

Director's Protest Resolution Report

**Nevada and California Greater
Sage-Grouse Bi-State Distinct
Population Segment Land Use
Plan Amendment and
Environmental Impact Statement**

May 27, 2016



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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-NV-BSSG-15-01-11
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

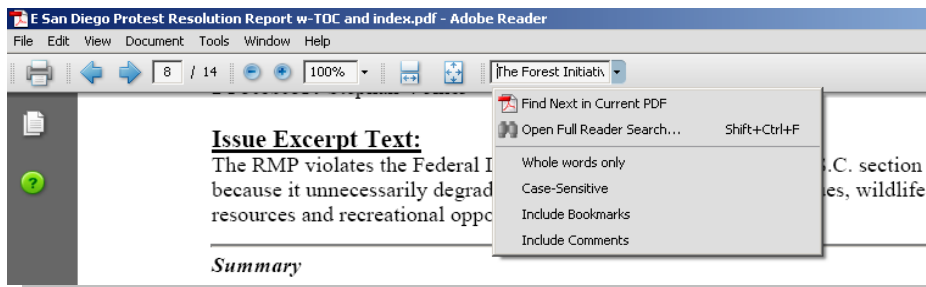
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

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

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

How do I find my Protest Issues and Responses?

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



List of Most Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	HRV	Historic Range of Variability
AUM	Animal Unit Month	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	KOP	Key Observation Points
BMP	Best Management Practice	LRMP	Land and Resource Management Plan
BSSG	Bi-State Sage Grouse	MOU	Memorandum of Understanding
BO	Biological Opinion	NEPA	National Environmental Policy Act of 1969
CAA	Clean Air Act	NHPA	National Historic Preservation Act of 1966, as amended
CEQ	Council on Environmental Quality	NOA	Notice of Availability
CFR	Code of Federal Regulations	NOI	Notice of Intent
COA	Condition of Approval	NRHP	National Register of Historic Places
CSP	Concentrated Solar Power	NSO	No Surface Occupancy
CSU	Controlled Surface Use	NTT	National Technical Team
CWA	Clean Water Act	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
DEIS	Draft Environmental Impact Statement	ORV	Outstandingly Remarkable Value
DM	Departmental Manual (Department of the Interior)	PA	Preliminary Assessment
DOI	Department of the Interior	PMU	Population Management Unit
DPS	Distinct Population Segment	PPA	Power Purchase Agreement
EA	Environmental Assessment	RFDS	Reasonably Foreseeable Development Scenario
EIR	Environmental Impact Report	RMP	Resource Management Plan
EIS	Environmental Impact Statement	ROD	Record of Decision
EO	Executive Order	ROW	Right-of-Way
EPA	Environmental Protection Agency	SO	State Office (BLM)
ESA	Endangered Species Act	T&E	Threatened and Endangered
FEIS	Final Environmental Impact Statement	USC	United States Code
FEIS	Final Environmental Impact Statement	USGS	U.S. Geological Survey
FLPMA	Federal Land Policy and Management Act of 1976	VRM	Visual Resource Management
FO	Field Office (BLM)	WA	Wilderness Area
FS	Forest Service	WFRHBA	Wild and Free Ranging Horse and Burro Act
FWS	U.S. Fish and Wildlife Service	WSA	Wilderness Study Area
GIS	Geographic Information Systems	WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Michael Connor	Western Watersheds Project	PP-NV-BSSG-15-01	Denied – Issues/Comments
Erik Molvar	WildEarth Guardians	PP-NV-BSSG-15-02	Granted in Part / Denied – Issues & Comments
Mark Salvo	Defenders of Wildlife	PP-NV-BSSG-15-03	Granted in Part / Denied – Issues & Comments

Protests Upheld/Granted in Part

Tall Structures

Issue Number: PP-NV-BSSG-15-02

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM proposes to adopt B-LUSU-S-01, prohibiting tall structures within 2 miles of a lek (FEIS at 23). This permits tall structures to be built between 2 and 4 miles of a lek (in prime nesting and brood-rearing habitat), in connectivity areas, and throughout wintering habitat. For perch inhibitors and tall structures limitations, BLM proposes no direction, because this would be “covered by C-LUSU-S-04” (FEIS at

23, 24). If BLM were adopting C-LUSU-S-04, we would agree, for the purposes of new tall structures. However, it does not appear that BLM intends to adopt C-LUSU-S-04 at this juncture.

Issue Number: PP-NV-BSSG-15-03

Organization: Defenders of Wildlife

Protestor: Mark Salvo

Issue Excerpt Text: Clarify which standard the BLM’s proposed alternative will adopt for construction of tall structures near Sage-Grouse leks. Adopt a 4-mile lek buffer for tall structures in Greater Sage-Grouse habitat.

Summary:

The BLM should adopt the buffer distance for tall structures as four miles from active or pending leks, rather than the two mile buffer it proposes in the plan amendment.

Response:

The BLM agrees that it should have identified the buffer distance for tall structures as four miles from active or pending leks. This is consistent with management prescriptions proposed by the Forest Service (FS). Specifically, the BLM proposes the action from Alternative C, which states that tall structures, which could serve as predator perches, will not be authorized within four miles of an active or pending lek (C-LUSU-S-04). The four-mile lek buffer accords with other prescriptions of surface disturbance in Sage-grouse habitat and is consistent with the best science available.

Disturbance Levels

Issue Number: PP-NV-BSSG-15-02

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: “Guardians raised the importance of a 3% limit on cumulative disturbance in Sage-grouse habitats throughout the NEPA process. DEIS comments at unnumbered 9, 19; Revised Draft EIS comments at 4. The BLM’s own experts (NTT 2011)

recommended that a maximum of 3% cumulative surface disturbance be allowed per square-mile section in key Sage-grouse habitats. In studies attached to our comments, we called the agencies’ attention to the findings of Kirol et al. (2012), Copeland et al. (2013), and Knick et al. (2013), which demonstrate the compelling need to limit cumulative surface disturbances to 3% of the landscape. The agencies have failed to

provide any scientific support for allowing more than 3% surface disturbance.”

Summary:

The BLM should have set a disturbance limit of no more than 3% of the landscape; it failed to provide specific support in allowing greater than a 3% surface disturbance.

Response:

The BLM agrees. The BLM is changing the Bi-State Sage-Grouse proposed plan, as it was set forth in the Plan Amendment and Final EIS, to set limits on total anthropogenic disturbance to no more than 3% of the total Bi-State Sage-Grouse (BSSG) habitat on Federal lands within the Bodie Mountain/Grant, Desert Creek/Fales, and White Mountains population management unit boundaries (C-Wild-S-04). The BLM is also changing the total anthropogenic disturbance of no more than 1.5% of the total BSSG habitat on Federal lands within the Pine Nut Mountains population management unit (PMU) boundaries (C-Wild-S-05), due to higher presence of risk factors in this PMU as analyzed under FEIS Alternative C. Disturbance levels identified in the FEIS will require site-specific project mitigation to insure no unmitigated net loss of habitat, which, in turn, will require the assessment of habitat availability at the landscape scale.

Transmission Lines / Exclusions

Issue Number: PP-NV-BSSG-15-02

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: BLM’s own experts (NTT 2011) recommend that key Sage-grouse habitats be ‘exclusion’ areas for

new right-of-ways. The proposed direction is woefully inadequate because it would apply this direction as a BMP only (which is completely discretionary and may be ignored by BLM decision-makers on a whim), which means that there is no certainty of implementation.

Summary:

The BLM failed to designate exclusion areas for newly-built high-power transmission lines in BSSG habitat areas.

Response:

The BLM is designating exclusion areas for new high-power (120kV) transmission lines in BSSG habitat. Specifically, new high-power (120kV) transmission line corridors, right-of-ways, facilities, or construction areas in habitat (outside of existing corridors) will not be authorized (C-Min-S-09).

Issue Topics and Responses

Range of Alternatives

Issue Number: PP-NV-BSSG-15-02-8

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: In comments, Guardians called for a provision to allow voluntary retirement of grazing permits to be included in the Bi-State plan

amendment (RDEIS comments at 12, 13, and 33). However, both EISs fail to consider implementing direction that allows the voluntary retirement of grazing permits. In its response to comments, the agencies state (FEIS at 223). Including permit retirement enabling language is a reasonable alternative to address significant threats posed by livestock grazing to Greater Sage-grouse. Permit retirement is a provision that has already been included in the proposed alternatives of a number of BLM Greater Sage-Grouse RMP amendment and/or revision EISs, including South Dakota, Billings/Pompey's Pillar, Bighorn Basin, and Miles City. These RMP amendments have an essentially similar purpose and need and "scope of the analysis" as the Bi-State plan amendment. For the agencies to willfully ignore this reasonable alternative is arbitrary and capricious and an abuse of discretion, and represents a NEPA failure to adequately consider a range of reasonable alternatives.

Issue Number: PP-NV-BSSG-15-01-1

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: The FEIS failed to

Summary:

The Bi-State Sage-Grouse Plan Amendment/FEIS fails to analyze an adequate range of alternatives as required by NEPA by not considering:

- the voluntary retirement of grazing permits; and
- reduced grazing in the proposed critical habitat.

Response:

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

consider a reasonable Range of Alternatives. The NEPA implementing regulations require BLM to "Rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. Here, despite alternative proposals from Western Watersheds Project and others, the FEIS considers only 2 grazing alternatives. Either 85,886 AUMs would be available to livestock on 2,118,811 acres of Bi-State Sage-Grouse habitat (No Action and the Preferred Alternative) or 0 AUMs would be available for livestock (Alternative C). And clearly, the BLM has no intention of opting for Alternative C. It could no reduced livestock grazing alternative at all.

It is both absurd and disingenuous of the BLM to imply that considering extreme alternatives allowing 85,886 AUMs and 0 AUM is somehow informative of reduced grazing (FEIS at 267). Although the FEIS admits that some allotments are failing to meet Land Health Standards there was no consideration of a reduced livestock grazing alternative. Although the USFWS has proposed critical habitat for Bi-State Sage-Grouse there was no attempt made in the FEIS to consider reduced livestock grazing in that proposed critical habitat

The BLM developed a reasonable range of alternatives that meet the purpose and need (Purpose and Need for Action (p. 8)) and that address resource issues identified during the scoping period. (Issues, #4, p.10). The BSSG plan amendment analyzed three alternatives, which are described in Chapter 2 (Alternatives, Including the Proposed Action (p. 2)). The alternatives analyzed cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

The BSSG plan amendment is a programmatic EIS which is needed to address the “proposed threatened” Endangered Species Act (ESA) listing, and to support Bi-State Distinct Population Segment (DPS) population management objectives within the states of Nevada and California (FEIS, p. 9). Developing alternatives to address the relinquishment of grazing permits is outside the scope of the analysis to be conducted.

Scoping comments led to the development of a list of issues used to develop the range of alternatives (p. 11) analyzed in this plan amendment. The livestock issue (p. 11) concerns the effects of regulatory mechanisms for the management of BSSG on the range and grazing programs on Federal lands.

Decisions to reduce the number of animal unit months (AUMs) across the planning area are outside the scope of this planning process. Those decisions will be made during a subsequent decision making process after appropriate NEPA analysis is conducted. The Final EIS Alternative C (specifically C-RP-S-01) did analyze making all allotments that contained BSSG habitat unavailable for livestock grazing. Consequently, the impact analysis for the BSSG plan amendment describes the impacts to livestock grazing resulting from the implementation of a variety of actions across the identified range of alternatives.

The BLM considered a reasonable range of alternatives in the Bi-State plan amendment in compliance with NEPA.

Best Available Science

Issue Number: PP-NV-BSSG-15-02-3

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Accordingly, “This document provides the latest science and best biological judgment to assist in making management decisions” (NTT (2011) at 5). This document represents the BLM’s expert opinion, and although policy documents state that the agency is not bound to adopt these measures in its RMP

amendments, in cases where the agency offers divergent conservation measures, it must supply a scientifically supported justification for choosing a different path, which is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act (“APA”). In many cases, the agency has elected to substitute alternative conservation measures to the NIT recommendations without providing sufficient science-based justification. The result is twofold: A failure to

uphold NEPA's scientific integrity requirements, and plan amendments that contain inadequate regulatory mechanisms.

Issue Number: PP-NV-BSSG-15-02-4

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Finally, under B-Weed-G-01, the proposed plan would allow livestock grazing to control cheatgrass and other weeds (FEIS at 33). However, the agencies themselves state that for cheatgrass, grazing cannot be used to address weed infestations according to the best available science: Recent research suggests that cattle grazing, even at the highest intensities, does not reduce cheatgrass cover. Increasing intensity of cattle grazing results in a decrease in the remnant native perennial grasses and biological soil crusts which promotes an increase in the magnitude of cheatgrass dominance (Reisner 2010; Reisner et al. 2013) (FEIS at 110). The approval of a guideline that is directly contradictory to what the best available science recognizes as effective is arbitrary and capricious, and is likely to add additional grazing impacts (and even weed spread) to already degraded areas resulting in both unnecessary and undue degradation to BLM lands.

Issue Number: PP-NV-BSSG-15-02-6

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Measures that would buffer leks by only two miles include B-RI-S-08 (location of livestock watering and handling facilities and sheep bed grounds, FEIS at 32), B-RI-S-09 (livestock salting or

supplemental feeding stations, FEIS at 33), and B-LUSU-S-01 (tall structures, FEIS at 23). There is a BMP proposed that would limit new fence construction, but only within 1.2 miles of Sage-Grouse leks under B-RI-G-01. Based on Coates et al. (2013), it is clear that if adequate protection is to occur in nesting and early brood-rearing areas as well, a 4.66-mile exclusion area around the lek would be more appropriate. For recreation special use permits, the lek buffer is set at 3 miles under BLM-01. It is arbitrary and capricious and an abuse of discretion for BLM to apply a mixture of lek buffers for different permitted activities known to impact sage grouse and their habitats, in the absence of science that specifically supports the variance from the scientifically recommended buffer of 4.66 miles for the Bi-State population (Coates et al. 2013).

Issue Number: PP-NV-BSSG-15-01-3

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: Despite the contrary indications clearly espoused in recent period reviewed science, the FEIS uncritically relies on Davison *et al.*, 2005 an unpublished report that does not even mention cheatgrass, and a 1999 book chapter by Olson, 2009 which likewise fails to discuss cheatgrass. The FEIS simply ignores the fact that peer-reviewed scientific studies have established that grazing by livestock, especially by cattle, is a risk factor for cheatgrass proliferation, and requires a reduction in livestock use. Guideline B-Weed-G-01 should be re-stated to require mandatory reductions in cattle grazing in areas infested and at risk for infestation from cheatgrass.

Summary:

The Greater Sage-Grouse Bi-state Distinct Population Segment Plan Amendment/FEIS does not comply with the National Environmental Policy Act's guidance to use the best available science by:

- Relying on the NTT Report, which does not comply with standards of integrity, objectivity, and transparency;
- Inconsistently applying lek buffer distances; and
- Using livestock grazing to reduce cheatgrass.

Response:

NEPA requires that agencies utilize information of high quality and based on accurate scientific analysis. NEPA does not specifically require use of "best available science".

Before beginning the Greater Sage-Grouse Bi-State Distinct Population Segment (DPS) Plan Amendment/FEIS, the BLM reviewed and considered data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

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

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

Both the NTT report and the COT report tier from the Western Association of Fish and Wildlife Agencies (WAFWA) Greater Sage-Grouse Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of Greater Sage-Grouse (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM and Forest Service in

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

Additionally, the BLM and Forest Service consulted with and collected and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and the Nevada Department of Wildlife, and relied on numerous data sources and scientific literature to support the description of baseline conditions and impact analysis (Forest Plan Amendment/FEIS, Chapter 3). A list of information and literature used begins on page 151 of the Plan Amendment/FEIS.

As a result of these actions, the BLM and Forest Service gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Forest Plan Amendment/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (Forest Plan Amendment/FEIS, Chapter 3). As a result, the BLM and Forest Service have taken a "hard look," as required by the NEPA, at the environmental consequences of the alternatives in the Forest Plan Amendment/FEIS to enable the decision maker to make an informed decision. Finally, the BLM and Forest Service have made a reasonable effort to collect and analyze all available data.

The BLM and Forest Service considered a variety of literature with regard to lek buffer size, including the COT Report, the NTT Report, and Manier et al. 2013. In addition, the US Geological Survey (USGS) published "Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review" (Manier et. al. 2014) on November 21, 2014. The USGS review provided a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on GRSG populations. The impacts of the buffers applied in the Plan Amendment/FEIS are analyzed in the Effects on the Management of the Wildlife Program on Federal Lands section of Chapter 3 (Forest Plan Amendment/FEIS, p. 81). As such, the BLM and Forest Service have considered the best available science for lek buffer decisions.

The Plan Amendment/FEIS recognizes the relationship between livestock grazing and cheatgrass. As stated on page 110, "Recent research suggests that cattle grazing, even at the highest intensities, does not reduce cheatgrass cover. Increasing intensity of cattle grazing results in a decrease in the remnant native perennial grasses and biological soil crusts which promotes an increase in the magnitude of cheatgrass dominance (Reisner 2010; Reisner et al. 2013)."

The purpose of the BLM best management practice (BMP) (same as Guideline B-Weed-G-01) is to allow the use of domestic livestock to control other undesirable vegetation in order to achieve Bi-State DPS habitat desired conditions. As stated on page 110 of the Plan Amendment/FEIS, “While cattle grazing may not be effective for cheatgrass control, many species of noxious and invasive weeds can be controlled with specifically designed grazing strategies using cattle, sheep, and goats (Davison et al. 2005; Olson 1999).” As such, the BLM and Forest Service have recognized and incorporated the best available science in considering the impacts of livestock grazing on noxious weeds and invasive species.

Public Participation

Issue Number: PP-NV-BSSG-15-02-1

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Guardians raised the importance of response to public comments as an issue (DEIS comments at unnumbered 8), and in response, the agencies issued a Revised Draft EIS with a new alternative that addressed many of our concerns. Attachment 3. On October 9, 2014, WildEarth Guardians and other conservation groups submitted comments on the Bi-State RMP Amendment RDEIS (Attachment 3), advanced by the Humboldt-Toiyabe National Forest and Bureau of Land Management Carson City and Tonopah Field Offices (the “federal agencies”) pursuant to the open comment period on that NEPA document. These comments were submitted via email to: comments-intermtn-humboldt-toiyabe.fs.fed.us, pursuant to instructions on the Forest Service webpage hosting the project NEPA documents (See Attachment 4).

Summary:

The agencies failed to respond to the issues brought forward in comments provided to the Revised Draft EIS.

Response:

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) make diligent

Federal agencies did not respond to issues included in these comments. See RDEIS at Appendix C. In a telephone conversation on February 9, 2015 with James Winfrey, Humboldt Toiyabe National Forest planner, it was disclosed that the federal agencies had not checked the email account associated with this address prior to February 9, 2015, that the comments of WildEarth Guardians and others were indeed received and timely filed, but had not been noticed or read until that very day. See Attachment 5. Significant issues raised in these comments (e.g., problems with off-road special use permitting) were not addressed in the agencies’ responses to the comments of others. We have no reason to believe that the agencies’ failure to check its email and receive the comments of WildEarth Guardians in time to respond was intentional, but this error on the agency’s part nonetheless violates federal law. This oversight by the lead agency led to the violation of NEPA’s response to public comments requirement in the FEIS.

efforts to involve the public in preparing and implementing their NEPA procedures (b) provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings...or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601- 1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

NEPA Handbook H-1790-1, page 101:

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

43 CFR 1610.2 Public participation:

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

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

- (1) General notice at the outset of the process inviting participation in the identification of issues (See 1610.2(c) and 1610.4-1);
- (2) Review of the proposed planning criteria (See 1610.4-2);
- (3) Publication of the draft resource management plan and draft environmental impact statement (See §1610.4-7);
- (4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See 1610.4-8 and 1610.5-1(b)); and
- (5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See 1610.5-1(b)).

The agencies provided the public with adequate opportunities to participate in the planning and NEPA process. A separate review and response to the comments received on the Revised DEIS in 2014 from WEG was prepared on March/April, 2015. This response document can be found on the Final EIS website at:

http://www.fs.usda.gov/wps/portal/fsinternet!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDfxMDT8MwRydLA1cj72BTUwMTAwgAykeaxRtBeY4WBv4eHmF-YT4GMHkidBvgAI6EdIeDXIvfdRAJuM3388jPTdUvyA2NMMgyUQQAyrqOmg!!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfS000MjZOMDcxT1RVODBJN0o2MTJQRDMwODQ!/?project=40683

This document provides information about how the issues raised in the October 9, 2014 comment letter were sufficiently addressed in the Final EIS. This document contains notes, table references, and clarifications and refers to corrections made to the FEIS that are specific to substantive and non-substantive comments and the issue topics raised in the October 9 letter.

In addition to the above, the issues identified throughout the public involvement process are articulated in the Final EIS starting on page 10. A recap of the public involvement process is also provided starting on page 9.

The agencies provided sufficient opportunities for public involvement and participation in the planning and NEPA process and adequately responded to public comments submitted on the Draft EIS.

The BLM has made changes and clarifications to its proposed decisions between FEIS publication and the Record of Decision (ROD), based on protests and on further policy review. A Notice of Change has been published in the Federal Register under 43 CFR 1610.2(f)(5) and 43 CFR 1610.5-1(b) to identify those clarifications and changes and initiate a separate 30-day public comment period.

Mitigation

Issue Number: PP-NV-BSSG-15-01-4
Organization: Western Watersheds Project
Protestor: Michael Connor

Issue Excerpt Text: The FEIS references off-site mitigation to offset the surface disturbance of habitat (e.g. for Non-

discretionary Locatable Minerals (FEIS at 53, 126)), but does not provide a breakdown or tabulation of what off-site mitigation is available. According to FEIS at 219, a description of the potential mitigation actions would be included in the final EIS. Where is this?

Summary:

The FEIS did not include a description of the potential and planned off-site mitigation actions.

Response:

Mitigation is defined on p. 164 of the FEIS. The BLM response referenced in this protest was in error, as potential mitigation measures are not included in the FEIS. The response to comment 186 (p. 243), in the FEIS correctly indicates this: “Off-site mitigation opportunities will be identified during site-specific NEPA analysis.”

As explained on p.201, “Why we don’t have a discussion on specific ‘mitigation measures’ or ‘decision framework’”:

These plan components guide decision-making; however, they do not create a specific “decision framework” of “if this, then that” statements. These components simply set up the side boards for the secondary site-specific NEPA analyses that are tied to particular geographic spots on the Federal systems lands. It is through this secondary site-specific process that decisions are made using detailed information and quantitative analysis that give the decision-maker a more robust picture of expected effects from explicit proposed actions on the ground.

Along with not having a decision framework, we do not propose any mitigation measures, also due to this secondary NEPA process that allows for site-specific analysis that can include mitigation measures as well as project design features that can ensure the proposed project follows the management direction proposed here in this FEIS. Having the detailed information is critical to ensure that, whatever mitigation measures or design features are proposed, chosen, and implemented, they are appropriate for the specific project and the resulting effects on the bi-state DPS.

ACECs

Issue Number: PP-NV-BSSG-15-01-2

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: That the Forest Service was the lead agency does not absolve the agencies from considering ACEC designations in a cooperative agency project. In fact, NEPA specifically requires that an EIS to: “Include reasonable alternatives not within the jurisdiction of the lead agency” (40 CFR §1502.14(c)). Only one of the five alternatives in the Draft Resource Management Plan and Environmental Impact Statement for the Carson City District considers designating ACEC for BSSG conservation. This is for a single ACEC (Pine Nut) that is considered in only one Alternative and is not a component of the agency Preferred Alternative. According to the Draft

Resource Management Plan and Environmental Impact Statement for the Carson City District, “The decisions for the Greater and Bi-State Sage-Grouse efforts will help inform the Carson City District Proposed RMP/Final EIS” (CCD DEIS at 1-35). Clearly then, this BSSG plan amendment process is the appropriate venue for considering ACEC designations to conserve and protect BSSG and its habitat. The BLM’s failure to consider designating ACECs - the most powerful land use conservation tool in its toolbox, the BLM’s failure to respond to expressed public concern that it do so, and BLM’s failure to consider ACEC nominations made by the public make this land use plan amendment process and FEIS fatally flawed because it violates both FLPMA and NEPA.

Summary:

The BLM violated NEPA and FLPMA by failing to consider ACEC designations in the BSSG Plan Amendment.

Response:

BLM policy does not require that a potential ACEC's relevant and important values be protected to the same level or degree of protection in all plan alternatives: "[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention" (BLM Manual Section 1613.22.B). Elaborating further, the Manual states that "[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes" (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

The Greater Sage-Grouse Bi-State Distinct Population Segment (DPS) Forest Plan Proposed Amendment explains that while the BLM is proposing not to designate any new ACECs within the planning area during this planning process, other conservation measures would be carried forward to the benefit of the DPS (see page 202 for our full response). Additionally, the response to public comments (pp. 210, 217, 242, 280-81) explains that the designation of new ACECs is being considered in the ongoing Carson City RMP Revision. The Draft Carson City RMP Revision was released for a 180-day public comment period between November 28, 2014 and May 27, 2015. The draft RMP revision included a wide range of alternatives for ACEC designation, covering between 21,000 acres and over 780,000 acres.

The BLM has adequately considered the designation of ACECs.

Fire

Issue Number: PP-NV-BSSG-15-02-7

Organization: WildEarth Guardians

Protestor: Erik Molvar

Issue Excerpt Text: Meanwhile, the negative impacts of "green strips" on sage grouse are proven, as they fragment habitat, create edge environments where increased predation rates occur, and result in direct loss of valuable sagebrush stands that are key to grouse survival in terms of providing food and cover. While the agencies assert that the creation of "green strips" will lower potential for fire, they cite absolutely no science to support this assertion. See FEIS at 87, 145. This

indicates NEPA 'hard look' and scientific integrity failures.

The agencies also fail to analyze the negative impacts of habitat loss and fragmentation due to the construction of "green strips" (FEIS at 145), another NEPA 'hard look' violation. In response to comments on this very issue, the agencies declined to address the failure to cite scientific support that "green strips" have any potential at all to slow, reduce, or constrain fire (FEIS at 206). This constitutes an additional failure to respond to public comments under NEPA.

Summary:

The Bi-State FEIS violates NEPA by failing to evaluate the negative effects of green strips used to combat fire.

Response:

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

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

The response to comment for the Bi-state RMPA/FEIS, p. 206 states:

“Application of standards and guidelines that provide management direction to prevent the spread of noxious and invasive species into any areas where there is soil disturbance would be applied at the site-specific project level. These standards and guidelines are included to reduce the risk of spread. While the proposed action provides management direction concerning where green strips may be used “...to protect areas with >25 percent landscape sagebrush cover” they are not required and there are other standards and guidelines that further limit disturbance in areas with less than 25 percent landscape sagebrush cover.”

The Bi-state RMPA/FEIS complied with NEPA’s requirement to analyze the environmental consequences/impacts to vegetation and wildland fire management in the Bi-State FEIS.

Special Status Species

Issue Number: PP-NV-BSSG-15-01-5

Organization: Western Watersheds Project

Protestor: Michael Connor

Issue Excerpt Text: The FEIS Fails to Take a Hard Look at the Effects on Listed Species... The FEIS does not even mention

Webber’s ivesia; in fact impacts to rare plants are entirely ignored. Clearly, if livestock grazing is a threat to Webber’s ivesia and that livestock grazing is modified such that the timing and distribution of livestock changes there will be effects to the plant and its habitat that need to be analyzed.

Summary:

The FEIS fails to take a Hard Look at the effect on listed species and failed to analyze impacts of livestock grazing decisions on the Webber’s ivesia.

Response:

The Proposed LUPA/FEIS adequately addresses effects on listed species in the planning area. There is no discussion on the *Webber's ivesia*, because it is not present in the area addressed in this amendment.