Director's Protest Resolution Report

Gateway West Transmission Line and Land Use Plan Amendments

November 12, 2013

BLM

Contents

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:

Direct quote taken from the submission

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.

Summary

General statement summarizing the issue excerpts (optional).

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

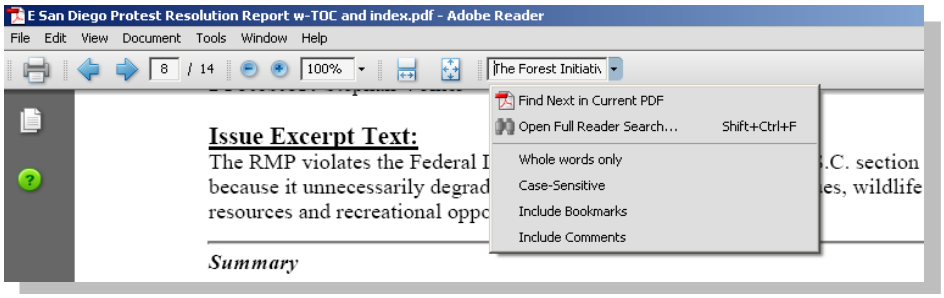
Response

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

Protesting Party Index

Protester	Organization	Submission Number	Determination
Constance Brooks	CE Brooks & Associates, PC	PP-WY-Gateway-13-01	Denied—Issues, Comments
Joe Merrick	Owyhee County Board of Commissioners	PP-WY-Gateway-02-02	Denied—Issues, Comments
John Robison	Idaho Conservation League	PP-WY-Gateway-13-03	Denied—Issues, Comments
Julie Randell	Prairie Falcon Audubon Inc.	PP-WY-Gateway-13-04	Denied—Issues, Comments
Katie Fite	Western Watersheds Project	PP-WY-Gateway-13-05	Denied—Issues, Comments

Issue Topics and Responses

NEPA

Range of Alternatives

Issue Number: PP-WY-Gateway-13-01-10
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
Failure to Consider Local Government Alternative
BLM was equally dismissive of the Coalition's proposed alternative route to deviate the Gateway Transmission Line south of the existing transmission lines and connect with alternative route 4C. Gateway West FEIS at App. L 189-193. This route would only add a few miles of transmission line, would not impact private residential areas near Cokeville, WY, and would avoid proposed water storage reservoirs proposed by LCD. It would be less total distance than alternative routes 4B-4F. BLM completely failed to respond to this proposed alternative route. Id.

Issue Number: PP-WY-Gateway-13-01-2
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
BLM failed to consider either the mitigation measure or the alternative route in violation of both FLPMA and NEPA. BLM only considered and rejected analyzing the technical and economic feasibility of burying the Gateway West Transmission Lines for the entire distance of the project, approximately 990 miles. See Gateway West FEIS, Sec. 2.6.3.5, at 2-138 (admitting that burying lines is justifiable for limited distances, which is exactly what the Coalition proposed but BLM failed to analyze). The Coalition proposed burying the line for eight miles near Cokeville, Wyoming, or less than 1% of the total distance of the Gateway West Project. Ex. 7, at 1-6. The second alternative proposed by the Coalition would direct the Gateway West Transmission Line from the proposed route and connect with route alternative 4C south of Cokeville, WY. Ex. 7, CLG Comments on FEIS at 3-4. However, BLM failed to analyze or even respond to this alternative proposed by the Coalition in the FEIS comments even though the alternative was reasonable, technically and economically feasible, resulted in less impacts, and accomplished the intended purpose of the Gateway West Transmission Line Project. See Gateway West FEIS at App. L 189-93 (no response to the suggested route alternative); see also S. Utah Wilderness Alliance (SUWA), 182 IBLA 377, 391 (2012) (stating the standard for considering a proposed alternative). These mitigation measures and alternatives should have been considered and analyzed pursuant to FLPMA and NEPA.

Issue Number: PP-WY-Gateway-13-05-12
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
The route that maximizes paralleling existing lines, major roads, the disturbed land areas of WWEC segments, and energizing Idaho and other Power company's existing lines, has not been fully developed and considered. We protest this, and the failure to analyze an adequate range of alternatives and take NEPA's required "hard look".

Issue Number: PP-WY-Gateway-13-05-32
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
The EIS process failed to consider an adequate range of alternatives, including those focused on locally generated and locally used power.

Summary

The Bureau of Land Management (BLM) failed to analyze a reasonable range of alternatives. The BLM did not consider:

- An alternative route to deviate the Gateway Transmission Line south of the existing transmission lines and connect with alternative route 4C or a mitigation measure to bury the line for eight miles near Cokeville, Wyoming.
- An alternative route that maximizes paralleling existing lines, major roads, the disturbed land areas of Westwide Energy Corridor (WWEC) segments.
- An alternative focused on locally generated and locally used power.

Response

The BLM's purpose and need for the Federal action defines the range of alternatives to be considered. The BLM must analyze a range of reasonable alternatives, but is not required to analyze in detail every possible alternative or variation. According to the Council of Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act of 1969 (NEPA), an agency may eliminate alternatives from detailed study with a brief discussion of the reasons for having been eliminated. 40 CFR 1502.14(a). For example, an alternative may be eliminated from detailed study if it is: determined not to meet the proposed action's purpose and need; determined to be unreasonable given the BLM mandates, policies, and programs; substantially similar in design to an alternative that is analyzed; speculative or remote; or technically or economically infeasible (BLM NEPA Handbook, H-1790-1, 6.6.3).

The BLM considered a reasonable range of alternatives in the Gateway West Plan Amendment /Final Environmental Impact Statement (PA/FEIS) for the Federal action of responding to the Proponent's right-of-way (ROW) application to use federally-managed lands for a portion of the Gateway West transmission line pursuant to Federal Land Policy and Management Act of 1976 (FLPMA). These alternatives meet the BLM's legal responsibilities and its purpose and need for Federal action. As required by NEPA, these alternatives represent a spectrum of alternative routes and Segments in and around Federal lands as a means of responding to and addressing environmental impacts. In regards to the protestor's proposed route deviation in Segment 4, the BLM did analyze in detail several routes south of the existing transmission line for Segment 4 that bypass the Cokeville area. These routes are described in Section 2.4.5 of the FEIS (pages 2-58 to 2-64). In addition, the BLM provides a brief rationale for not analyzing in detail four variations of Segment 4 in the Cokeville, Wyoming area, as provided in Section 2.4.12.5 of the FEIS (pages 2-91 to 2-98). The alternative routes for Segment 4 represent a reasonable range of alternatives that address the spectrum alternatives focused on responding to resource concerns, including sage-grouse habitat as addressed by the Governor of Wyoming's sage-grouse policy. The BLM is continuing to work with State and local government officials to discuss siting concerns in the Cokeville, Wyoming area.

The Environmental Impact Statement (EIS) addresses burying the transmission line in Section 2.6.3 of the FEIS. The additional cost and disturbance identified in that section would apply to an eight-mile section, as well as to a longer segment. Placing a 500 kV line underground would cost approximately 7 to 12 times as much as building an overhead line. Based on an average above ground cost of $2 million per mile, placing an eight-mile section underground would cost between $112 and $208 million compared to $16 million for an above ground line. This cost would be passed on to ratepayers, assuming the State regulators would approve this unusual alternative. In addition, burying the line requires digging a continuous trench, requiring at least a 30-foot wide disturbance area (see Figure 2.6-2 in the FEIS). Installations similar to substations would be required at each end of the underground section; each of these would require about four acres. The reliability of an underground 500 kV line over the life of the Gateway West project is unproven. The BLM appreciates the concern of local residents and is working with local stakeholders and the proponents to ensure that the selected route avoids impacts to the City of Cokeville without the added cost, disturbance, and risk of a buried line.

Pursuant to Section 503 of FLPMA, the BLM evaluated alternative routes and segments that use existing transmission and designated utility corridors, and utilized these corridors to the extent practical. Section 503 of the FLPMA states: "The utilization of rights-of-way in common shall be required to the extent practical…In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices" (43 U.S.C. 1763). In some instances, the existing transmission corridor could not be followed due to resource concerns such as sage-grouse leks, oil and gas wells, raptor nests, and historic trails, or because the existing corridors would not meet the BLM's purpose and need. As presented in section 1.5.2 of the FEIS, the WWEC PEIS designated west-wide corridors, but did "not require their use nor does such designation exempt the federal agencies from conducting an environmental review on each project. While the PEIS amended the relevant land management plans to add a corridor, it did not necessarily amend underlying land allocations, including visual resource management designations, to allow for overhead transmission lines." During the environmental review for this project, resource concerns related to placing this project within the designated WWECs were identified. For example, for Segment 2 of the project, the FEIS states that "the proposed route avoids the Fort Fred Steele State Historic Site and the community of Fort Steele. The designated corridors in the vicinity of the fort (Alternatives 2A and 2B) do not avoid the historic site or the community" (page 2-43). Table 2.4-3 presents the length and percentage of Proposed Route and Route Alternative Segments within the proposed WWEC, within the projected WWEC (private land segments between WWEC Segments), adjacent to the WWEC, and adjacent to existing transmission corridors. Gateway West PA/FEIS, p. 2-113 to 2-117. Of the total length of the BLM's preferred route (1,024.1 miles), 590.8 miles or 57.7 percent is located in or adjacent to designated corridors or existing linear facilities.

The BLM did not consider an alternative that looked at locally generated and locally used power because it does not respond to the purpose and need for Federal action in the FEIS (FEIS, page 1-1) to respond to the proposal submitted to the BLM by Rocky Mountain Power and Idaho

Power for a ROW grant to build and operate a transmission line. Evaluating locally generated and locally used power is beyond the scope of this analysis.

Mitigation

Issue Number: PP-WY-Gateway-13-01-7
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
NEPA requires that BLM mitigate the consequences of its actions. 40 C.F.R. §§1502.1, 1502.14(f), 1502.16(h), 1508.20. BLM must consider and analyze mitigation measures. 40 C.F.R. §§1502.1 (the EIS "shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."), 1502.14(f) (the alternatives section of the EIS "shall include appropriate mitigation measures not already included in the proposed action or alternatives."), 1502.16(h), 1508.20. BLM's failure to consider the local governments' reasonable mitigation measure violates NEPA.

In response to BLM's proposed alternative route and consistent with County and Conservation District land use objectives, the Coalition proposed that Rocky Mountain Power bury the transmission line where it passes near the residential areas in Cokeville, Wyoming in order to mitigate the impacts to private lands and residential areas. Ex. 7, Coalition Comments on FEIS at 2-4. BLM ignored this mitigation measure and undertook no mitigation measures that would make the project conform to the county zoning.

Summary

The BLM ignored the mitigation measure to bury the transmission line where it passes near the residential areas in Cokeville, Wyoming, in order to mitigate the impacts to private lands and residential areas.

Response

Underground alternatives are addressed in Section 2.6.3 of the FEIS. The FEIS explains on page 2-138 that "Underground cable system installation has historically been justifiable in terms of cost and reliability only in urban or metropolitan areas, and for limited distances." This means that underground alternatives are feasible in terms of cost and reliability for limited distances in urban or metropolitan areas only. The United States Census Bureau data presented in Table 3.4-5 of the FEIS (page 3.4-7) indicate that the estimated population of Cokeville, Wyoming, was 508 in the year 2000, and 553 in the year 2011; therefore, burying the transmission line where it passes near Cokeville, Wyoming, would not be feasible in terms of cost and reliability. The NEPA does not require an agency to analyze mitigation measures that it has determined to be infeasible.

Process

Issue Number: PP-WY-Gateway-13-04-2
Organization: Prairie Falcon Audubon Inc.
Protestor: Julie Randell

Issue Excerpt Text:
3.7 Twin Falls MFP Amendments FEIS F.1-31 and 3.8 Jarbidge RMP, FEIS F.1-37: BLM Burley F.O. management and proponents arbitrarily decided, without public knowledge, input, or regard; to change the route, in segment 9, after the Draft EIS, and take the line along rim of and across the Salmon Falls Creek Canyon, including Lily Grade. Interested public was not given this information or an opportunity to comment.

The FEIS states, "No amendment for this area was proposed in the Draft EIS because it was thought that crossing the WSR at the proposed location would not be consistent with WSR management goals.", .. "An alternative crossing of the river (Alternative 9C) would avoid the eligible WSR and the ACEC (emphasis added)." ... "The Burley FO has stated that the WSR classification at this location is "Recreational" and that this crossing would not have a negative effect on the outstandingly remarkable values (ORVs) for that classification (emphasis added). Amendments for crossing the ACEC and VRM Class II lands are therefore provided in the Final EIS." FEIS F1-31

Issue Number: PP-WY-Gateway-13-03-4
Organization: Idaho Conservation League
Protestor: John Robison

Issue Excerpt Text:
These amendments have not yet gone through the full NEPA process. The analysis of the effects of these amendments is tiered to the Gateway West Final Environmental Impact Statement which is open for public comment until June 28, 2013. The BLM is still accepting public comments, responding to comments, refining alternatives and no final Record of Decision has been issued. It is very helpful when assessing such projects to incorporate RMP amendments into the EIS process so the actual impacts are fully analyzed and disclosed. Closing the protest period on the RMP amendments before the completion of the full analysis is an inappropriate segmentation of NEPA. We are particularly concerned because several of these amendments were not proposed in the original DEIS so the public has not had an adequate opportunity to review them.

Issue Number: PP-WY-Gateway-13-05-20
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
BLM has internal maps that overlay sage-grouse. pygmy rabbit and other habitats and conflicts. This all should have been made public and laid out in the Scoping and now the DEIS process so that a valid range of alternatives and analysis can occur.

Summary

Closing the protest period on the Resource Management Plan (RMP) amendments before the completion of the full analysis violates NEPA because several amendments were not proposed in the original Draft Environmental Impact Statement (DEIS) so the public has not had an adequate opportunity to review them. This all should have been disclosed and made available for public comment.

Response

The BLM's planning regulations at 43 CFR 1610.5-2 provide for public protest of proposed RMPs "within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of the final environmental impact statement containing the plan or amendment in the Federal Register." Thus, the BLM is following regulations in accepting protests on proposed RMP amendments related to the FEIS for the Gateway West project proposal.

Possible plan amendments for the Salmon Falls Creek area, in Segment 9, were identified in the DEIS (Table 2.2-1, pages 2-34 to 2-36). The amendments involved locating the line through an Area of Critical Environmental Concern (ACEC), a Visual Resource Management (VRM) Class II area, an area eligible for Wild and Scenic River (WSR) designation, and a utility avoidance/restricted area. The apparent need for some of these plan amendments was based on inaccurate information and the DEIS indicates the BLM would not be able to approve some of these amendments because of these designations. However, review of BLM records revealed that the WSR eligibility determination was based on recreation values, which do not preclude transmission line. The other situations (i.e., ACEC, VRM Class II, and ROW avoidance area) did not preclude siting a transmission line in these areas. After considering the other siting constraints (Wilderness Study Area and private lands), we determined the current crossing location, and its associated plan amendments, was the best multiple-use decision.

For the current proposed plan amendments, the BLM has worked hard to provide all the necessary and pertinent information, maps, analyses, and discussion to afford stakeholders ample opportunity to contribute to this proposed project planning effort.

Cumulative Effects

Issue Number: PP-WY-Gateway-13-05-22
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Revised and expanded analysis of the adverse impacts of potential linked or foreseeable development of new energy or other projects (wind, geothermal, fossil fuel, more transmission, etc.) in the path of any potential route of the Gateway line have not been fully examined. This is part of understanding the full range of connected, linked, and foreseeable actions. Where are sites where potential or linked development is likely if the line is routed along any segment? If this occurs, to what degree will habitats be lost and fragmented further, and species decline or be extirpated altogether in particular habitats used by particular populations? This is also necessary to understand if any mitigation is possible, the effectiveness of any mitigation, or the impossibility of mitigating impacts of ill-sited routes. We protest this lack.

Issue Number: PP-WY-Gateway-13-05-28
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
We are very concerned with potential wind energy development in Wyoming in areas with sage-grouse populations, prairie dogs and even black-tailed ferret. It appears substation locations in some areas (like Wyoming) may be anticipating wind development, yet the full indirect and cumulative effects of all of this existing and potential development all along the

path of Gateway and its alternatives have not been addressed.

Issue Number: PP-WY-Gateway-13-05-30
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
A SEIS must incorporate the full range of ecological concerns (such as habitat loss and fragmentation for native biota that will result from all potential segments), and the tremendous ecological footprint of a host of likely linked developments, ranging from power lines to road networks that these projects would spawn) to potential wind, geothermal and solar development sprawl. Please also consider the potential for Gateway to promote oil and gas development, mining, and other industrial undertakings that further promote habitat loss. We protest the failure to fully analyze this linked development and sprawl. Please analyze the potential for development.

Summary

The cumulative effects analysis did not adequately analyze potential linked or foreseeable solar, wind, geothermal, fossil fuel, mining, or transmission development.

Response

The only protestable sections of this FEIS are those related to the proposed plan amendments, not the proposed project. The possible cumulative effects of the amendments are addressed separately from the Project cumulative effects but considered with them, because the decision whether to approve plan amendments is a separate decision under the law for both the BLM and the US Forest Service. Within section 4.1.3 of the FEIS, the BLM examined the possible cumulative effects to resources of the various plan amendments that would be necessary to permit the Project. These amendments are connected actions to the Project ("but for" the Project, these amendments would not be considered). In most cases, the amendments to the land management plans are designed to allow the Project to be constructed and operated without changing the underlying land allocations. Where that is the case, there are no cumulative effects of the plan amendment that are not fully captured in the cumulative effects of the Project itself. The effects of those amendments are considered in detail by resource in section 4.1.3 of the PA/FEIS. Where that is not the case, the resultant plan amendment could have cumulative effects to be considered as part of the overall Project cumulative effects. The impacts of the underlying land use allocation revision are across the extent of the polygon proposed for revision. For example, if a polygon mapped as VRM Class II is proposed to be changed to VRM Class III, the impact of that change is taken into consideration as part of the cumulative effects of the Project.

As discussed in the FEIS, several commenters on the DEIS requested that the analysis of cumulative effects include possible future projects that might be facilitated if Gateway West were constructed. The National Environmental Policy Act requires analysis of "reasonably foreseeable" future actions and does not require speculation about unknown future events.

Therefore, the cumulative effects analysis is generally limited to projects with known locations and descriptions, usually those for which a permit application has been filed or other public announcement made with enough detail to allow for comparison. All the reasonably foreseeable future actions related to proposed transmission lines, pipelines, roads, energy generation facilities, oil and natural gas-fired power plants, geothermal, wind energy, hydroelectric, biomass, and solar facilities are outline in section 4.2.2 of the FEIS. These reasonably foreseeable futures actions were then taken into account during the development of the cumulative effects analysis on various resources (including the various habitat types the protester references) in section 4.4 of the PA/FEIS.

Baseline Information

Issue Number: PP-WY-Gateway-13-05-24
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
No map of access roads, project construction disturbance areas, etc. is provided so that informed comparisons of impacts can be made and NEPA's required "hard look" at alternatives taken.

Issue Number: PP-WY-Gateway-13-05-34
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
How will it be possible to rehab disturbed lands (soils, microbiotic crusts, native vegetation communities, fragile sagebrush sites) faced with continued chronic grazing disturbance? What is the risk of failure, and permanent domination by invasive annual grasses and other weeds? There is no annual monitoring, Ecological Site Inventory, Rangeland Health, allotment evaluation, lentic or lotic PFC monitoring or examination of condition of habitat components or other data essential to understand the current condition and quality and quality of the lands and waters that Gateway potential routes and their footprint would impact, and how these are currently being impacted and impaired by livestock grazing.

All of this information is necessary to understand both indirect and cumulative impacts; to understand effectiveness of any mitigation and the scope of mitigation that is required; to understand the feasibility or likelihood of any rehab of disturbance being successful; to understand the risk of new and expanded weed invasions with Gateway disturbance; and the full impacts of current chronic grazing disturbance and degradation stressors on sage grouse and other habitats. Current science on the very long disturbance interval of many arid sagebrush and other communities must be provided. See Knick and Connelly (2009/2011 Baker and other chapters, also Bukowski and Baker (2013), for example.
There is no baseline information provided on the existing battery of livestock facilities that serve to degrade or fragment essential species habitat components across the Corridor and landscape impacts. This includes livestock fences, water developments (spring "development" and de-watering projects, water pipelines and troughs, wells), salting sites, etc., all of which may significantly impair ecological processes, and have spawned an extensive road network over time and are also deleteriously affecting sage grouse, pygmy rabbit and other important and sensitive species habitats. Fleischner (1994), Frelich (2003), Connelly et al. 2004, Knick and Connelly 2009. This is also essential to understand the impacts additional fencing, roading, potentially expanded pumped livestock water sources, and other development that the Corridor projects and linked wild land industrial development sprawl that would occur from Gateway providing a power source in wild land areas.

Issue Number: PP-WY-Gateway-13-05-36
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Wildfires that start due to construction and operation accidents (raptor collisions with lines, downed lines,

explosions, maintenance or operation of vehicles, etc.) may affect a vast area of important and critical habitats for ESA-listed species and sensitive species like sage grouse and pygmy rabbit. There is not even a baseline map provided of fire history.

Issue Number: PP-WY-Gateway-13-05-38
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Placement of high tension lines in or near Wildlife Refuges or state WMAs, sage grouse leks, Important Bird Areas, habitats essential for connectivity, migratory bird flyways, etc., may have serious adverse impacts to birds, and result in mortality and population losses, including of birds that are internationally significant. Where are all known migration corridors or movement pathways? Please conduct necessary baseline studies to determine migratory bird routes, especially in areas where such routes may be less known. What percentage of the population of each species may use each route? How might this corridor and also the development that may be spawned such as industrial wind farms on remote ranges affect population viability? We are very concerned at the failure of the EIS to conduct necessary analysis to understand migration patterns in this little-studied landscape.

Issue Number: PP-WY-Gateway-13-05-46
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Please provide mapping and analysis that overlays Dark Night Sky areas with the path. How will this project adversely impact the Darkness of Night Skies? This has not been addressed, nor facility lighting minimized. We protest the lack of dark skies analysis, and lack of necessary measures to minimize light pollution, including potential transformer/ substation and other sites that may be lighted and linked development, and the lethal impacts such lighting may have on migratory birds and bats, as well. …This describes millions of birds being killed across the U.S. at transmission towers. The power line, its upright towers near ancillary facilities with night lights as well as potentially linked development pose a significant and unassessed and unmitigated risk that will very likely result in significant "take" of migratory birds. We protest the failure to address and mitigate these serious issues.

Issue Number: PP-WY-Gateway-13-05-50
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Why does mapping only show Wyoming leks, and not Idaho leks? Without mapping this, it is impossible to understand the location of the leks, or the impact of the project.

Issue Number: PP-WY-Gateway-13-05-53
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
None of the mapping shows all the access routes. So how can the impacts, including such impacts as downstream sedimentation, really be understood, analyzed, and mitigated?

Issue Number: PP-WY-Gateway-13-05-59
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Important Bird Areas
The consideration of biological information is so poor that the Important Bird Areas of the South Hills and the important Ferruginous hawk areas and their surroundings are not even shown.

Issue Number: PP-WY-Gateway-13-05-61
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
Portions of the route north of the Snake River would affect slickspot peppergrass. Since access route and new and expanded roading maps have not been provided, it is impossible to understand the degree and severity of impacts, which are likely to be very significant.

Summary

The BLM has failed to take the "hard look" required by the NEPA because it did not use or convey adequate information for its analysis in the PRMPA/FEIS, such as providing:

- a map identifying project construction disturbance areas and access roads;
- baseline information provided on the existing use and disturbance of livestock and related facilities;
- fire history baseline map;
- necessary baseline studies to determine migratory bird routes;
- mapping and analysis that overlays Dark Night Sky areas;
- leks in the State of Idaho; and
- Important Bird Areas of the South Hills and the important Ferruginous hawk areas.

Response

Much of the information that the protester cites as being inadequate or nonexistent in this EIS is related to the project itself and not the proposed plan amendments. For example, the protester claims that the FEIS failed to identify project construction disturbance areas and access roads on a viewable map, provide adequate baseline information related to fire history, specific transmission line development issues related to migratory birds, existing livestock grazing disturbances, and light pollution from the transmission lines themselves. The land use plan amendments only address nonconformance with visual resource, historic trail and associated historic landscape, and Special Management Area management objectives. As such, only issues associated with the visual resource, historic trail and associated historic landscape, and Special Management Area management objectives can be protested as part of this land use plan amendment protest process.

The BLM has provided for an adequate baseline of data in the FEIS and has met its obligation under NEPA to take a “hard look” at the environmental impacts of the proposed action and alternatives. The baseline data in Chapter 3 and various appendices in the FEIS are sufficient to support the environmental impact analysis resulting in approval of the proposed project and adoption of associated land use plan amendments. The proposed land use plan amendments are presented as a component of the preferred alternative. The effects of approving the proposed land use plan amendments are incorporated into the overall impact analysis for the project. Specifically, in regard to leks in the State of Idaho, those are identified in Figure E.11-3 (Appendix E) of the PRMPA/FEIS. The BLM utilized the available data to provide an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives.

Best Science Available

Issue Number: PP-WY-Gateway-13-05-44
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
In Scoping, we asked that you use analyses as found in ICBEMP and other current science-based assessments such as the ICBEMP Wisdom et al. 2002 species examination and other ICBEMP documents, also Nevada Wisdom et al. 2003 assessment, and the Wyoming Basin Environmental Analysis (WBEA) to examine the full range of ecological threats and habitat fragmentation that currently exists for other sensitive species, too.

Summary

The FEIS did not use analyses from the following science-based assessments that were recommended in scoping:

- ICBEMP Wisdom *et al.*, 2002 species examination
- Nevada Wisdom *et al.*, 2003 assessment
- Wyoming Basin Environmental Analysis (WBEA)

Response

The Wisdom *et al.*, (2002) paper has been referenced in section 3.11 to the degree that it is applicable to a transmission line EIS. Gateway PA/FEIS, L-27. The Wisdom *et al.*, (2003) assessment was not used to create the habitat service metric for the Gateway West Habit Equivalency Assessment (HEA) for multiple reasons:

First, Wisdom *et al.*, (2003) describe procedures to evaluate threats to habitat at a scale and resolution that is appropriate for regional planning, but is inappropriate for the analysis of local project-level effects. The datasets and procedures described by Wisdom *et al.*, (2003) are intended for application at large spatial extents (>100,000 hectares) with a 90 m2 pixel resolution. The multi-agency working group assigned to the Gateway West HEA decided that a 30 m2 pixel resolution was needed to capture adequate habitat and project detail for the Gateway West HEA. A habitat service metric based on the procedures described in Wisdom *et al.*, (2003) would not be able to detect most local habitat service losses due to the project or local habitat service gains due to the habitat improvements proposed for mitigation.

Second, Wisdom *et al.*, (2003) use coarse species range data, which is efficient for a regional analysis, but does not utilize the best available data for sage-grouse at the local scale. Wisdom *et al.*, (2003) describe, "Importantly, our definition of a species' range says nothing about the spatial structure of the population inside each polygon, except to assume that one interacting population exists. This definition contrasts strongly with distribution maps of populations, often generated from documented occurrences of a species. Our definition also differs strongly from

maps of predicted distribution of habitats for species, such as those produced by GAP analysis (Scott et al. 1993)" (Wisdom *et al*., 2003, page 19). Again, the scale of the data used by Wisdom *et al.,* (2003) is not appropriate to the HEA. The multi-agency working group for the Gateway West HEA insisted on using lek count data as an indicator of habitat use at a local scale.

Finally, Wisdom *et al*., (2003) do not provide methods for scoring of habitat services. They provide methods for scoring habitat threats, which is not a surrogate for habitat services.

There are similarities between the methods used to develop the habitat service metric for Gateway West and the procedures described by Wisdom *et al*., (2003). Specifically, the procedures to estimate species habitat requirements are nearly identical to the process used by the multi-agency working group for the Gateway West HEA. Wisdom *et al*., (2003) describe an example in which habitats for sagebrush-associated species are designated from land cover types using the same process as was used for the HEA: "First, identify the vegetation coverage to be used, in this case the 90-m sagestitch map. Second, associate each species with the cover types known or considered to be source habitats, based on literature review and an evaluation by species experts with specialized knowledge of each taxon (e.g., birds). … Last, identify other habitat and non-habitat factors beyond source habitats that also could affect species' persistence, such as population size or presence of roads (e.g., Lee 2000, Marcot *et al*., 2001)" (Wisdom *et al.*, 2003, p. 21).

The evaluation of threats is also similar between Wisdom *et al.,* (2003) and the project effects modeled for the Gateway West HEA. Wisdom *et al*., (2003) describe a plausible modeling approach for representing increased predation risk near transmission lines that was also discussed by the multi-agency working group that developed the HEA. Wisdom *et al.,* (2003) identify critical assumptions for estimating such risks and recommend that, "Species experts can review and refine these assumptions, and provide supporting empirical rationale and evidence for the approach taken" (Wisdom *et al*., 2003, page 24). This review and refinement process was used in the development of the Gateway West HEA, in which the subject experts (the multi-agency working group) carefully considered and discussed all the species threats modeled. In the case of the Gateway West HEA, the subject experts decided that there was not enough evidence to support the quantitative modeling of transmission line effects on sage-grouse habitat.

In regards to the use of the WBEA for sage-grouse analyses, a HEA model was developed by an inter-governmental working group, including the U.S. Fish and Wildlife Service, which incorporated input from the academic community, and utilizes the best available science. The response to comments document provided the following response by the project proponents to explain why the WBEA was not used in the HEA model:

"The sage-grouse habitat model created by the USGS for the Wyoming Basins Ecoregional Assessment (WBEA Model; Hanser *et al*., 2011) was considered for use in the HEA. It was determined that while the WBEA model may be useful to characterize baseline habitat quality and characterize habitat injury (the left hand side of the HEA equation), it was unable to quantify the benefits of the habitat improvements proposed as mitigation (the right hand side of the HEA

equation). This imbalance makes it a poor candidate for a habitat service metric for the Project HEA, which must balance habitat service losses and gains with the same metric." Gateway PA/FEIS, p. L-265.

The HEA models were not determined to be required for other ESA species (beyond the sage-grouse, which is a candidate species under the ESA) by the inter-governmental working group due to the extent of potential impacts to these other ESA species, as well as the currently accepted avoidance, minimization, and mitigation measures for these ESA species. In addition, the measures implemented to protect the sage-grouse (as identified during the HEA and mitigation process) would be applicable to all sage-brush dependent species (not just the sage-grouse). The proponents are also required to provide compensatory mitigation for impacts to wetland habitats per the regulations outlined in Section 401 and 404 of the Clean Water Act, which mitigate for impacts to wetland dependent species. The agencies have also required that the applicants provide compensatory mitigation for impacts to forested habitats, in order to mitigate for impacts to forest dependent species. As a result, the agencies have required that the applicants fully mitigate for all impacts to habitats utilized by wildlife species (not just the sage-grouse).

Public Participation

Issue Number: PP-WY-Gateway-13-05-10
Organization: Western Watersheds Project
Protestor: Katie Fite

Issue Excerpt Text:
The mapping in the EIS appendices is often unclear, and it also uses the same purple color to show the "Alternative Route not Studied in Detail" and WWEC segments resulting in confusion and a viewer not able to clearly distinguish what is being depicted.

Summary

The mapping in the EIS appendices is often unclear in its depiction of alternate routes and WWECs.

Response

The mapping in Appendix A of the DEIS was unclear because the same purple color was used to depict the WWEC and “Alternative Routes not Studied in Detail.” The WWEC were distinguished in the DEIS by using thick, dashed purple lines. Maps in the Final EIS (FEIS) were revised to more clearly show the location of the WWECs. In the FEIS, the alternative routes not studied in detail were removed from the maps in Appendix A and placed in a separate

appendix, Appendix O. One of the purposes of the public meetings was to provide additional detail on the routes to the public.

Visual Resource Management

Issue Number: PP-WY-Gateway-13-01-13
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
Decision #6051 states that a visual corridor extending up to 1 mile on either side of the Sublette Cutoff and Slate Creek Cutoff would be designated through VRM Class II areas north of U.S. Highway 180 and east of Slate Creek Ridge in consideration of NHT views. Gateway West FEIS at App. F 1-10. The Coalition supports a reclassification to VRM Class III for all routes, including the preferred route located north and east of U.S. Highway 30 and west of the Hams Fork River. Ex. 6, at 7-8; Ex. 7 at 8.
"The approved VRM objectives shall result from, and conform with, the resource allocation decisions made in the RMPs." BLM Manual 8400.0-6A.2. BLM cannot enforce a VRM Class II designation if it conflicts with the underlying resource allocation. As stated by the IBLA, BLM must expressly alter the VRM classification to the level which would be consistent with approved land use determinations. SUWA, 144 IBLA 70, 84 (1998).

The objective of VRM Class II is to "retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape." BLM Manual H-841 0-1.v.B.2. The existing 345kV transmission lines running through the area north and east of U.S. Highway 30 do not comply with VRM Class II, nor will the Gateway West Transmission Line.

Issue Number: PP-WY-Gateway-13-01-19
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
2. Decision #5010
BLM proposed to permit a one-time allowance for the Gateway West project to cross the Sublette Cutoff in Section 11 of T23N, R118W. Gateway West at App. F 1-15. According to BLM policy, BLM cannot permit a one-time violation of the VRM class for this portion of the proposed transmission line route, because it is a permanent structure that alters the context and historic values, to the extent that they exist anymore. See NHPA rules, 36 C.F.R. part 800 (construed to protect specific trail features and their associated historic landscape); E.G. 13195, "Trails for America in the 21st Century," 66 Fed. Reg. 7391 (2001) (requiring federal agencies to ensure trail corridors are protected and that trail values remain intact); BLM IM No. WY-2002-001.

Summary

According to policy, the BLM cannot permit a one-time violation of the VRM Class for the Gateway West project to cross the Sublette Cutoff in section 11 of T23N, R118W, because it is a permanent structure that alters the context and historic values, to the extent that they exist anymore. The existing 345kV transmission lines running through the area north and east of U.S. Highway 30 do not comply with VRM Class II, nor will the Gateway West Transmission Line. The BLM must expressly alter the VRM classification to the level which would be consistent with approved land use determinations.

Response

It is first important to note that the legal description that the protester cites is incorrect. The proposed line will not cross Section 11 of T. 23 N., R. 118 W. As stated in the FEIS for section 4 of the route: "The proposed route would cross within 3 miles of eligible NRHP sites whose viewsheds are protected under the Kemmerer RMP [as VRM Class II]; thus, the Proposed Route does not conform to the Kemmerer RMP. An amendment to the Kemmerer RMP has been proposed that would allow the Project within these sites' viewshed" (FEIS, page 3.17-76). This amendment, as described in the FEIS, would only be a one-time allowance for this project and the classification from VRM Class II to III for this linear area would not be made. It is the BLM's intent to continue managing the entire area under the VRM Class II allocation, due to the high landscape quality in this area, even after the project is completed. The Nancy Hill grave site, White Hill Trail Monument, and the Oregon National Historic Trails (NHT) corridor are just a few of the nodal area viewsheds that the BLM wants to continue managing for under VRM Class II.

The BLM believes that with appropriate mitigation applied to the site-specific authorization; this one-time allowance will still allow the agency to continue managing this area for the VRM Class II objective. Generally speaking, in locations where the transmission line is just inside a VRM Class II boundary or crosses an isolated tract of public land with a Class II designation, the BLM has proposed revising the designation from Class II to Class III. However, where the line passes through the bulk of a Class II area (and avoiding the area has been determined not practical by the alternatives analysis in the EIS), the BLM has proposed the one-time allowance. The EIS analysis shows that following the existing transmission lines (preexisting the VRM Class II designation), is a better multiple-use decision than siting the alignment in the VRM Class II area away from existing infrastructure. The Class II designation is integrated with cultural resource landscape values. The Historic Trails Treatment Plan will ensure appropriate mitigation is applied, addressing both the visual and cultural landscape impacts.

Protection of the values for which NHT are designated is part of the BLM mission, as called for in Executive Order 13195, Section 1(b). The FEIS at F.1-15 – F.1-17 describes mitigation measures proposed and designed, through the NHPA Section 106 process, to protect the values for which the Sublette Cutoff segment of the NHT system was designated. Mitigation design features will eliminate long-term ground disturbance and minimize visual impacts within the proposed project corridor in the vicinity of the Sublette Cutoff trail Segment in Section 11 of T23N, R118W. Implementation of these mitigation measures is designed to reduce impacts to negligible levels consistent with visual resource management Class II designation within the area.

National Scenic and Historic Trails

Issue Number: PP-WY-Gateway-13-01-17
Organization: CE Brooks & Associates, PC
Protestor: Constance Brooks

Issue Excerpt Text:
The Coalition objects to the classification of the trail segments near the existing transmission lines as Class 1 or 2, because most have lost their physical integrity and do not qualify for protection under NHPA. See How to Apply the National Register Criteria for Evaluation, National Register Bulletin 51, at 44-47 (1995) (when roads or trails are mostly invisible or difficult to follow, then they have not retained the essential physical features necessary to meet the criteria for integrity.). Nor are these segments appropriate for NHT designation based on the NPS criteria.

For National Historic Trails, the management corridor need not be continuous through the planning area. A National Historic Trail Management Corridor will include Federal Protection Components, including the high potential historic sites and high potential route segments identified in the trailwide Comprehensive Plan. The corridor will include those areas that meet the criteria established in the NTSA; the designated route that contains evidence of history, including artifacts and remnants; National Register eligible and/or listed properties; and proposed supporting development actions or uses, such as access trails, overlooks, and interpretive sites. Ex. 9, BLM Manual 6280, Sec. 4.2., D.2.iv; see also How to Apply the National Register Criteria for Evaluation, National Register Bulletin 51, at 44-47 (1995). Indeed, the California Trail Comprehensive Management and Use Plan FEIS shows that there are no high potential trail segments or high potential sites located in the immediate vicinity of the Coalition's proposals. Ex. 10, at 14, 233, 273. Therefore, the Coalition recommends that BLM reclassify the relevant viewshed classifications to Class III segments within the portion of the planning area south of Cokeville, WY. In response to the Coalition's comment that BLM should not even consider historic trail segments which no longer have any physical evidence of the trail, BLM responded that it "does consider that these trails could be eligible for listing on the National Register of Historic Places until studies show otherwise." Gateway West FEIS at App. L.

Summary

The trail Segments near the existing transmission lines were incorrectly classified as Class 1 or 2. Most of these segments have lost their physical integrity and do not qualify for protection under the National Historic Preservation Act of 1966, as amended (NHPA), nor are the segments appropriate for NHT designation based on the NPS criteria.

Response

The Sublette Cutoff and Slate Creek Cutoff trails have been determined, with each State Historic Preservation Office concurrence, as eligible for the National Register of Historic Places (NRHP), and thus must be considered in the Gateway PA/FEIS. The methods used to make this determination of eligibility are described in detail in section 3.3.2.5 of the FEIS and followed standard BLM protocol for determination of NRHP eligibility.