

*Director's Protest Resolution Report*

**Rawlins Proposed Resource  
Management Plan  
Amendment and Final  
Environmental Assessment  
for Visual Resource  
Management and Blowout  
Penstemon ACEC (Rawlins  
PRMPA/EA)**

October 3, 2018



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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.

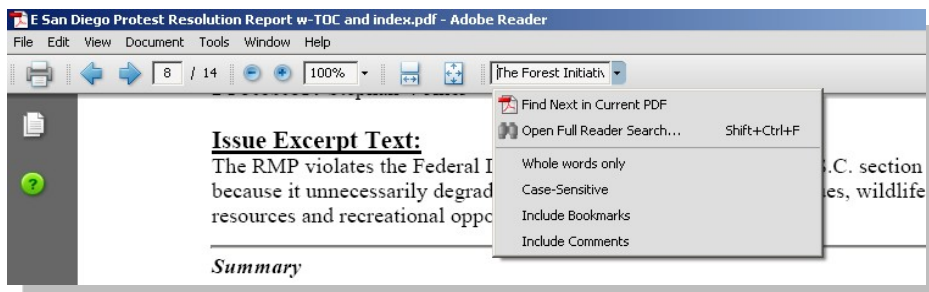
### Report Snapshot

The diagram shows a report layout with several sections and callouts:

- Topic heading**: Points to the heading "Issue Topics and Responses".
- Submission number**: Points to the heading "NEPA".
- Issue Number**: Points to the text "PP-WY-RAWLINS-18-01".
- Organization**: Points to the text "The Forest Initiative".
- Protesting organization**: Points to the text "The Forest Initiative".
- Protester's name**: Points to the text "John Smith".
- Direct quote taken from the submission**: Points to the text "Rather than analyze these potential impacts, as required by NEPA, the BLM postpones analysis of renewable energy development projects to a future case-by-case analysis."
- General statement summarizing the issue excerpts.**: Points to the text "The BLM inadequately analyzes NEPA for renewable energy projects in the PRMP/FEIS."
- The BLM's response to the summary statement.**: Points to the text "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 in the order protest letters were received by the BLM.
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

<b>BA</b>	Biological Assessment	<b>IB</b>	Information Bulletin
<b>BLM</b>	Bureau of Land Management	<b>IM</b>	Instruction Memorandum
<b>BO</b>	Biological Opinion	<b>MOU</b>	Memorandum of Understanding
<b>CEQ</b>	Council on Environmental Quality	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>CFR</b>	Code of Federal Regulations	<b>NHPA</b>	National Historic Preservation Act
<b>CWA</b>	Clean Water Act	<b>NHT</b>	National Historic Trail
<b>DEIS</b>	Draft Environmental Impact Statement	<b>NOA</b>	Notice of Availability
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>NOI</b>	Notice of Intent
<b>DOI</b>	Department of the Interior	<b>NRHP</b>	National Register of Historic Places
<b>EA</b>	Environmental Assessment	<b>PRMPA</b>	Proposed Resource Management Plan Amendment
<b>EIS</b>	Environmental Impact Statement	<b>RMZ</b>	Recreation Management Zone
<b>EO</b>	Executive Order	<b>ROD</b>	Record of Decision
<b>EPA</b>	Environmental Protection Agency	<b>ROW</b>	Right-of-Way
<b>ESA</b>	Endangered Species Act	<b>SDNM</b>	Sonoran Desert National Monument
<b>FEIS</b>	Final Environmental Impact Statement	<b>SHPO</b>	State Historic Preservation Office
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>THPO</b>	Tribal Historic Preservation Officer
<b>FO</b>	Field Office (BLM)	<b>TMC</b>	Trail Management Corridor
<b>HPMP</b>	Historic Properties Management Plan		

## Protesting Party Index

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Kent Connelly	Coalition of Local Governments	PP-WY-RAWLINS-18-01	Denied / Issues and Comments
Nada Culver / Dan Heilig / Connie Wilbert / Shaleas Harrison	The Wilderness Society / Wyoming Outdoor Council / Sierra Club WY Chapter / Wyoming Wilderness Ass'n	PP-WY-RAWLINS-18-02	Denied / Issues and Comments

## **Issue Topics and Responses**

### ***NEPA – Baseline Data***

**Issue Number:** PP-WY-RAWLINS-18-02

**Organization:** The Wilderness Society, et al.

**Protester:** Nada Culver, et al.

#### **Issue Excerpt Text:**

BLM's inventory of lands with wilderness characteristics is not compliant with FLPMA and related BLM guidance, ignores substantial public comment, and results in a flawed NEPA analysis.

The Proposed Rawlins Resource Management Plan Amendment and Environmental Assessment for Visual Resources (Rawlins PRMPA/EA) does not comply with either the Federal Land and Policy Management Act (FLPMA) or current BLM policy for inventory and management of lands with wilderness characteristics (LWC), as set forth in BLM Manuals 6310 and 6320.

BLM cannot adequately analyze environmental impacts in accordance with NEPA without establishing baseline conditions.

BLM's inventory of lands with wilderness characteristics is incomplete and inaccurate, as we have thoroughly discussed with BLM on several occasions. Therefore, the agency has not adequately established a baseline to use in evaluating the effects of management alternatives on the LWC resource.

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#### **Summary:**

The Proposed Rawlins Resource Management Plan Amendment and Environmental Assessment for Visual Resources (Rawlins PRMPA/EA) fails to establish a baseline to evaluate effects of management alternatives in regards to Lands with Wilderness Characteristics.

#### **Response:**

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes.

Existing conditions regarding Lands with Wilderness Characteristics are described in the Rawlins PRMPA/EA, Chapter 3, Section 3.20, p. 3-32. The BLM evaluated Lands with Wilderness Characteristics as required by FLPMA and BLM Manuals 6310 and 6320. Additionally, Table 4-11 in the PRMPA/EA summarizes VRM classes for all alternatives for Lands with Wilderness Characteristics. Out of 104 potential Lands with Wilderness Characteristics units surveyed by the BLM in 2012, only nine (9) met the criteria for Lands with Wilderness

Characteristics, as discussed in the PRMPA/EA, Chapter 4, pp. 28-29.

As stated in the PRMPA/EA Comment and Response Table, Appendix C-49 through C-90, management decisions in regards to Lands with Wilderness Characteristics are outside the scope of this amendment. The Lands with Wilderness Characteristics inventory was completed in 2012. The BLM added the inventory to the Rawlins Field Office website and conducted an additional comment period for the public. This was done to allow the public the opportunity to provide additional comments on possible effects to Lands with Wilderness Characteristics as a result of the proposed VRM changes (see Appendix C, p. C-56). The BLM will manage Lands with Wilderness Characteristics in accordance with the Rawlins Field Office Resource Management Plan (RMP) and Record of Decision (ROD) approved on December 24, 2008. The BLM does consider the most recent Visual Resource Inventory (VRI) and RMPs for adjacent field offices in the formulation of alternatives for this PRMPA/EA. Additionally, any units brought up by the public as not being accurate will be re-evaluated as time and resources permit (See the PRMPA/EA, Appendix C, p. C-58).

The BLM complied with NEPA's requirement to conduct a Visual Resources Inventory to establish a baseline to evaluate the effects of management decisions. As discussed above, and in the Rawlins PRMPA/EA, management decisions regarding Lands with Wilderness Characteristics are outside the scope of the Rawlins PRMPA/EA.

## ***NEPA – Range of Alternatives***

**Issue Number:** PP-WY-RAWLINS-18-02

**Organization:** The Wilderness Society, et al.

**Protester:** Nada Culver, et al.

### **Issue Excerpt Text:**

Because BLM has not considered an alternative that would avoid harm to lands with wilderness characteristics, the Proposed RMP-A/EA lacks a reasonable range of alternatives. NEPA generally requires the lead agency to conduct an alternatives analysis for “any proposal which involves unresolved conflicts concerning alternative uses of available resources” (42 U.S.C. § 4332(2)(E)). The regulations further specify that the agency must “rigorously explore and objectively evaluate all reasonable alternatives” including those “reasonable alternatives not within the jurisdiction of the lead agency” so as to “provid[e] a clear basis for choice among the option”.

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### **Summary:**

The Rawlins Proposed Resource Management Plan Amendment and Environmental Assessment (Rawlins PRMPA/EA) lacks a reasonable range of alternative, which ultimately fails to consider an alternative that would avoid harm to Lands with Wilderness Characteristics.

### **Response:**

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action: “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.’” BLM NEPA Handbook, H-1790-1, at 50 (citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); *see also* 40 C.F.R. § 1502.14.

An alternative may be eliminated from detailed study if it is determined not to meet the purpose and need for the proposed action; determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3). The agency must also briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Rawlins PRMPA/EA and that address resource issues identified during the scoping and comment periods. The alternatives analyzed in the Rawlins PRMPA/EA 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.

In Chapter 2 of the PRMPA/EA, the BLM describes four amendment alternatives and the considerations and requirements for developing those alternatives. Because the purpose and need is



focused on the management of Visual Resources and the proposed expansion of the Blowout Penstemon ACEC, the range of alternatives is directed at those resources only. As such, it does not analyze the subsequent impacts to other resources from the proposed amendments. Indeed, the PRMPA/EA further states in Chapter 3, Section 3.20, that an inventory for wilderness characteristics was completed in 2012 for the Rawlins Field Office. Nine (9) units were found to have wilderness character totaling 74,662 acres. As described in the PRMPA/EA, considering new management direction for those lands with wilderness characteristics “is outside the scope of this issue-targeted Plan Amendment” (Rawlins PRMPA/EA, p. 3-32). Those areas with wilderness character in the Rawlins Field Office will continue to be managed in accordance with the 2008 Rawlins approved RMP and associated ROD.

The BLM considered a reasonable range of alternatives in the Rawlins PRMPA/EA in full compliance with NEPA.

## ***NEPA – EIS Tiering***

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The VRM RMPA and EA does not support a FONSI because the changes to the VRM Class designations require major changes in resource allocations for several hundred thousand acres in the RMP area and this would significantly impact oil and gas development and livestock management.

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The BLM tries to tier to a 10-year old FEIS that was partially remanded to the BLM to amend its VRM Class objectives analysis. It is inappropriate for the BLM to rely on a 10- year old FEIS. See Or. Natural Desert Ass'n, 953 F. Supp. at 1147-48 (The tiering of a 14-year old general plan that contains no site-specific information concerning the impact of grazing on the protected values of a river area cannot cure a deficient EA.). It is even more inappropriate when the environmental impact analysis it relies upon is from a portion of the FEIS that was remanded and found deficient for failing to consider the underlying resource allocations.

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### **Summary:**

The BLM failed to perform a sufficient NEPA analysis for the Rawlins Proposed Resource Management Plan Amendment (PRMPA) by preparing an Environmental Assessment (EA) that does not address the significant impacts that require an EIS, and by tiering to an EIS that was remanded and found deficient.

### **Response:**

The visual resources portion of the planning decision for the Rawlins RMP (2008) was remanded in order to be fully addressed in a new planning effort. As a result, the BLM conducted a new NEPA analysis in this new plan amendment.

The BLM's NEPA Handbook, page 27, states:

*You may tier to a NEPA document for a broader action when the narrower action is clearly consistent with the decision associated with the broader action. In the tiered document, you do not need to reexamine alternatives analyzed in the broader document. Focus the tiered document on those issues and mitigation measures specifically relevant to the narrower action but not analyzed in sufficient detail in the broader document.*

Additionally,

*“You may prepare an EA for an action with significant effects, whether direct, indirect or cumulative, if the EA is tiered to a broader EIS which fully analyzed those significant effects...[i]f there are new circumstances or information that would result in significant effects of an individual action not considered in the EIS, tiering to the EIS cannot provide the necessary analysis to support a FONSI for the individual action (see sections 7.1, Actions Requiring an EA, and 8.4.2, The Finding of No Significant Impact (FONSI))”*  
(BLM NEPA Handbook, p. 27).

The BLM prepared an EA for this amendment because analysis shows that the action alternatives would have no new significant effects beyond those previously analyzed in the BLM Rawlins RMP and EIS and Record of Decision (ROD), approved 24 December 2008, to which this EA is tiered, and is in conformance with the RMP and ROD. The Area of Critical Environmental Concern (ACEC) Preferred Alternative (Action Alternative 4) and the VRM Preferred Alternative (Action Alternative 4), with modifications, do not constitute a major federal action with significant effects on the human environment. Therefore, an Environmental Impact Statement (EIS) is not necessary and will not be prepared. This finding is based on the Field Office’s consideration of the Council of Environmental Quality’s (CEQs) criteria for significance (40 CFR 1508.27), and as defined in Section 7.3 of the BLM’s NEPA Handbook (Manual H-1790-1, page 70), both with regard to the context and to the intensity of impacts described in the EA and supporting documents.

In response to protests the BLM received on the Rawlins Proposed RMP/FEIS in 2008, the BLM Director’s Office remanded the Visual Resource Management (VRM) decisions to the BLM State Director to address in a separate future amendment process to determine VRM Class objectives. The RMP protest resolution process also resulted in the BLM committing to address five proposed ACECs in a new planning effort at the earliest opportunity. The focus of the environmental analysis for this plan amendment is to analyze the effects of the proposed VRM and ACEC management alternatives. Because the eventual VRM and ACEC decisions may impact the implementation of the existing Rawlins RMP decisions for other resources and resource uses, the environmental analysis for this planning effort addresses these management decisions in relationship to these other resources. These actions would not have international, regional, or statewide consequences. The Finding of No Significant Impact (FONSI) addressed the 10 Significance Criteria described in 40 CFR 1509.27(b) (1-10), which were used to evaluate the intensity of the effects described in the EA (See the FONSI for the Rawlins PRMPA/EA dated December 12, 2017).

The BLM has made no substantial changes to the proposed plan that are relevant to environmental concerns in the Rawlins PRMPA/EA. The BLM has determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts. The BLM documented its reason for this determination in the Rawlins PRMPA/EA; therefore, the BLM appropriately complied with NEPA.

## ***Consistency with State and Local Plans***

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

As discussed supra, BLM's VRM class designations and expansion of the Blowout Penstemon/Ferris Dunes ACEC will eliminate future oil and gas development in previously successful drilling areas located in the western and northwestern portion of the Rawlins Field Office. Not only is this contrary to BLM VRM policy, but also the local land use policies. Using VRM Class II designations to protect LWCs is also inconsistent with SWCCD local plans that discourage the use of informal policies to restrict energy development. These designations will also have an adverse impact on other resources, including livestock grazing and wildlife habitat, contrary to local land use policies that heavily support and rely upon agriculture and ranching for the local economy. Management actions that prevent livestock grazing, restrict range improvements, and limit the ability to complete vegetative treatment projects is inconsistent with the goals and objectives of the Sweetwater County, SWCCD, and LSRCD land use plans.

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### **Summary:**

The Proposed Rawlins Resource Management Plan Amendment and Environmental Assessment for Visual Resources (Rawlins PRMPA/EA) is inconsistent with State and Local Plans because:

- it uses VRM Class II designations to protect Lands with Wilderness Characteristics, which is inconsistent with Sweetwater County Conservation District (SWCCD) local plans; and
- its management actions prevent livestock grazing, restrict range improvements, and limit the ability to complete vegetative treatment projects, and therefore are inconsistent with the goals and objectives of the Sweetwater County, SWCCD, and LSRCD land use plans.

### **Response:**

Section 202 (c)(9) of FLPMA requires that "land use plans of the Secretary [of the Interior] under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." The BLM's planning regulations implementing FLPMA provide that RMPs and amendments must be consistent with "officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands" (43 CFR. 1610.3-2(a)).

In accordance with this direction, the BLM has given consideration to state, local, and Tribal plans that are germane to the development of the Rawlins VRM Amendment. The BLM has worked closely with state, local, and Tribal governments during preparation of the Rawlins VRM Amendment. Chapter 5.0 describes coordination that has occurred throughout the development of the Rawlins VRM Amendment.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 5,

Section 5.1.2. The BLM satisfied consistency requirements in accordance with FLPMA in the preparation of the Rawlins PRMPA/EA.

## *Visual Resources*

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The BLM continues to violate BLM Manual 8400, BLM Handbook 8410-1, and the holding of the Interior Board of Land Appeals (IBLA) in Southern Utah Wilderness Alliance, 144 IBLA 70 (1998), and the BLM Director's Protest Resolution Report for the Rawlins RMP by ignoring the underlying resource allocations when designating VRM Classes to public lands in the Rawlins Field Office. The lands proposed for VRM Class II designation under the VRM RMPA and EA includes lands that have been open to oil and gas leasing, that have existing oil and gas leases, and that are made available for livestock grazing.

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The VRM RMPA and EA will place additional restrictions on the development and utilization of energy resources in the project area, and therefore, violate the existing policy of the BLM. Graff , 822 F. Supp. 2d at 34. The VRM RMPA and EA unnecessarily restricts oil and gas development in areas that have never been closed to mineral development and in areas where active oil and gas leases are present. See infra Section V.C.1. It also places new burdens on all oil and gas development and, in many cases, may prevent development from occurring in VRM Class II designated areas. See infra Section V.C.1. The VRM Class II designations violates not only BLM's own policy and IBLA precedent, but is also inconsistent with the direction of the new administration as described in the Executive Order 13783, Secretarial Order 3349, and the Department of Interior's Final Report regarding its review of agencies actions that burden energy development. These policies call for the review of BLM's VRM RMPA and EA and further analysis of the associated impacts on energy development.

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The Coalition's protest of the VRM Class designations was granted and remanded for reevaluation. Ex. 2, BLM Director's Protest Resolution Report at 139-140, 142 (Dec. 24, 2008). "To comply with VRM policy, the Rawlins Field Office will undertake an effort to update the inventory of visual resources within the planning areas . . . Using this updated inventory as a baseline, VRM class designations will be considered and analyzed in a future VRM-targeted EIS for the planning area." Id. at 140. However, the BLM unlawfully limits the Director's remand to only requiring it to update its visual resource inventory while continuing to ignore the underlying resource allocations.

The BLM continues to ignore the underlying resource allocations and expand upon the errors it made in the 2008 proposed VRM class designations.

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**Summary:**

The Rawlins Proposed Resource Management Plan Amendment and Environmental Assessment (Rawlins PRMPA/EA) is erroneous because:

- it ignores the underlying resource allocations when designating visual resource management (VRM) Classes to public lands;
- the VRM Class II designations/resource allocations violate not only BLM's own policy and IBLA precedent, but is also inconsistent with the policies and priorities on energy development; and
- the BLM continues to ignore the underlying resource allocations and expand upon the errors it made in the 2008 proposed VRM class designations.

**Response:**

In accordance with FLPMA, the BLM's Land Use Planning Handbook (H-1601-1 Appendix C, p. 11), and the BLM Visual Resource Manuals 8400.02, 8400.06.A.2 and 8400.06.A.4 respectively, the BLM is required to protect the quality of scenic resources on public lands and manage scenic resources in accordance with the VRM objectives (i.e., management classes). The sections of FLPMA relevant to visual and scenic resources are:

- Section 102(a)(8) [43 USC 1701(a)(8)], which declares that it is the policy of the United States that "...public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values";
- Section 103(c) [43 USC 1702(c)], which identifies "scenic values" as one of the resources for public management;
- Section 201(a) [43 USC 1711(a)], which states that "the Secretary shall prepare and maintain on a continuing basis and inventory of all public lands and their resources and other values (including...scenic values)"; and
- Section 505(a) [43 USC 1765(a)], which mandates that "Each Right-of-Way shall contain terms and conditions which will...minimize damage to the scenic and esthetic values."

The BLM must manage visual resource values through the VRM system which designates VRM management classes based on an inventory of visual resources and management considerations for other land uses. This process is described in detail in BLM Manual 8400, BLM Handbook H8410-1, and BLM Handbook H-8341-1.

Sections 2.2.1.1 and 3.16 of the Rawlins PRMPA/EA state the baseline visual resource conditions for the planning area, incorporating by reference the information used in the 2008 Rawlins Approved RMP. A Visual Resource Inventory (VRI) was conducted in the summer of 2010 and completed in 2011 to determine the visual values within the planning area of the Rawlins Field Office. The methodology for the inventory is further described in Section 3.16 (Rawlins PRMPA/EA, pp. 2-2 to 2-6 and 3-23 to 3-28).

Chapter 4, Section 4.2 of the Rawlins PRMPA/EA states that a portion of the resources in the Rawlins Field Office were not analyzed further due to that fact that those areas would not be directly impacted by VRM class alternatives. Those resources adhere to the management decisions made in the 2008 Rawlins Approved RMP, and include air quality, paleontology, socioeconomics, vegetation, water quality, watershed, soils, wild horses, fish and wildlife (Rawlins PRMPA/EA, p. 4-3).

Potential impacts to resources such as oil and gas development are covered in section 4.2.7. Section 4.2.7.4 states that nearly all of areas that have high to moderate oil and gas potential are within VRM III and VRM IV designations, thus requiring fewer mitigation measures to meet VRM class objectives (Rawlins PRMPA/EA, p. 4-12). Additionally, VRM II does not restrict oil and gas development from occupying the surface; however, it does require proposed actions to conform to the VRM class II objective. Finally, the PRMPA/EA does recognize valid existing rights (see Section 1.8.1, General Planning Criteria) and does not propose any management actions that would violate valid existing rights.

The VRM analysis and proposed decisions in the Rawlins PRMPA/EA appropriately conform to all relevant laws, regulations, and policies, and do not propose to violate valid existing rights.



## *Greater Sage-Grouse*

**Issue Number:** PP-WY-RAWLINS-18-02

**Organization:** The Wilderness Society, et al.

**Protester:** Nada Culver, et al.

### **Issue Excerpt Text:**

BLM's Proposed Visual Resource Management prescriptions for the Greater Sage-Grouse Core areas undermine Greater Sage-Grouse management included in the approved Wyoming Greater Sage-Grouse RMP Amendments and the Wyoming Sage Grouse Executive Order.

As acknowledged in the Proposed RMP-A, the protections imposed on activities under VRM II are more stringent than those imposed under VRM III; nonetheless, the BLM has applied VRM III to Core Areas. In order to safeguard PHMA and related Core Areas, BLM should be applying more protective VRM classifications to Core Areas.

Requested Remedy: In order to comply with the commitments made in the 2015 Sage-grouse Plans, the Wyoming ARMPA and the Wyoming SGEO, BLM should apply more protective VRM classifications to Core Areas.

The Rawlins Resource Management Plan Amendment and Environmental Assessment are in error for the reasons stated in this protest, generally because the decisions would be based on failures to comply with federal law, including NEPA and FLPMA, and BLM's policies and guidance issued under these and other statutes. We would like to discuss potential resolutions to these issues at your earliest convenience.

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### **Summary:**

The BLM failed to comply with NEPA and FLPMA because it did not apply the appropriate VRM classification prescriptions for Greater Sage-Grouse core areas in the Rawlins Proposed Resource Management Plan Amendment and Environmental Assessment (Rawlins PRMPA/EA).

### **Response:**

Section 201(a) of FLPMA requires that the BLM "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." Section 202(c)(4) of FLPMA requires that "in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values".

As described in the PRMPA/EA, Section 2.2.1.1, "The BLM is responsible for ensuring that the scenic values of public lands under its management are considered before permitting uses that may potentially have negative visual impacts. Scenic quality is one of the resource values specifically addressed and provided for in FLPMA. Consideration of scenic quality is accomplished through the use of VRM. The VRM program involves an inventory of scenic values through a VRI,

establishment of management objectives for those scenic values, and evaluation of proposed activities to determine whether they are in conformance with the management objectives.

A VRI for the BLM Rawlins Field Office was conducted and completed in 2011, which establishes inventory classes to serve as a tool through the portrayal of visual resource relative quality (BLM VRM Manual 8410). The VRI provides a snapshot in time of current scenic values of an area without consideration of jurisdiction, manageability, existing leases, pending or approved projects, or other resource opportunities or constraints (i.e. wildlife habitats, mineral and energy potential, etc.). VRI classes are assigned based on a matrix combining scenic quality, sensitivity level, and distance zones. Generally, lands with high scenic quality, where the landscape is of concern to the public and visible from less than five miles, are rated higher than lands with low scenic quality, for which there is little public concern for the maintenance of the scenic quality. Distance zones are categorized as foreground, middle-ground, background, and seldom seen. Details regarding these zones can be found in Chapter 3 of the PRMPA/EA. The VRI classes provide a baseline from which to develop a range of alternatives for VRM classes during the planning process and during the analysis of impacts associated with the various alternatives. VRI classes are informational in nature only, and do not establish management direction. A VRI was completed by the BLM for the Planning Area (Otak, Inc. 2011), and the VRI classes can be found in the PRMPA/EA on Map 2-1.

In developing the visual resource management (VRM) recommendations for each alternative, the BLM considered the existing environment, plus decisions described in the Rawlins 2008 RMP, as amended by the 2015 Greater Sage-Grouse Amendment, including existing mineral potential and mineral leases, high wind potential and existing wind development applications, ROW corridors and applications, as well as other external factors including resource or area restrictions. Baseline information used in developing the alternatives included: landownership, transportation and utility corridors, VRI classes, areas with high wind potential, areas visible from high wind potential areas, existing wind energy site-testing and monitoring locations, existing oil and oil and gas leases, water bodies, SD/MAs, recreational areas, historic and scenic trails, and other management considerations that may limit surface-disturbing activities, specifically the Approved Resource Management Plan Amendments and Record of Decision for the Greater Sage-Grouse (BLM 2015).

The EA states that a "...portion of the [Blowout Penstemon] ACEC is located within a Priority Habitat Management Area as identified by the BLM's Approved Resource Management Plan Amendments for Greater Sage-Grouse, which require additional management protection measures through both state and BLM resource management. A management plan is being developed for the Blowout Penstemon ACEC by the Rawlins Field Office" (PRMPA/EA, Section 3.13.2.1, p. 3-20).

Additionally, language has been added to the EA to include implementation and compliance with the BLM's Instruction Memorandum (IM) WY-2012-019, "Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands including the Federal Mineral Estate", which is in place for proposed activities until ongoing resource management planning addressing greater sage-grouse in the area is completed. (See the PRMPA/EA Response to Comments, p. C-47).

The BLM fully complied with NEPA and FLPMA by applying appropriate VRM classification prescriptions for all resources in the planning area, including Greater Sage-grouse core habitat areas, in the Rawlins PRMPA/EA.

## ***NEPA – Impacts Analysis - Energy***

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

More than the acres, the actual objectives of the ACEC also demand an EIS. The management objectives for this proposed expansion to the ACEC is to "maintain, restore, and enhance the unique parabolic dune complex" and "protect the area to ensure the continued existence of the Blowout Penstemon" (VRM RMPA and EA at 2-15). Under the Preferred Alternative, the ACEC would be closed to new oil and gas leasing and include a no surface occupancy (NSO) stipulation for existing lease projects within 0.25 miles of occupied blowout penstemon habitat. *Id.* at 2-15, 4-34. All other surface disturbing activities would not be authorized within 0.25 miles of occupied habitat. *Id.* at 2-16. This will significantly impact oil and gas leasing because this area is currently open to leasing with standard stipulations or minor constraints. As depicted on Maps 3-1 and 3-2, a large portion of this area has moderate to high oil and gas potential, as well as containing existing leases and wells. *Id.* at 3-6 - 3-7. The closure of the area to new oil and gas leasing and a NSO stipulation will not only make development more difficult, but will have the potential to prevent oil and gas development altogether. The NSO stipulation also prevents wells and other facilities from being located within the ACEC boundaries (see *id.* at 4-34 - 4-35), but the BLM failed to address if and how the mineral resources would be reached. The use of directional drilling has a limited reach and can be prevented by the geology of the land. The potential to halt development is increased by the Preferred Alternative's VRM Class I and II designations surrounding this ACEC. See *id.* at 2-27 (Map 2-5). Thus, the BLM has not considered, nor disclosed, how the ACEC designation will synergistically impact other authorized users including oil and gas developers (Kleppe, 427 U.S. at 410).

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The proposed expansion of the ACEC will also adversely impact other types of developments including pipelines, utility, and wind energy development. The ACEC is an exclusion area for wind energy development and all proposed right-of-way projects and other surface disturbing activities must be designed and located at least 0.25 miles from any occupied blowout penstemon habitat. *Id.* at 2-16, 2-18. This will impact the location of rights-of-way within the analysis area. See *id.* at 4-32. Within the proposed ACEC area, there is an existing pipeline and it is an area with high wind potential.

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

**Issue Excerpt Text:**

The VRM RMPA and EA violates Secretarial direction and orders. The VRM RMPA and EA was final in December 2016 and has not been changed to reflect new agency direction. The VRM Class II designations and proposed Blowout Penstemon/Ferris Dunes Area of Critical Environmental Concern (ACEC) expansion are inconsistent with the Executive Order 13783 and Secretary Order 3349 which call for reconsideration, revisions, and rescission of federal actions that burden energy development. This point should have been addressed by the BLM before issuing the finding of no significant impact (FONSI).

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**Summary:**

In the Proposed Rawlins Resource Management Plan Amendment and Environmental Assessment for Visual Resources (Rawlins PRMPA/EA), the BLM failed to adequately analyze the effects that designating potential ACECs would have on other resource uses, such as oil and gas, rights of way and mineral development. Additionally the decision to designate certain ACECs and include protective management direction is inconsistent with S.O. 3349 and E.O. 13783.

**Response:**

The BLM must carry forward all potential ACECs recommended for designation in at least one alternative in the Draft RMPA/EA per BLM Manual Section 1613.22.B. The BLM has discretion to determine whether to designate potential ACECs in its final decision. The BLM Manual Section 1613.33.E provides direction for consideration and designation of ACECs. Consistent with this direction, all potential ACECs were recommended for designation and analyzed in at least one alternative in the Rawlins Draft RMPA/EA (DRMPA/EA, p. 1-14).

The BLM appropriately exercises its discretion under FLPMA and is consistent with the direction in the BLM ACEC Manual when evaluating and determining which areas to designate as ACECs. In the Rawlins PRMPA/EA, development of energy and minerals (see p 1-11) is identified as one issue in Section 1.7, “Anticipated Planning Issues and Management Concerns”. Also, Chapter 2 (p. 2-13) presents plan amendment alternatives with respect to energy. The BLM appropriately analyzed the effects of designation on other uses, including mineral development.

Chapter 1, Section 1.1.2 in the Rawlins PRMPA/EA states that following evaluation, a portion of the Proposed Ferris Dunes ACEC was found to meet the Relevance and Importance (R&I) criteria, while the other areas nominated did not. Chapter 1, Section 1.7 states that the five areas proposed for ACEC designation in the 2008 Rawlins RMP not previously evaluated underwent interdisciplinary review. The proposed Ferris Dunes ACEC met the R&I criteria, while the four remaining proposals did not. The need for special management of the proposed Ferris Dunes ACEC will be addressed in this Plan Amendment and EA through the proposed expansion of the Blowout Penstemon ACEC. The VRI and ACEC R&I Evaluation forms are posted on the BLM Rawlins RMP Project website at: <http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins.html> and can be found in Appendix A of the Rawlins PRMPA/EA.

The BLM's multiple-use and sustained yield mission is to ensure the health and productivity of the public lands for the use and enjoyment of present and future generations. The BLM accomplishes this by managing a variety of resource uses such as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

The BLM has completed an implementation plan and identified ten top priorities, and is currently developing internal guidance to begin implementation. The BLM's decision to designate certain ACECs, and to include protective management direction for those designated areas, is fully consistent with S.O. 3349 and E.O. 13783.

## ***NEPA – Impacts Analysis – Livestock Grazing***

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The proposed Blowout Penstemon/Ferris Dunes ACEC expansion will also significantly impact livestock grazing, permittees' ability to meet or maintain rangeland health standards, and other wildlife vegetation objectives.

These management actions would restrict flexibility in livestock management and reduce the opportunities to improve the distribution of livestock use. *Id.* at 4-33 - 4-34. This will also impact livestock permittee's ability to meet or maintain rangeland health standards. The EA points out some of these impacts but fails in concluding that this is insignificant and does not adopt any mitigation measures.

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### **Summary:**

The BLM failed to adequately analyze the impacts to livestock grazing, nor offer sufficient mitigation measures, in the Rawlins Proposed Resource Management Plan Amendment and Environmental Assessment (Rawlins PRMPA/EA).

### **Response:**

As required by 40 CFR § 1502.16, the BLM provides a discussion, in the Rawlins PRMPA/EA, of:

*“...the environmental impacts of the alternatives including the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented; the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented”.*

As stated in the Rawlins PRMPA/EA, Chapter 3, Section 3.7, of the 2008 Rawlins Approved RMP provided the existing conditions for management of livestock, which was incorporated by reference (Rawlins PRMPA/EA, pp. 3-11 to 3-12). Chapter 4, Section 4.3.3 of the Rawlins PRMPA/EA, “Impacts Common to All Alternatives”, denotes that the protection measures within the ACEC can help manage and improve the conditions for the blowout penstemon and the surrounding vegetation, which will improve forage potential for livestock. (Rawlins PRMPA/EA, p. 4-33).

Livestock grazing would be managed consistent with the direction in the 2008 RMP around the boundaries of the ACEC, but the protection measures for the blowout penstemon habitat are consistent with attempts to manage multiple resource conditions. The Rawlins Approved RMP, Section 4.7, states the significance criteria are: (1) Impacts on livestock grazing activities would be considered potentially significant if the following were to occur: Resource management actions cause a reduction in forage that results in a greater than ten percent permanent reduction in animal unit months (AUM) available for livestock grazing within the planning area or given allotment; and (2) Resource management actions reduce or eliminate the opportunity to run the livestock of choice

(Rawlins PRMPA/EA, p. 4-69). Neither of these two criteria thresholds are expected to be met or exceeded; therefore, an EA is determined to be the appropriate level of NEPA analysis. Rangeland health assessments have occurred twice on those allotments containing blowout penstemon and both assessments find that these allotments are meeting standards. Grazing increases are not precluded; however, additional assessments and consultation with the U.S. Fish and Wildlife Service will be required prior to allowing AUM increases.

The Rawlins PRMPA/EA has adequately analyzed and disclosed the effects of livestock grazing on the proposed Blowout Penstemon/Ferris Dunes ACEC expansion.

## *NEPA – Impacts Analysis – Wildlife*

**Issue Number:** PP-WY-RAWLINS-18-01

**Organization:** Coalition of Local Governments

**Protester:** Kent Connelly

### **Issue Excerpt Text:**

The EA fails to address how ACEC management objectives will impact other wildlife species in the area, such as big game, sage grouse, or wild horses.

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### **Summary:**

The BLM fails to address impacts to wildlife as a result of ACEC management objectives in the Rawlins Proposed Resource Management Plan Amendment and Environmental Assessment (PRMPA/EA).

### **Response:**

The Rawlins PRMPA/EA analyzes impacts for wildlife with its ACEC management prescriptions in the following ways:

#### *Greater Sage-Grouse*

As explained in Chapter 3, Section 3.13.2.1 (p. 3-20), a portion of the Blowout Penstemon ACEC is located within Priority Habitat Management Area as identified by the BLM's Approved Resource Management Plan Amendments for Greater Sage-Grouse, which provide additional management protection measures through both state and BLM resource management. A management plan is being developed for the Blowout Penstemon ACEC by the RFO.

Additionally, the Rawlins PRMPA/EA considers two specific Greater Sage-Grouse actions in its cumulative impacts analysis for the Ferris Dunes and Blowout Penstemon Proposed ACEC. These include the Governor's Executive Order for Greater Sage-Grouse Core Area Protection and the BLM's approved RMPAs for the Greater Sage-Grouse. Refer to Section 4.4.4, p. 4-44 - 4.45 of the EA for additional details on the Governor's Executive Order for the species' core area protection. Cumulative impacts associated with the Greater Sage-Grouse initiative would include an overlap of core areas; and therefore, relocations as well as some possible effects to core habitat areas.

#### *Wild Horses*

No wild horse habitat exists in the Blowout Penstemon ACEC area. For more information, refer to the Rawlins Approved RMP (2008) for significance criteria relating to wildlife and big game (Rawlins PRMPA/EA Response to Comments, C-4, p. 4-450).

#### *Big game*

In the Rawlins PRMPA/EA, the BLM identifies elk, mule deer and pronghorn as resource species that meet the relevance criteria for ACECs, as established and defined in 43 CFR 1610.7-2; however, because big game species are frequent and widespread outside of the area designated as an ACEC, they are not deemed fragile, rare, irreplaceable, or vulnerable to adverse change, so they do not meet the importance criteria.



For wildlife in general, the Rawlins PRMPA/EA discusses the following management actions:

*“Management actions, such as implementing protective conservation measures to protect the plant, pollinators, and the habitat, would both directly and indirectly protect other wildlife resources. These actions would maintain contiguous areas for hiding cover, nesting habitat, and forage, as well as, improve vegetation health and vigor. The pursuit of the acquisition of other lands that contain populations of, and habitat for, the plant would increase the area that protection measures would be applied to, thereby benefiting wildlife species. Protections aimed at conserving vegetation communities and limitations on surface disturbing activities would benefit wildlife by enhancing overall habitat conditions. Road closures would result in a reduction in disturbance of wildlife and thereby improve animal condition”* (Section 4.3.11 - p. 4-41).

Intensive management of surface disturbing activities in areas that contain habitat would reduce the potential to disturb wildlife habitat.

*“Impacts to wildlife resources from the Blowout Penstemon ACEC would be similar to those identified under Alternative 1 (See 4.3.11.1 Impacts Under Alternative 1: No Action Alternative). A larger ACEC in the preferred alternative would reduce or eliminate surface disturbing activities that have the potential to fragment habitat and/or displace wildlife resources located in these areas. Species dependent upon contiguous habitats at a larger landscape scale would usually benefit and maintain healthier populations”* (Section 4.3.11.4, p. 4-42).

The BLM fully complied with NEPA’s requirement to analyze the environmental consequences/impacts to the Greater Sage-Grouse and big game species, as a result of ACEC management objectives in the Rawlins PRMPA/EA.

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