmented landownership. This will be noted in the CCSM Record of Decision.

Failure to assign five-mile setback for visually intrusive projects that would degrade historic settings of trails, SRMAs, NRHP-eligible sites and other visually sensitive lands

GCR 7: The BLM must identify and mitigate adverse effects to the setting of historic properties regardless of the VRM Class. The Rawlins RMP specifies that, “where the integrity of historic trails setting contributes to NRHP eligibility, management actions resulting in visual elements that diminish the integrity of the property’s setting will be managed in accordance with the Wyoming State Protocol and BMPs.”

GCR 8: According to the BLM RMP (BLM 2008b, p. 2-27), the goal of the North Platte River SRMA is to ensure the continued availability of outdoor recreation opportunities associated with the North Platte and Encampment Rivers. One of the main objectives of the SRMA is to maintain or improve the quality of river-related recreational experience along the North Platte and Encampment Rivers to continue to provide high-quality recreational experiences and benefits to local residents and visitors to the area. The RMP also includes one management action for the SRMA specifically related to management of the visual resource, “surface disturbing activities on public lands within one-quarter mile on either side of the river will be intensively managed to maintain the quality of the visual resource (BLM 2008b, p. 2-27). Due to the depressed nature of the floodplain, the BLM is able to adequately manage the visual resource on public lands as viewed from the river surface within the SRMA. While VRM classifications will only apply to BLM-administered lands and not to other dispersed land ownership, the topography of the area allows the BLM to effectively manage the visual resource in this area as opposed to other checkerboard ownership areas where there is relatively little topographic relief.

The Proposed Plan Amendment/FEIS (Volume I) includes a modification to the VRM Class II designation along the North Platte River SRMA. The VRM Class within the major utility and transportation corridors, such as that along I-80, within the checkerboard landownership area, is

designated as VRM Class IV where the corridors cross the North Platte River SRMA. GCR 11: The FEIS is compatible with and incorporates the direction of the 2009 CDNST Comprehensive Plan (CMP). Volume II, Section 2.2.1 of the DEIS clearly states "Use of the public lands for either development or access requires compliance with the stipulations and policy governing the public lands, including the Rawlins RMP and relevant Federal laws, regulations, and policy." A management objective to "Comply with the CDNST Comprehensive Plan" is included in the Rawlins RMP and is also referenced in the relevant management considerations for recreation (Table 4.7-1, CCSM DEIS Volume II).

The FEIS has been revised to clarify that the action alternatives do not substantially interfere with the nature and purposes of the CDNST. According to the CMP, "the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor" (IV, A). The CDNST is an exclusion area and there are no direct impacts (i.e., no proposed surface disturbance) to either the CDNST trail or the CDNST SRMA (0.25-mile swath centered on the trail) under any alternative. A consistent width for the CDNST corridor is not defined in the CMP. However, the CMP acknowledges private interests and the unique concentration of non-Federal land "near the Continental Divide within the Great Divide basin in Wyoming" (IV, B, Policy 3a(2)). The CMP further states that a policy for ROW acquisition on non-Federal lands (IV, B, 3b(2)) is to "not acquire in fee title more than an average of one-quarter mile on either side of the CDNST." Consistent with this policy, the Rawlins RMP has located the CDNST within a one-quarter-mile wide corridor on BLM-managed land, obtained rights-of-way no wider than one-quarter mile to cross private land in the checkerboard, and the BLM has maintained this corridor as an exclusion area.

The CDNST was considered in developing VRM Class alternatives as were potential impacts within the CDNST viewshed consistent with the 2009 CDNST Comprehensive Management Plan (CMP) visual resource management approach (IV, B, 4). The CMP is clear that human modifications may dominate views from the trail, especially for rights-of-way through private land, "Trail segments in this category provide the user with a safe continuous trail link between other trail segments. They have as their primary purpose the safety, protection, and convenience of the user. Evidence of civilization usually is predominant with the recreation opportunity pointed to allowing passage of recreationists in a safe, convenient manner... Private property or safety considerations may dominate location alternatives..." (IV, B, 5c1(d)). The checkerboard ownership pattern, I-80, and the City of Rawlins are the context through which the CDNST passes in the RFO. The CMP demonstrates a clear understanding that an ideal condition will not always be met across private property.

Information about the Recreation Opportunity Spectrum (ROS) classes that the CDNST crosses (i.e., semi-primitive motorized) and the compatibility of ROS classes and the proposed project have been added to the recreation sections of the CCSM FEIS. The prescribed setting for the CDNST in the RFO is semi-primitive motorized for one mile on either side of the trail. No proposed facilities would occur within one mile of the CDNST under any alternative. Therefore,

the project would comply with a semi-primitive ROS class for primitive hiking and horseback riding opportunities on the CDNST.

Effects within the CDNST viewshed are described in the CCSM DEIS Volume II, Section 4.12, and mitigation measures were proposed to mitigate the impacts to the degree practicable. Specifically, a comparison of effects to the CDNST is provided by analysis of impacts to visual quality from three KOPs (KOPs 11, 12, and 13) along the CDNST; four KOPs (KOPs 1, 9, 14, and 16) near the CDNST that are representative of views from the CDNST; photographic simulations of KOPs 1 and 12; and viewshed analyses of wind turbine generator alternatives. The corrected location of the CDNST was added to the WTG Viewshed Analysis figures in 4.12, and additional viewshed analyses for each alternative from the correct location of the CDNST have been incorporated in the FEIS.

Setting maximum buffer for historic features at one-fourth mile

See GCR 7, FEIS Appendix M.1-2: The BLM must identify and mitigate adverse effects to the setting of historic properties regardless of the VRM Class. The 2008 Rawlins RMP specifies that, “where the integrity of historic trails setting contributes to NRHP eligibility, management actions resulting in visual elements that diminish the integrity of the property’s setting will be managed in accordance with the Wyoming State Protocol and BMPs.”

Reducing protection for Platte River corridor from CO border to Seminoe Reservoir, despite recreational activities and high scenic values, thereby failing to protect viewshed for SRMA; this does not meet objectives in the Rawlins RMP.

See GCR 8, FEIS Appendix M.1-3: According to the Rawlins RMP (BLM 2008b, p. 2-27), the goal of the North Platte River SRMA is to ensure the continued availability of outdoor recreation opportunities associated with the North Platte and Encampment Rivers. One of the main objectives of the SRMA is to maintain or improve the quality of river-related recreational experience along the North Platte and Encampment Rivers to continue to provide high-quality recreational experiences and benefits to local residents and visitors to the area. The RMP also includes one management action for the SRMA specifically related to management of the visual resource, “surface disturbing activities on public lands within one-quarter mile on either side of the river will be intensively managed to maintain the quality of the visual resource (BLM 2008b, p. 2-27). Due to the depressed nature of the floodplain, the BLM is able to adequately manage the visual resource on public lands as viewed from the river surface within the SRMA. While VRM classifications will only apply to BLM-administered lands and not to other dispersed land ownership, the topography of the area allows the BLM to effectively manage the visual resource in this area as opposed to other checkerboard ownership areas where there is relatively little topographic relief.

The Proposed Plan Amendment/FEIS (Volume I) includes a modification to the VRM Class II designation along the North Platte River SRMA. The VRM Class within the major utility and transportation corridors, such as that along I-80, within the checkerboard landownership area, is designated as VRM Class IV where the corridors cross the North Platte River SRMA. Regardless of this modification, the existing prescription measures from the 2008 Rawlins RMP remain in place for the North Platte River SRMA.

VRM changes to WHMAs from VRM Class II to Class III will allow intense development not suitable for long-term benefit of habit, ecosystem, wildlife, fisheries and recreation opportunities.

As noted in comment response GCR-14 on FEIS p. M.1-4, “Additional information on the ecological site characteristics of the overlapping portion of the Upper Muddy Creek Watershed/Grizzly WHMA, Red-Rim Grizzly WHMA, and Power Company of Wyoming’s potential turbine layout has been added to Chapter 3 of the EIS. In addition, specific impacts to resources within this overlapping area have been added to Chapter 4 of the EIS and discussed in relation to the goals and objectives of each WHMA. The sections of the EIS that include additional information on this area include Section 3.4 Land Use, Section 3.6 Range Resources, Section 3.11 Vegetation, Section 3.13 Water Resources, Section 3.14 Wildlife and Fisheries Resources, and Section 3.15 Special Status Species.”

A change from VRM II to VRM III does not allow for “intense development” in wildlife habitat management areas (WHMA). The VRM Classes do not directly address development intensity or degree of surface disturbance. The VRM Class objectives set forth the performance criteria for visual change to the landscape. The VRM Class III objective allows for moderate levels of visual change irrespective of development intensity. There may be circumstances where higher levels of intensity may meet the VRM Class III and other situations where low levels of intensity do not meet this objective. The conformance to the objectives is subject to the visual elements of the project design and visual absorption capability of the landscape. Appendix J presents the Wildlife Monitoring and Protection Plan - Chokecherry and Sierra Madre Wind Energy EIS, which sets forth preliminary wildlife inventory, monitoring, and protection protocol. Appendix J Section 2.3.3 – Other Protective Measures, states: “the following protection measures will be applied for all wildlife species.”

VRM Class IV for crucial wildlife habitat areas will allow development and does not balance Wyoming’s energy development with conservation of the state’s wildlife, habitat and sporting heritage.

There are specific stipulations in place for protection of wildlife habitats and WHMAs in the 2008 Rawlins RMP (Section 2) that are independent of VRM classifications. These stipulations continue to be in effect and are not superseded by VRM classifications. Restrictions on energy development would be put in place as a result of the specific management direction for winter ranges, the specific WHMA, leks, nests, sage grouse core areas, etc. Just because an area is

designated as a specific VRM class does not mean that other restrictions on development may occur through other management direction.

Section 35.2 - Visual Resource Inventory (VRI)

Issue Number: PP-WY-Chokecherry-12-07-14

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The Foreground-Midleground Should Be Five Miles, Not Three Miles. This is an important matter because distance zones are used in developing visual resource inventory classifications. BLM responded to this issue by categorizing it as "out of scope" (GCR-3, M 2-32). For the reasons stated above, questions regarding the premises of the Otak VRI are not out of scope. If there was ever a case that "management activities might be viewed in detail" for at least five miles, the construction of numerous massive towers in one's line of sight would be it. The conclusory statement that the distance zones were developed in accordance with BLM Manual 8410 is inadequate. (The CCSM FEIS implies that a 5-mile distance is being applied. Volume II, pA.12-20. However, there should be an explicit statement in the VRM Amendment FEIS that this is the appropriate standard.)

Issue Number: PP-WY-Chokecherry-12-07-23

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The one exception is the area between the Trail and Atlantic Rim (our recommended new SQRU), which continues to have a Class C scenic quality rating (Vol. 11, figure 3.12-4).

Actually, BLM seems to us to be inconsistent, inasmuch as it extols the scenic importance of Atlantic Rim: "High to very high visibility is a defining characteristic of the region. Generally, the

vast, open nature of the analysis area provides for wide and distant vistas. To the west of the analysis area lies the Atlantic Rim, one of the more distinctive landforms in the area. Panoramic views are seen from the crest of the Atlantic Rim." (Vol. II, p. 3.12-13).

Issue Number: PP-WY-Chokecherry-12-07-4

Organization: Continental Divide Trail Society

Protester: James Wolf

Issue Excerpt Text:

The response (GCR-3, also M.2-32) was that any revision to the previously adopted VRI was "outside the scope of this NEPA process." But, as BLM had itself noted, "inventory class boundaries can be adjusted as necessary to reflect resource allocation decisions made in the RMP." (DEIS, 3.13)

Issue Number: PP-WY-Chokecherry-12-07-6

Organization: Continental Divide Trail Society

Protester: James Wolf

Other Sections: 6.1

Issue Excerpt Text:

So far as we are aware, the 2011 Otak VRI has never been subject to public comment procedures under NEPA, and this is the first occasion for its conclusions to be applied in arriving at VRM decisions. If BLM is going to rely on the VRI under such circumstances, a disagreement as to its facts and conclusions is not at all out of scope and must be addressed.

Issue Number: PP-WY-Chokecherry-12-11-13

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

The Visual Resource Inventory presented in the FEIS is biased BLM states that VRI Class IV areas have been designated based on their current level of degradation by industrial projects. FEIS Vol. I at 3-3. This statement is contradicted by a comparison of Figure 3-1 (showing oil and gas fields, virtually the sole source of industrial intrusion in the planning area, with Figure 2-1, showing Visual Resource Inventory. Many areas shown as VRI Class IV on

Figure 2-1 have minimal well field development in Figure 3-1.

Issue Number: PP-WY-Chokecherry-12-11-17

Organization: Biodiversity Conservation Alliance et al

Protester: Erik Molvar et al

Issue Excerpt Text:

classifying these areas as VRI Class IV despite their scenic and undeveloped nature displays a disconnect between the facts found and decisions made, and leads BLM toward an arbitrary and capricious lowering of VRM Class.

Summary:

The CCSM FEIS VRI analysis is flawed for the following reasons:

The foreground-middle ground should be five miles rather than three miles because distance zones are used in developing VRI classifications and the FEIS implies that a five-mile distance is being applied.

Many areas shown as VRI Class IV have only minimal visual degradation from industrial projects, e.g., oil and gas wells. This shows bias on the part of the BLM.

Classifying areas as VRI IV despite their scenic and undeveloped nature displays a disconnect between facts found and decisions made.

Class C scenic quality for area between CDNST and Atlantic Rim is inconsistent, as the BLM extols the scenic importance of the Atlantic Rim.

Rationale for the BLM's failure to revise previously adopted VRI is inconsistent with statement in DEIS that "inventory class boundaries can be adjusted to reflect resource allocation decisions made in the RMP."

Response:

The foreground/middle-ground should be five miles rather than three miles because distance zones are used in developing VRI classifications and the FEIS implies that a five-mile distance is being applied.

Adjusting the outer range of the Foreground/Middle-ground Distance Zone from three miles to five miles would have no effect to the VRI Classes given that the inventory delineated the entire planning area as Foreground/Middleground. The response to comment 0305-004 on FEIS p. M.2-32 states: "The foreground-middleground distance zones were developed in accordance with guidance from BLM Manual 8410-1 (available here: <http://www.blm.gov/nstc/VRM/8410.html#Anchor-IV-14210>), which provides the following definition: 'Foreground-Middleground Zone: This is the area that can be seen from each travel route for a distance of three to five miles where management activities might be viewed in detail. The outer boundary of this distance zone is defined as the point where the texture and form of individual plants are no longer apparent in the landscape. In some areas, atmospheric conditions can reduce visibility and shorten the distance normally covered by each zone. Also, where the foreground-middleground zone from one travel route overlaps the background from another route, use only the foreground-middleground designation.'" Furthermore, the Visual Resource Inventory places the entire planning area into the Foreground/Middle-ground Distance Zone.

Many areas shown as VRI Class IV have only minimal visual degradation from industrial projects, e.g., oil and gas wells. This shows bias on the part of the BLM. Classifying areas as VRI IV despite their scenic and undeveloped nature displays a disconnect between facts found and decisions made.

Visual Resource Inventory is a comparative measurement of visual values in context of the physiographic region. The Rawlins area crosses three physiographic regions - the Wyoming Basin, Great Plains, and Southern Rocky Mountain Regions. Existing industrial projects on the landscape may involve a role in assessment of VRI Classes and is factored into the inventory of existing conditions under Scenic Quality – cultural modifications. Cultural modifications is one of seven criteria measured when determining the Scenic Quality rating. Cultural modifications are scored according to whether they distract, enhance or have no effect to the landscape's scenic quality. However, Scenic Quality is combined with two other visual values, Sensitivity Rating (high, medium, low) and Distance Zone (foreground/ middle-ground, background, seldom seen) in assignment of VRI Classes. These three values are compared in accordance of the VRI Class Matrix. The VRI Class IV is assigned to areas of Scenic Quality C areas that have low to medium Sensitivity within all Distance Zones and high Sensitivity within the background and seldom seen Distance Zone. The VRI Class IV areas also encompass Scenic Quality B with low to medium Sensitivity within the background and seldom seen Distance Zones, and in some situations high Sensitivity within the seldom seen Distance Zone (this is dependent on the adjacent VRI Class outcome). For more information regarding visual resource inventories, a variety of factors goes into the determination of visual classes during the VRI process. See BLM H-8410-1, Visual Resources Inventory, January 17, 1986. Thus, areas that may have scenic appeal on a subjective basis may still receive Class of III or IV.

Class C scenic quality for area between CDNST and Atlantic Rim is inconsistent, as the BLM extols the scenic importance of the Atlantic Rim.

A variety of factors goes into the determination of the scenic quality during the VRI process which is a comparative measurement of visual values in context of the physiographic region. The Rawlins Field Office area crosses three physiographic regions - the Wyoming Basin, Great Plains, and Southern Rocky Mountain Regions. See BLM H-8410-1, Visual Resources Inventory, January 17, 1986 for more information.

In rating the scenic quality, the following criteria are used:

- Landform
- Vegetation
- Water
- Color
- Adjacent Scenery
- Cultural Modifications

Scenic Quality A is assigned to areas that score 19 or above; Scenic Quality B are assigned within scoring range of 12 – 18; while Scenic Quality C is assigned to landscapes scoring 11 or less.

The protester did not provide a reference to the specific Scenic Quality Unit in question. The Rawlins Visual Resource Inventory was reviewed based on interpretation of the comment in order to try to provide additional explanation for the area described. It appears that the commenter is referencing Scenic Quality Rating Unit 039 Sage Creek. Unit 039 Sage Creek was ranked as Scenic Quality C based on a scoring sum of 9.

Please review the VRI report, available on the BLM website, for a full evaluation discussion of all criteria evaluated when determining VRI class.

The BLM balanced competing objectives in designating VRM classes that protect the CDNST, Atlantic Rim, and other areas of high visual resource sensitivity. As explained in the response to comment 0305-007 on FEIS p. M.2-33, “There are many sensitive viewing roads, trails, and recreation sites including the CDNST that were considered to be shielded from view of the CCSM wind turbines, as described in Volume II, Section 3.12.3.3 Visibility and Distance Zones (see also Volume II, Figure 3.12-3 Visual Resource Inventory Sensitivity Rating Level Rating Units, Figure 3.12-5 Ground-Level Viewshed Analysis, and Figure 3.12-6 Turbine-Level Viewshed Analysis). The turbine-level viewshed analysis found that there were very few locations, such as the Sage Creek Basin east of Miller Hill, where turbines could be shielded from view of most roads, trails, and recreation sites. Volume II, Section 4.7 evaluated the overall visibility of project alternatives. A new viewshed map specific to the CDNST was incorporated into Volume II, Section 4.7 to identify and compare alternative impacts to the CDNST.”

As mentioned above, scenic quality is ranked according to the seven visual characteristics (landform, vegetation, color, adjacent scenery, water, scarcity, cultural modifications) against the entire physiographic region and not the immediate surroundings. We have reviewed the determination of the Class C scenic quality rating for the area between Atlantic Rim and the CDNST and found that it was completed in accordance with applicable BLM policy and procedures for visual resource management.

Rationale for BLM's failure to revise previously adopted VRI is inconsistent with statement in DEIS that "inventory class boundaries can be adjusted to reflect resource allocation decisions made in the RMP."

As noted in the response to comment GCR-3 on FEIS page M.1-2, "The VRI completed by OTAK, Inc. in February 2011 was conducted for the entire Rawlins Field Office area and served as the baseline information for this plan amendment. Relevant VRI baseline information is included in Volume I Section 3.13 and referenced throughout the EIS. The VRI has been publicly available on the BLM Rawlins website since its completion in February 2011 at <http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins/vri.html>. Since the VRI was not completed as part of this project, it is not subject to revision as a result of public comments on the CCSM plan amendment process."

Note: The protesting party cites to a misstatement in the DEIS as regards BLM policy for adjusting inventory class boundaries during the resource management planning process. The BLM policy in H-8410-1 on p. 1 – General Guidance states: "**Visual Resource Management** classes are established through the RMP process for all BLM-administered lands (see also Manual 1625.3). During the RMP process, the class boundaries are adjusted as necessary to reflect the resource allocation decisions made in RMP's. **Visual management** objectives are established for each class." [Emphasis added]. Thus, while the Otak, Inc. VRI was publicly available, the inventory class boundaries were not subject to redesign as part of this or any other planning process. The BLM will make this clarification in the ROD for the Visual Resources Management Plan Amendment.