



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

**Wyoming  
Greater Sage-Grouse  
Land Use Plan Amendment / Final  
Environmental Impact Statement**

September 15, 2015

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## Reader's Guide

### *How do I read the Report?*

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

### **Report Snapshot**

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

- Issue Topics and Responses** (with **NEPA** below it)
- Topic heading** (callout pointing to the top section)
- Submission number** (callout pointing to the top section)
- Issue Number:** PP-WY-NINEPLAN-GRSG-15-XX (callout: **Protest issue number**)
- Organization:** The Forest Initiative (callout: **Protesting organization**)
- Protester:** John Smith (callout: **Protester's name**)
- Issue Excerpt Text:** (callout: **Direct quote taken from the submission.**)
- Summary** (callout: **General statement summarizing the issue excerpts (optional).**)
- Response** (callout: **BLM's and USFS's response(s) to the summary statement or issue excerpt if there is no summary.**)

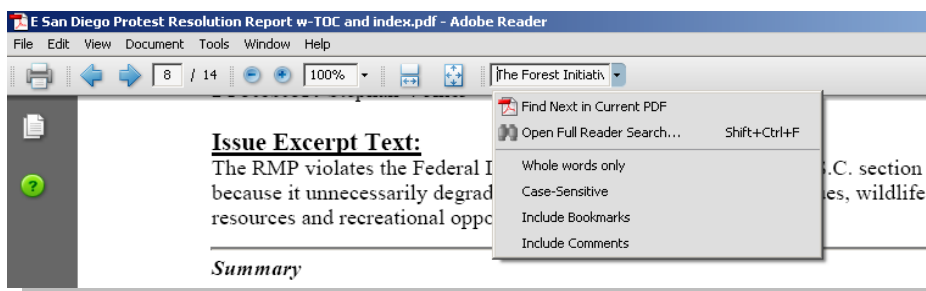
**Issue Excerpt Text:**  
Rather than analyze these potential impacts, as required by NEPA, the BLM and FS postpone analysis of renewable energy development projects to a future case-by-case analysis.

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

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

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

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



## List of Commonly Used Acronyms

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

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
James Reeves	GeoSpectrum Oil & Gas	PP-WY-NINEPLAN-GRSG-15-01	Denied – Issues and Comments
Kyle Wilson	Wyoming Wilderness Association	PP-WY-NINEPLAN-GRSG-15-02	Denied – Issues and Comments
R. Jeff Richards	Rocky Mountain Power (PacifiCorp)	PP-WY-NINEPLAN-GRSG-15-03	Denied – Issues and Comments
Dru-Bower Moore	Devon Energy Corporation	PP-WY-NINEPLAN-GRSG-15-04	Denied – Issues and Comments
Barbara Walz	Tri-State Generation & Transmission Association	PP-WY-NINEPLAN-GRSG-15-05	Denied – Issues and Comments
Keith Williams	Arch Coal (Thunder Basin Coal, LLC)	PP-WY-NINEPLAN-GRSG-15-06	Denied – Issues and Comments
Albert Sommers	Individual	PP-WY-NINEPLAN-GRSG-15-07	Denied – Issues and Comments
Nada Culver	The Wilderness Society	PP-WY-NINEPLAN-GRSG-15-08	Denied – Issues and Comments
Frank Eathorne, Jr.	Thunder Basin Grasslands Prairie Ecosystem Association	PP-WY-NINEPLAN-GRSG-15-09	Dismissed – Comments Only
Frank Eathorne, Jr.	Thunder Basin Grazing Association	PP-WY-NINEPLAN-GRSG-15-10	Denied – Issues and Comments
Erik Molvar	WildEarth Guardians	PP-WY-NINEPLAN-GRSG-15-11	Denied – Issues and Comments
Bret Sumner	Beatty & Wozniak for ExxonMobil and XTO Energy	PP-WY-NINEPLAN-GRSG-15-12	Denied – Issues and Comments
Esther Wagner	Petroleum Association of Wyoming	PP-WY-NINEPLAN-GRSG-15-13	Denied – Issues and Comments
Dan Heilig	Wyoming Outdoor Council	PP-WY-NINEPLAN-GRSG-15-14	Denied – Issues and Comments
Travis Bruner	Western Watersheds Project	PP-WY-NINEPLAN-GRSG-15-15	Denied – Issues and Comments
No Name	Public Lands Council / National Cattlemen’s Beef Association	PP-WY-NINEPLAN-GRSG-15-16	Denied – Issues and Comments
Jim Magagna	Wyoming Stock Growers Association	PP-WY-NINEPLAN-GRSG-15-17	Denied – Issues and Comments
Constance Brooks	CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association	PP-WY-NINEPLAN-GRSG-15-18	Denied – Issues and Comments
Mark Salvo	Defenders of Wildlife	PP-WY-NINEPLAN-GRSG-15-19	Denied – Issues and Comments

Constance Brooks	CE Brooks & Associates for Wyoming Coalition of Local Governments	PP-WY-NINEPLAN-GRSG-15-20	Denied – Issues and Comments
Matthew Mead	Governor of Wyoming	PP-WY-NINEPLAN-GRSG-15-21	Denied – Issues and Comments
Mike Best	Avian Power Line Interaction Committee	PP-WY-NINEPLAN-GRSG-15-22	Denied – Issues and Comments
Kathleen Zimmerman	National Wildlife Federation	PP-WY-NINEPLAN-GRSG-15-23	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-WY-NINEPLAN-GRSG-15-24	Dismissed – Comments Only
Ken Hamilton	Wyoming Farm Bureau Federation	PP-WY-NINEPLAN-GRSG-15-25	Dismissed – Comments Only
Robert Vergnani	E&B Natural Resources	PP-WY-NINEPLAN-GRSG-15-26	Dismissed – Comments Only
Dick Loper	Wyoming State Grazing Board	PP-WY-NINEPLAN-GRSG-15-27	Denied – Issues and Comments
Jack Berger	Saratoga-Encampment-Rawlins Conservation District	PP-WY-NINEPLAN-GRSG-15-28	Dismissed – Comments Only
Denise Langley	Individual	PP-WY-NINEPLAN-GRSG-15-29	Dismissed – Comments Only

## Issue Topics and Responses

### FLPMA-General

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-10

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The Wyoming BLM's position (erroneous, yet driving project policy) is that it has little to no authority to regulate the development of locatable mineral mining claims; withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to sage GRSG (at least in the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to sage GRSG habitats and populations in the areas where that threat is most extreme. In effect, the BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates both FLPMA and BLM Sensitive Species policy.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-2

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The ability to adopt post-leasing mitigation measures – see 43 CFR § 3101.1-2 – is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by the BLM. This is particularly true given that the BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation. (43 USC § 1732[b]). Put simply, the failure of the BLM to study and adopt these types of mitigation measures – especially when feasible and economic – means that the

agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-26

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has not complied with FLPMA's mandate that it give priority to designating ACECs here. Although the BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, the BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. The BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where the BLM has acknowledged that areas meet the criteria for ACEC designation and would be best protected as ACEC, yet has instead developed a new, less-restrictive designation for them, it has failed to put designation of ACECs first, in violation of FLPMA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-5

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** XTO protests the LUPA's imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the

Endangered Species Act (ESA).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-6

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** The FWS has not developed a recovery plan pursuant to the ESA, and the BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery

plan in violation of FLPMA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-19

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Proposed LUPA confirms that a “net conservation gain” is beyond the BLM’s authority under FLPMA. Tellingly, the BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation.

### **Summary:**

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that:

- Uses a non-legislated standard of “net conservation gain”;
- creates a de facto recovery plan that exceeds the unnecessary or undue degradation standard; and,
- abrogates the BLM’s authority over federal land by giving USFWS ESA-like authority without first making a listing determination for a species.

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

### **Response:**

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

The Wyoming GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.3, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced



management approach.

Additionally, the BLM and the Forest Service developed the Wyoming GRSG PLUPA/FEIS with involvement from cooperating agencies, including Federal agencies, state agencies, local governments, and tribal governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG habitat while allowing for utilization of renewable and nonrenewable resources on the public lands.

The first Management Goal of the Wyoming GRSG PLUPA/FEIS, detailed on Page 2-12, is to “[c]onserve, recover, and enhance GRSG habitat on a landscape scale consistent with local, state, and federal management plans and policies, as practical, while providing for multiple use of BLM-administered lands and National Forest System lands.”

Additionally, the “net conservation gain” mitigation standard is fully consistent with the BLM’s authority under FLPMA. To achieve this goal, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. As described further in the GRSG-Mitigation section of this protest report, this is consistent with BLM’s authority as described in FLPMA. It is also consistent with BLM Manual 6840 mentioned above by reducing or eliminating threats to the GRSG and its habitat.

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Wyoming GRSG PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Wyoming GRSG PLUPA/FEIS the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Wyoming GRSG PLUPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that, among other things, prevent the unnecessary or undue degradation of public lands.

In Section 2.4, the Wyoming GRSG PLUPA/FEIS describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for mineral development, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would recommend withdrawal of as much as 5.1 million acres from mineral entry. The BLM’s decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-46, is based on the value of the habitat to the Greater GRSG. Also, action 79, detailed on page 2-46, provides additional information on how the BLM would manage mineral resources in PHMA and GHMA areas to avoid, minimize, and mitigate impacts of that resource use on the GRSG habitat.

For the development of fluid minerals under existing leases, the Wyoming GRSG

PLUPA/FEIS details BLM's Management Objective 14 (page 2-13) to "work with the lessees, operators, or other project proponents to avoid, minimize, and compensate for adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources." Action 63, pages 2-40 through 2-42, detail the BLM's approach for managing existing fluid mineral leases in GRSG habitats, using Conditions of Approval and other approaches to minimize and mitigate impacts while respecting valid, existing rights. Any conditions of approval for permits to drill on existing leases – including measures necessary to prevent unnecessary or undue degradation -- will be evaluated at the project level.

The Wyoming GRSG PLUPA/FEIS will not result in unnecessary or undue degradation of public lands. Moreover, whether a particular project or other implementation-level action will cause unnecessary or undue degradation – and what steps BLM will take to prevent it – will be evaluated at the implementation stage.

### *Valid Existing Rights*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-03-3

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

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Wyoming 9 Plan LUPA (Chapter 2, page 2-2) identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Rocky Mountain Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights.

In the LUPAs, pipeline restrictions and how they would pertain to operation and maintenance of existing facilities is vague. It is unclear what activities may take place during the seasonal buffers. The seasonal buffers outlined would not provide sufficient time during the year to appropriately maintain a natural gas pipeline. Additionally, what constitutes "ground disturbance" is not clearly identified and

could hinder regular pipeline maintenance. Maintenance for all types of existing infrastructure must still be allowed as an excepted activity from proposed triggers.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-1

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests the BLM's decision to impose new restrictions on existing federal oil and gas leases as Conditions of Approval (COAs).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-2

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests the BLM's imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, as described in more detail below, the BLM does not have the authority to impose new restrictions on Devon's valid existing leases under the Federal Land Policy and Management Act of 1976 (FLMPA). Such leases were issued

pursuant to the terms of the existing RMPs, or prior to said RMPs and the enactment of FLPMA, and the BLM cannot modify the terms of those leases through a RMP revision. Second, Devon's leases constitute valid existing contracts that cannot be unilaterally modified by the BLM.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-3

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The proposed addition of new restrictions, such as GRSG noise restrictions and other required design features, to existing leases is impermissible because it exceeds the BLM's legal authority under FLPMA. By attempting to impose these restrictions on existing leases, the BLM is proposing to modify Devon's existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are "subject to valid existing rights." 43 U.S.C. § 1701 note (h); see also 43 C.F.R. § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, the BLM cannot terminate, modify, or alter any valid or existing property rights. 43 U.S.C. § 1701 note (h); see also 43 C.F.R. § 1610.5-3(b).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-4

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM's Land Use Planning Manual mandates the protection of existing lease rights. "All decisions made in land use plans, and subsequent

implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases . . . ." See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). The BLM must comply with the provisions of its planning manual and recognize existing rights.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-5

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** BLM Instruction Memorandum 92-67 similarly states that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance." As noted in the BLM's Instruction Memorandum, the lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the BLM.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-6

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Although the BLM's regulation at 43 C.F.R. § 3101.1-2 allows it to impose "reasonable measures" on existing leases to control environmental impacts, such measures must be consistent with the rights granted by the lease. When a lease includes stipulations to protect a resource such as the greater GRSG, the BLM cannot later impose more expansive measures to protect the same resource because such

measures are not consistent with the original lease.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-1

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** Here, the 9-Plan LUPA proposes to impose new lease stipulations through permit COAs on valid existing leases, action that vastly exceeds XTO's original lease contract terms. For example, the LUPA proposes requiring compensatory mitigation to a net conservation gain standard. Such management prescriptions would unduly and unreasonably restrict XTO's right and ability to develop its leases.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-2

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** The 9-Plan LUPA's mandate for compensatory mitigation for any disturbance within GRSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO's ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM's authority under FLPMA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-3

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** With the 9-Plan LUPA, however, the Agencies are, in effect,

disregarding economic impacts and instead planning to revise and restrict XTO's valid existing lease rights through the imposition of a net conservation gain standard, development and disturbance caps, and additional restrictive measures added to the proposed LUPA since release of the draft document.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-10

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Section 3101.1-2, 43 C.F.R., states that BLM may impose "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted." BLM, however, has expressly recognized that this regulation does not allow BLM to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 C.F.R. § 3101.1-2, BLM unequivocally stated that this regulation "will not be used to increase the level of protection of resource values that are addressed in lease stipulations." 53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988). BLM further explained that "the intent of the proposed rulemaking" was not to impose measures that, for example, "might result in an unstipulated additional buffer around an area already stipulated to have a buffer." Id. (emphasis added). Any attempts by the agencies to impose measures that expand express stipulations attached to leases are inconsistent with the leases' contractual terms.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-33

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The agencies have not adequately explained or justified the proposal to designate all PHMA avoidance areas. Devon, a member of the Trades, commented extensively on ROW avoidance areas. (Devon Comments, pg. 26). Lessee’s ability to develop their leases could be significantly impacted if the agencies inappropriately limit access to these leases. The agencies must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of the oil and gas leases does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 CFR § 3101.1-2 (2006).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-5  
**Organization:** Petroleum Association of Wyoming  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest the agencies’ decisions to impose new restrictions on existing federal oil and gas leases.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-6  
**Organization:** Petroleum Association of Wyoming  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest the agencies’ imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, BLM does not have the authority to impose new restrictions on

valid existing leases under the FLPMA. Second, the agencies cannot unilaterally modify federal leases, which are valid existing contracts. Finally, the agencies cannot impose new restrictions on existing leases that render development uneconomic or impossible.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-7  
**Organization:** Petroleum Association of Wyoming  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The proposed addition of new restrictions to existing leases exceeds BLM’s legal authority under FLPMA. BLM may not modify existing lease rights through its land use planning process because FLPMA expressly states that all BLM actions, including authorization of RMPs, are “subject to valid existing rights.” 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, BLM cannot terminate, modify, or alter any valid or existing rights.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-8  
**Organization:** Petroleum Association of Wyoming  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM’s Land Use Planning Manual reinforces that RMPs must respect existing lease rights. “All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases . . . .” See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). BLM must comply with the provisions of its

planning manual and recognize existing rights. Any attempts to modify a federal lessee's existing rights would violate the terms of its leases with BLM and BLM's own policies.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-9

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-10

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The 4-mile buffer would also prevent existing leases from any disturbing activities in these areas – a term not previously included in the lease and therefore counter to the MLA. 43 C.F.R. §3101.1-2. Once the BLM has issued a federal oil and gas lease without any surface occupancy stipulations, and in the absence

of a nondiscretionary statutory prohibition against development, the BLM cannot deny development on the leasehold. See, e.g., Nat'l Wildlife Fed'n, et al., 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-8

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** An RMP prepared pursuant to FLPMA, after lease execution, is likewise subject to existing rights and cannot modify or amend existing leases. See Colo. Env't'l Coal., et al., 165 IBLA 221, 228 (2005). The BLM's own record shows that respect for valid rights is not the same as continuing to allow development.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-9

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The 4-mile buffer would also prevent existing leases from any disturbing activities in these areas - a term not previously included in the lease and, therefore, counter to the MLA. 43 CFR §3101.1-2. Once the BLM has issued a federal oil and gas lease without no surface occupancy stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot deny development on the leasehold. See, e.g. Nat'l Wildlife Fed'n, et al., 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued.

**Summary:**

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

**Response:**

The Wyoming GRSG PLUPA/FEIS is subject to valid existing rights (FLPMA, Section 701(h)). For example, p. 2-13, Management Objectives include: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of Greater GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights...”

And on p. 2-49 includes the following language: “In PHMAs, existing roads or realignments would be used to access valid existing rights that are not yet developed. If valid existing rights could not be accessed via existing roads, any new road would be constructed to the absolute minimum standard necessary, and the surface disturbance would be added to the total disturbance in the PHMA.”

With respect to oil and gas leasing specifically, the BLM and FS may restrict development of an existing oil and gas lease through Conditions of Approval (COA) consistent with the rights granted in the lease. When making a decision regarding discrete surface-disturbing activities (e.g. Application for Permit to Drill) following site-specific environmental review, BLM and FS have the authority to impose reasonable measures (e.g. COA) to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200, 36 CFR 228). In its LUPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24).

Statutory rights of access are discussed in FSM 2734.5 and 2734.6. Appropriate access to non-Federal land to use and manage that land constitutes entry for a lawful and proper purpose and must be allowed (See FSM 2703). The standard for appropriate and reasonable access is determined by the present or future use of the non-Federal land. Undue restrictions to access may affect the purpose for seeking access and violate the right established. Location, type and method of access can be reasonably limited considering the purposes for which the National Forest System was established and is administered. Restrictions only apply to future requests and provides options if the alternative is impracticable.

Access rights to non-Federal land are not affected by Forest Service land management planning considerations or procedures. However, exercising the right may involve land management planning. Statutory rights of access attach to the land, therefore application for access must be made by the landowner, and access authorization shall be issued only to the landowner.

Application for access across National Forest System land will be evaluated through the NEPA process. The analysis will address such points as the type, location, and conditions of the access sought; whether other adequate access exists; and requirements of any grant.

While the Wyoming GRSG PLUPA/FEIS provides management direction for conditions of approval on valid existing leases (see Management Objective 14, page 2-13), it does so only consistent with lessees' valid existing rights.

### Multiple Use Mandate

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-9

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** In contrast, here, the 9-Plan LUPA could be interpreted as imposing a "no significant impact" standard for oil and gas operations. This de facto insignificance standard violates BLM's statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and gas resources as a "major use" of public lands. It also is

contrary to the basic tenets of NEPA and long established legal precedent.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-16-2

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

**Issue Excerpt Text:** Reducing grazing for the sole benefit of the GRSG is inconsistent with the multi-use mandate of NFMA, FLPMA and the balanced grazing program outlined in the Taylor Grazing Act, as it prioritizes wildlife use over other productive uses.

### **Summary:**

The Wyoming GRSG PLUPA/FEIS violates the multiple use provisions of FLPMA and NFMA by:

- Imposing a "no significant impact" standard for oil and gas operations.
- Prioritizing wildlife over other uses (e.g., livestock grazing).

### **Response:**

Section 302 of FLPMA provides that the Secretary shall manage the public lands under principles of multiple use and sustained yield. Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people and a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

Both the BLM's FLPMA (Section 103(c)) and Forest Service's Multiple Use Sustained Yield Act (MUSYA) define "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. Accordingly, the BLM and Forest Service are responsible



for the complicated task of striking a balance among the many competing uses to which public lands can be put. The multiple-use mandate does not require that all uses be allowed on all areas of the public lands. The purpose of the mandate is to require the BLM and Forest Service to evaluate and choose an appropriate balance of resource uses which involves tradeoffs between competing uses. FLPMA also directs the BLM to develop and periodically revise or amend its RMPs, which guide management of BLM-administered lands, and provides an arena for making decisions regarding how public lands would be managed and used.

The Wyoming GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve Greater GRSG and to respond to the potential of it being listed (Section 1.3, Purpose and Need). The planning process allows for analysis and consideration of a range of alternatives in the Wyoming GRSG PLUPA/FEIS that identified and incorporated appropriate regulatory mechanisms to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure that a balanced management approach was reached. The Wyoming GRSG PLUPA/FEIS includes alternatives that provide a greater and lesser degree of restrictions in various use programs, but would not eliminate or invalidate any valid existing development rights.

FLPMA's multiple use mandate does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, including conservation values, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation.

All alternatives considered in the Wyoming GRSG PLUPA/FEIS, as described in Chapter 2 (Vol.1, p. 2-1 through 2-223), provide an appropriate balance of uses on the public lands. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM and Forest Service policy. The Wyoming GRSG PLUPA/FEIS is consistent with FLPMA's and MUSYA's multiple-use mandates.

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-12

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests the significant inconsistencies between the Proposed Wyoming LUPA and the Wyoming GRSG Core Area Strategy. These inconsistencies are the result of the BLM's choice to impose certain GRSG

conservation measures in violation of FLPMA's requirement for the BLM to coordinate land use planning with state and local governments. The Proposed Wyoming LUPA diverges from the Wyoming GRSG Core Area Strategy in many important respects, as follows:

The USFS has added additional PHMA areas that are not recognized by Wyoming Executive Order 2011-5. Proposed

Wyoming LUPA, pg. 1-2; Map 2-13.

Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5. Appendix E, Management Action Nos. 131, 132, and 133, pgs. E-11 – E-15; GRSD-TDDD-GL-017, GRSG-TDDD-GL-018-Guideline, Proposed Wyoming LUPA, pg. 2-68.

Noise limitations that are not consistent with those contained in the Wyoming Executive Order 2011-5. Proposed Wyoming LUPA, pgs. 2-61 – 2-62.

USFS mitigation hierarchy that is inconsistent with Wyoming Executive Order 2011-5. GRSG-TDDD-ST-016-Standard, Proposed Wyoming LUPA, pg. 2-68.

USFS restrictions on surface use and disturbance that are inconsistent with Wyoming Executive Order 2011-5. GRSG-SUA-ST-026-Standard, Proposed Wyoming LUPA, pg. 2-70.

USFS requirements for phased oil and gas development outside of PHMA. GRSG-M-FMO-GL-092-Guideline, Proposed Wyoming LUPA, pg. 2-77.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-14

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The Wyoming Executive Order was designed to provide certainty and reliability regarding how, when, and where operators could develop oil and gas resources. It prioritizes development outside of designated PHMA areas during portions of the year determined not to have an impact on GRSG. Allowing the BLM or USFS to modify timing restrictions on an annual basis based on personal beliefs and

interpretations is inappropriate, may be arbitrary and capricious, and is wholly inconsistent with the Wyoming Executive Order.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-06-1

**Organization:** Arch Coal (Thunder Basin Coal, LLC)

**Protestor:** Keith Williams

**Issue Excerpt Text:** The RMPs and LUPs should recognize the Wyoming Executive Order (WYEO) and defer to all conservation agreements and other arrangements with USFWS that are applicable in Wyoming. By recognizing these agreements and established state strategies, the RMPs and LUPs would be facilitating the implementation of conservation measures for preserving and enhancing habitat. Hardline "do not allow" uses/activities within fixed zones or criteria refuse to recognize the effectiveness and value of mitigation measures and compensatory actions. Such prohibitions are inconsistent with the concept of multiple use.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-07-1

**Organization:** Individual Consumer

**Protestor:** Albert Sommers

**Issue Excerpt Text:** I am concerned about the definition of Sagebrush Focal Areas (SFAs), because they seem inconsistent with the Wyoming Core Strategy, which has grazing as a de minimis activity. In fact, the whole LUP seems inconsistent with this de minimizes designation in the Wyoming Executive Order. One of the changes from the original draft was the creation of SFAs, and on Page 2-1 the proposed amendment states: "...and prioritized for management and conservation actions including, but not limited to review of livestock grazing

permits/leases.” The EIS does not contemplate what conservation actions are being suggested for grazing within these SFAs. More clarity of intent is needed in this statement to understand the impact on my operation.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-1

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest several inconsistencies between the Proposed LUPA and the Wyoming GRSG Core Area Strategy. These inconsistencies result from BLM’s decision to impose certain GRSG conservation measures in violation of FLPMA’s requirement for BLM to coordinate land use planning with state and local governments. The Proposed LUPA diverges from the Wyoming GRSG Core Area Strategy in many important respects:

- The Forest Service has added additional priority habitat management areas (PHMA) that are not recognized by Wyoming Executive Order 2011-5. Proposed LUPA, pg. 1-2; Map 2-13.
- Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5. Proposed LUPA, Appd. E, Management Action Nos. 131, 132, and 133, pgs. E-11 – E-15; GRSD-TDDD-GL-017, GRSG-TDDD-GL-018- Guideline, Proposed LUPA, pg. 2-68.
- Noise limitations that are not consistent with those contained in Wyoming Executive Order 2011-5. Proposed LUPA, pgs. 2-61 – 2-62.
- Forest Service mitigation hierarchy that is inconsistent with Wyoming Executive Order

2011-5. GRSG-TDDD-ST-016-Standard, Proposed LUPA, pg. 2-68.

- Forest Service restrictions on surface use and disturbance that are inconsistent with Wyoming Executive Order 2011-5. GRSG-SUA-ST-026-Standard, Proposed LUPA, pg. 2-70.
- Forest Service requirements for phased oil and gas development outside of PHMA. GRSG-M-FMO-GL-092-Guideline, Proposed LUPA, pg. 2-77.
- The requirement to impose compensatory mitigation for development in PHMA or possibly even in GRSG habitat. Proposed LUPA, pg. 2-59; Appd. D, pg. D-15.
- The Wyoming Executive Order does not require a net conservation gain. Proposed LUPA, pgs. pg. 2-2, 2-81.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-4

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Wyoming Executive Order does not allow extensions of the timing limitations. The Wyoming Executive Order was designed to provide certainty and reliability regarding how, when, and where operators could develop oil and gas resources. It prioritizes development outside of designated PHMA areas during portions of the year determined not to have an impact on GRSG. Allowing BLM or Forest Service to modify timing restrictions on an annual basis based on subjective beliefs and interpretations is inappropriate, arbitrary and capricious, and is wholly inconsistent with the Wyoming Executive Order.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-17-2

**Organization:** Wyoming Stock Growers Association

**Protestor:** Jim Magagna

**Issue Excerpt Text:** Item # 2 under General Management Direction (Table 2.11) appropriately commits the BLM and USFS to working with the State of Wyoming under the principles of EO 2013-3. However, in numerous subsequent statements, this commitment is ignored as specific action items are outlined without regard to their consistency with the EO. As one example, you do not venture beyond statements that proposed actions under Act 1on 48 "do not conflict with (EO 201 3-3) and would be taken as appropriate' providing for compliance with (EO 2013-3)".

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-14

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The BLM has failed to even discuss the inconsistencies between the Wyoming LUPA and the Wyoming Core Area Strategy and has therefore made no attempt to resolve the inconsistencies.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-7

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** BLM has not resolved inconsistencies with Executive Order 2011-05 and local land use plans

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-12

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** Not only are these new limitations on grazing contrary to the Rangeland Health Standards, the only regulations that apply to livestock grazing permits, but they are also contrary to the Wyoming Executive Order. See Wyoming Executive Order 2011-05, supp. 2013-01. The State of Wyoming has explicitly determined that proper livestock grazing, trailing and other animal husbandry is a de minimus activity on GRSG habitat and has not set any universal habitat objectives.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-19

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The BLM has failed to even discuss the inconsistencies between the LUPA and local land use plans and the Wyoming Core Area Strategy has therefore made no attempt to resolve the inconsistencies.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-7

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** This reality indicates two significant problems: (1) the BLM has not properly analyzed the mineral potential in these areas despite its obligations to do so pursuant to FLPMA and NEPA; (2) BLM has not resolved inconsistencies with EO 2011-05 and local land use plans.

**Summary:**

The Wyoming GRSG PLUPA/FEIS is inconsistent with state and county plans, particularly the Wyoming GRSG Core Area Strategy established by Governor's executive orders. Additionally, the BLM and USFS acted arbitrarily and capriciously and have inadequately considered the counties' land use plans or acknowledged the inconsistencies in the Wyoming GRSG PLUPA/FEIS, in violation of FLPMA.

**Response:**

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Wyoming GRSG PLUPA/FEIS, including the Wyoming GRSG Core Area Strategy, as established by Governor's executive orders 2011-5 and 2013-3, and other related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Wyoming GRSG PLUPA/FEIS. Chapter 5 describes coordination that has occurred throughout the development of the Wyoming GRSG PLUPA/FEIS and documents the coordination that has occurred to try to resolve inconsistencies.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.11. The agency will discuss why any remaining inconsistencies between the Wyoming GRSG PLUPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

Please reference the response for NFMA Coordination with State and Local Governments for Forest Service requirements.

**Viability**

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-20

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the violations of the National Forest Management Act's regulations on species

viability. NFMA and its regulations require the Forest Service to "provide for a diversity of plant and animal communities based on suitability and capability of the specific land area in order to meet overall multiple-use objectives." 16 U.S.C. § 1604(g)(3)(B). And FSM 2672.1 requires that: "There must be no impacts to sensitive species without an

analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers.” To the extent that the aforementioned conservation measures of the plan fail to impose the level of protection

necessary to maintain viable sage GRSG populations in PHMA and GHMA, the PLUPA/FEIS has failed to conform to NFMA.

### **Summary**

The Wyoming GRSG PLUPA/FEIS did not adequately address viability requirements of the 1982 Planning Rule (implementing NFMA) and the Forest Service sensitive species policy because it did not impose the level of protection necessary to maintain viable sage GRSG populations in PHMA and GHMA.

### **Response:**

The 1982 National Forest Management Act Regulations at 219.19 state that, “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” Sensitive species are identified by Regional Foresters as one of several approaches for species conservation (Forest Service Manual 2670). Forest Service Manual 2672.1 provides the following direction on sensitive species management: “Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole.”

The Forest Service documents analysis of viability and sensitive species in a biological evaluation. According to the Forest Service Manual at 2672.4, “The objectives of the biological evaluation are:

1. To ensure that Forest Service actions do not contribute to loss of viability of any native or desired non-native plant or contribute to animal species or trends toward Federal listing of any species.
2. To comply with the requirements of the Endangered Species Act that actions of Federal agencies not jeopardize or adversely modify critical habitat of Federally listed species.
3. To provide a process and standard by which to ensure that threatened, endangered, proposed, and sensitive species receive full consideration in the decision-making process.”

The biological evaluation (see Appendix M) completed for the GRSG amendments reflects the reduction in threats to greater GRSG and improvements in conditions resulting from plan direction (Chapter 2 pages 2-64 thru 2-78 of the FEIS). The Wildlife Biologist made the following determination in the biological evaluation for the proposed plan amendment: “the GRSG population would have high probability of achieving a stable or upward trend. Many of the documented stressors are stabilized, reduced, or removed in GRSG habitat across the National Forests and Grassland. This alternative would encourage better habitat conditions.

Therefore, it is my determination that Alternative E ‘may impact individuals but is not likely to cause a trend to federal listing or loss of viability’ for the GRSG for all three planning units.” The biological evaluation reached the same conclusion for all terrestrial and aquatic sensitive species that were analyzed. While some short-term impacts could occur since small amounts of sagebrush habitat could be lost, degraded, or disturbed due to the 5 percent disturbance cap for sagebrush habitat in PHMA or SFAs, overall habitat conditions will improve.

The biological evaluation and associated FEIS together provide the ecological rationale for this determination based on a careful consideration of the direct, indirect and cumulative effects of the proposed plan, in light of existing understanding of the GRSG biology and ecology, threats to that species, and its current population trends.

The Plan amendment provides direction to improve habitat conditions for greater GRSG, contributing to habitat conditions suitable to support a viable population. The FEIS, particularly the biological evaluation of GRSG in Appendix M, with its careful consideration of the scientific analysis of population trends and evaluation of the effects of proposed management direction, adequately demonstrate that the proposed plan amendment met the requirements of the 1982 planning regulation regarding managing habitat to maintain viable populations of vertebrate species and the Forest Service policy on sensitive species.

### *NFMA Coordination with State and Local Governments*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-2

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The disregard for some provisions of the Wyoming Executive Order evidenced in the Proposed LUPA is inconsistent with the National Forest Management Act (NFMA) and the United States Forest Service (Forest Service) regulations.

#### **Summary:**

The Wyoming GRSG PLUPA/FEIS violates NFMA and Forest Service regulations because it is inconsistent with some provisions of the Wyoming Executive Order.

#### **Response:**

NFMA requires the Forest Service to coordinate land management planning for the National Forest System with land management planning conducted by state and local governments and other Federal agencies (16 U.S.C. 1604(a)). The applicable 1982 planning rule echoes these coordination requirements. (36 C.F.R. 219.7(a)). However, the Forest Service is not required to adopt recommendations made by state and local governmental entities. In particular, the Forest Service is not required to incorporate specific provisions of county ordinances or resolutions into land management plans or to comply with procedural requirements, such as a requirement to obtain county approval before amending or revising a land management plan. The statutes governing Forest Service land management planning and their implementing regulations provide for an advisory role for state and local governments.

In accordance with these requirements, the BLM and Forest Service have given consideration to state, local and Tribal plans that are germane to the development of the Wyoming PLUPA /FEIS. The BLM and Forest Service have worked closely with state, local, and Tribal governments during preparation of the Wyoming PLUPA/FEIS. Chapter 6 describes coordination that has occurred throughout the development of the Wyoming PLUPA /FEIS. A list of the local, state, and Tribal plans that the BLM and Forest Service considered can be found in Chapter 1, Section 1.11. Therefore, the Forest Service satisfied the coordination requirements under NFMA and Forest Service regulations in preparation of the Wyoming PLUPA /FEIS.

### Range of Alternatives

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-20

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM proposes to exempt the Gateway West, Gateway South, and TransWest Express transmission line projects from the plan amendments. FEIS at 4-340. This loophole violates the purpose and need for the FEIS and renders FEIS management for large transmission projects essentially meaningless, as these three lines are the only lines of this size likely to be constructed in the planning area over the 20-year time horizon of the plan amendments.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-3

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Guardians also submitted our GRSG Recovery Alternative (DEIS Attachment 11) earlier in this NEPA process; the issues raised in this alternative are also part of our expectations for the final plan amendments. We requested that agencies should designate as Priority Habitat and General Habitat all lands identified as PPMAs and PGMAs, and in addition should expand Priority Habitat to include all 75% population areas, but this alternative does not appear to have been considered in detail

in violation of NEPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-14

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Final EIS fails to analyze a reasonable range of alternatives to the Proposed LUPA. First, the Final EIS does not analyze an alternative to the Proposed LUPA's mitigation standard of a "net conservation gain" for the greater GRSG. Second, the Final EIS does not analyze any alternative to the Proposed LUPA's monitoring framework, including alternatives that BLM has the resources to implement.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-35

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The only rationale and justification given for this broad-scale exemption for the TransWest and similar transmission projects is that the projects have been identified by the President as being high priority renewable projects for jobs and for electric transmission infrastructure. Yet, other than this single



conclusory statement, the LUPA and FEIS do not provide any supporting documentation, data, or analysis to justify this disparate treatment or the allowance of these large-scale significant impacts within greater GRSG habitat.

The LUPA/FEIS does not identify, let alone analyze, the number of jobs that would be created for construction of these projects, or the number of long-term jobs that would result after construction of the transmission line. The LUPA/FEIS fails to identify, let alone analyze, whether there are alternatives to providing this exemption in the LUPA. The LUPA/FEIS fails entirely to analyze an alternative that explains or otherwise justifies counting the significant landscape level surface disturbance of these projects against the cap calculation applicable to the oil and gas industry and all other industries operating on public lands where the cap is applicable against their operations and activities. The LUPA/FEIS fails to explain why such disparate treatment between

### **Summary:**

The Wyoming GRSG PLUPA/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail:

- a citizens GRSG alternative,
- alternatives to the BLM's goal of achieving a "net conservation gain" of GRSG habitat/monitoring framework,
- removing livestock grazing from the entirety of GRSG habitat.

The Wyoming GRSG PLUPA/FEIS also failed to adequately explain exemptions for certain transmission projects, including TransWest.

### **Response:**

#### General

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

industries and public land developers is warranted.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-15

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure to consider an alternative would remove livestock grazing from the entirety of GRSG habitat, including all of the priority and important habitats. Alternative C removes grazing from the PHMA, the analysis of this alternative is limited to removing livestock only in the PHMA, and none of the alternatives consider eliminating livestock grazing across the range. There is no true analysis of the beneficial impacts of removing livestock grazing from GRSG habitat entirely, or seasonally in accordance with the best available science. Under the proposed plan, greater than 99.9% acres of GRSG habitat are open for livestock grazing.

The BLM and Forest Service developed a range of reasonable alternatives in detail that meet the purpose and need (Wyoming GRSG PLUPA/FEIS Section 1.4, Purpose and Need for the Land Use Plan Amendments, p.1-5) and that address resource issues identified during the scoping period. The Wyoming GRSG PLUPA/FEIS analyzed four distinct alternatives, which are described in section 2.8 Draft LUPA/EIS Alternatives (p.2-79). The alternatives cover the full spectrum by varying in: 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

### Citizens Alternative

The BLM may eliminate an alternative from detailed study if it is substantially similar in design to an alternative that is analyzed (40 CFR 1502.14; BLM Handbook H-1790-1, Section 6.6.3). Here, Alternative C of the Wyoming GRSG PLUPA/FEIS was derived and developed from recommendations made by conservation groups and individuals for protection and conservation of GRSG and its habitat.

As discussed in the Wyoming GRSG PLUPA/FEIS, Alternative C is based on the citizen groups recommended alternative. This alternative emphasizes improvement and protection of habitat for Greater GRSG and is applied to all occupied Greater GRSG habitat. This alternative would limit commodity development in areas of occupied Greater GRSG habitat, and would close or designate portions of the planning area to some land uses. A surface disturbance cap of 3% per 640 acres is considered within GRSG priority habitat and considers closing priority GRSG habitat to livestock grazing. Management actions proposed under Alternative C are presented in Table 2-11 and reflected in Table 2-7 (land use restrictions) and Tables 2-8 and 2-9 (oil and gas leasing stipulations).

### Net Conservation Gain

The net conservation gain standard is derived from the purpose and need statement (1.3 Purpose and Need) which identifies the need for the BLM and Forest Service to incorporate measures to conserve, enhance and/or restore GRSG habitat responding to the overall landscape-scale goal of similar intent and accounts for uncertainty associated with mitigation effectiveness.

### Eliminate Grazing from BLM-administered Public Lands or GRSG Habitats

No issues or conflicts were identified during this planning effort that identified the complete removal/elimination of livestock grazing within the planning area. In Section 1.8.1 Planning Issues Addressed (p. 1-16) the livestock grazing issue is described as the “continuation and elimination of livestock grazing practices.” (p. 1-18). Alternative C, Table 2.11 Detailed Comparison of Alternatives (p. 2-112), identifies “Livestock grazing would be prohibited within GRSG priority habitat.” Alternative B describes a “light grazing management strategy utilizing a 20-30% forage allocation for livestock.”

The COT Report identifies localized threats from sagebrush elimination, fire, conifer encroachment, weed and annual grass invasion, mining, free-roaming wild horses and burros, urbanization, and widespread threats from energy development, infrastructure, grazing, and recreation (USFWS 2013a, p. 18) (Table 1-2). The Report produced recommendations regarding the degree to which threats need to be reduced to conserve the Greater GRSG so that it would no

longer be in danger of extinction or become in danger of extinction in the foreseeable future. The BLM/Forest Service decisions analyzed in the Wyoming GRSG PLUPA/FEIS ameliorate threats identified in the COT Report and to reverse the trends in habitat condition. Because livestock grazing was identified as a widespread threat it is unnecessary to analyze an alternative that would eliminate all grazing.

The BLM and Forest Service considered a reasonable range of alternatives in the Wyoming GRSG PLUPA/FEIS in full compliance with NEPA.

### *Purpose and Need*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-1

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** “The purpose for the LUPA is to identify and incorporate appropriate conservation measures to conserve, enhance, and restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat.” (FEIS at ES-6). As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of the BLM’s own experts regarding necessary measures to protect sage GRSG habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and/or restore GRSG habitat.”

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-5

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The Proposed Plan does not Meet the EIS Purpose and Need. In order to remedy the inadequacy of regulatory mechanisms identified by USFWS, BLM must address the two-pronged test under the Policy on the Effectiveness of Conservation Efforts (“PECE Policy”), which requires that conservation measures be effective

according to the best available science and have certainty of implementation. 68 Fed. Reg. 15115. BLM observes, “Regulatory certainty will be an important factor in the USFWS’s decision on whether to list the GRSG under the ESA; however, regulatory certainty alone would not be enough for USFWS to not list the species.” Oregon Greater Sage GRSG RMP Amendment DEIS at 2-15. The BLM’s National Greater GRSG Planning Strategy further underscores the need to provide adequate regulatory mechanisms in these plan amendments, which the agencies have not done in this case.

One of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are likely to undermine the intent of the protective measure in question.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-16-1

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

**Issue Excerpt Text:** As addressed in our comments, we reiterate that the purpose and need of the Proposed LUPA/FEIS is misleading and arbitrary and capricious in the context of livestock grazing and range management. The purpose and need given to

augment grazing regulation is “Loss of habitat components due to improper livestock, wild horse and burro, and large wildlife use.” (FEIS at ES.2) (emphasis added). However, neither the FWS nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations. Therefore, imposing regulatory change on the grazing livestock industry is arbitrary and capricious and without factual basis.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-2

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** It is clear then, that BLM has targeted livestock grazing to support potential damage to the range resulting from wild horse populations. RSGA and Vermillion vigorously argued that AMLs must be reduced to reflect the Consent Decree and HMA boundaries must be adjusted. Attach. 1, RSGA DEIS Comments at 10-11 (Mar. 27, 2014). Without these adjustments, BLM is essentially doubling the number of horses to

be managed in GRSG PHMA in direct conflict with the purpose and need statement of the Wyoming LUPA. *Id.*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-23-2

**Organization:** National Wildlife Federation

**Protestor:** Kathleen Zimmerman

**Issue Excerpt Text:** The Wyoming PLUPA/FEIS, however, also now provides that these stipulations can be waived if Greater GRSG "are not listed or determined to be warranted for listing" by USFWS. In other words, if, as NWF hopes, USFWS is able to find that adequate regulatory mechanisms are now in place such that listing under ESA is no longer warranted, the very stipulations on which USFWS relied to make such a determination could then disappear. This provision of the Wyoming PLUPA/FEIS must be removed in the final Record of Decision. It undermines one important goal of the National Greater GRSG Planning Strategy which should be to demonstrate that the agencies' commitment to species conservation is not dependent on a determination that extinction is imminent and contingent on employing ESA.

### **Summary:**

The Wyoming GRSG PLUPA/FEIS violates NEPA because the Purpose and Need to conserve, enhance, and restore GRSG habitats is defined too narrowly or has not been met:

- the best available science has not been used;
- protecting GRSG habitat from the effects of livestock grazing is without factual basis because neither FWS nor the BLM have found that the existing regulatory mechanisms applicable to livestock grazing and range management pose a threat to GRSG habitat or populations;
- targeting livestock grazing as a disturbance in these areas will double wild horse use. If the BLM does not adjust AMLs, the Wyoming GRSG PLUPA/FEIS is in direct conflict with the purpose and need; and
- One of the biggest sources of regulatory uncertainty is the inclusion of provisions to provide exceptions, waivers, or modifications of conservation measures at the discretion of the agency in ways that are likely to undermine the intent of the protective measure in

question. The Wyoming GRSG PLUPA/FEIS now provides that these stipulations can be waived if Greater GRSG "are not listed or determined to be warranted for listing" by USFWS. This provision of the Wyoming GRSG PLUPA/FEIS must be removed in the final Record of Decision.

**Response:**

CEQ regulations direct that an EIS "...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR 1502.13). Also, under the CEQ regulations, the BLM and the Forest Service are required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act [NEPA]." (40 CFR 1501.2(c)). The range of alternatives developed are intended to meet the purpose and need and address the issue; thereby, providing a basis for eventual selection of an alternative in a decision (BLM NEPA handbook and Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook Chapter 10 – Environmental Analysis).

For detailed discussion related to the need to use the Best Available Science and use of the COT and NTT reports, please refer to the Best Available Science section of this report. The management actions developed and analyzed in the alternatives for this Proposed RMP Amendment included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8):

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a and b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Wyoming GRSG PLUPA/FEIS that address these impacts. The livestock grazing measures are supported by the NTT and COT reports, utilize best available science, are within the range of alternatives, and meet the Purpose and Need for this Wyoming GRSG PLUPA/FEIS.

The management actions described in Table 2-4 of the RMP amendment provide for adjustments to all activities that may be a causal factor for not meeting GRSG habitat objectives. Specifically these include Action #s 3, 10, and 109-113. Management action #110 (p. 2-53) states, “PHMA (core only) management objectives would be considered when evaluating appropriate management levels (AML).” This requires AMLs to be consistent with PHMA management objectives to conserve, protect and restore GRSG habitat which is consistent with the Wyoming GRSG PLUPA/FEIS stated purpose and need (1.3 Purpose and Need).

Language regarding the waiving of stipulations should the GRSG not be listed or is determined not warranted for listing will be removed from the Wyoming GRSG PLUPA/FEIS. This clarification will be identified in the appropriate Record of Decision.

The BLM and Forest Service applied the best information available when it developed the proposed RMP Revision and alternatives as they include recommendations from the NTT and COT reports. Therefore, these management actions meet the purpose and need and are within the range of alternatives that addresses such.

### Cumulative Effects

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-19

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The standard for an Environmental Impact Statement is even higher. We also refer you again to the ruling in the Pinedale RMP case. The cumulative impacts section provide does not comply with that order.

#### **Summary:**

The cumulative impacts section does not comply with the ruling from the Pinedale RMP court case.

#### **Response:**

The BLM and Forest Service must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7). It is neither practical nor required to exhaustively analyze all possible cumulative impacts. Instead, CEQ (1997) indicates the cumulative impact analysis should focus on meaningful impacts. The BLM identified key planning issues (see Chapter 1) to focus the analysis of environmental consequences in Chapter 4 on meaningful impacts.

The BLM and Forest Service have complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section (Chapter 4, Section 4.22) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource. The cumulative effects analysis study area extends beyond the planning area boundary and consists of WAFWA GRSG Management Zones (MZ) I, II and VII, which sets the appropriate geographic scope and biological scale for the analysis. Impacts to GRSG were analyzed in the cumulative effects analysis, which is consistent with the Pinedale RMP court order, which found deficiencies with the cumulative impacts analysis to GRSG in that plan.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Wyoming GRSG PLUPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM and Forest Service adequately analyzed cumulative effects in Wyoming GRSG PLUPA/FEIS.

### Public Comments

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-03-1

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

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** Rocky Mountain Power submits the following protest on the Wyoming 9 Plan LUPA FEIS as it adversely affects our ability to serve our customers and did not adequately address comments that were submitted previously on the DEIS/LUPA on March 24, 2014.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-05-2

**Organization:** Tri-State Generation and Transmission Association

**Protestor:** Barbara Walz

**Issue Excerpt Text:** Tri-State previously submitted a comment regarding the 3% and 5% disturbance limits, requesting further information be made available to the public that outlines the scientific justification and data used to identify this threshold. The FEIS did not provide any additional information on how these thresholds were determined or how they protect GRSG.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-16

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** With respect to the Proposed LUPA, the Trades submitted extensive and detailed comments on the RDFs listed in Appendix B. See Trade Comments, pgs. 37 - 49. The agencies, however, did not make any substantive changes to the RDFs between draft and final, Compare Proposed LUPA, Appd. B with Draft RMP, Appd. B. Additionally, the agencies did not acknowledge the Trades' comments on the RDFs in Appendix D and did not "[e]xplain[ing] why the comments do not warrant further response." See 40 C.F.R. § 1503.4(a). Therefore, the agencies have not provided the response to comments as required by the CEQ regulation.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-18

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Similarly, the inclusion of new components in the Proposed LUPA is a violation of the Forest Service's regulations. The Forest Service regulations require the public to be provided an opportunity to meaningfully participate in and comment upon preparation of land use plans. 36 CFR § 219.4(a); 219.5(a)(2)(i); 219.7(c)(1). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan were either not included in or substantially

changed from the Draft RMP, the agencies should have prepared and released for comment a supplement to the Draft RMP.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-32

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest the RDFs listed in Appendix B of the Proposed LUPA. Although the Trades extensively commented on the RDFs in the Draft RMP, the agencies did not adjust any of the RDFs in response to the Trades' comments. Trade Comments, pgs. 37 – 49. Furthermore, as explained in section III.C above, the agencies did not respond to the Trades' comments as required by 40 C.F.R. § 1503.4(a).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-17-1

**Organization:** Wyoming Stock Growers Association

**Protestor:** Jim Magagna

**Issue Excerpt Text:** We noted that the Taylor Grazing Act clearly establishes Section 3 l and as "chiefly valuable for grazing" while FLPMA outlines the need for a LUP amendment to permanently remove

**Summary:**

The BLM and Forest Service did not adequately address comments that were received on the Wyoming GRSG PLUPA/FEIS. The BLM received comments on the Required Design Features (RDF, called BMPs in the Draft) but did not make any substantive changes to the RDFs between draft and final and did not explain why the comments do not warrant further response. The Forest Service did not provide the public an opportunity to meaningfully participate in and comment upon preparation of land use plan after new components were added to the Wyoming GRSG PLUPA/FEIS.

The agencies did not respond to comments submitted regarding the disturbance caps and the request for information be made available that explains the justification for these caps. Also, the BLM did not respond to comments regarding the apparent conflict between the intent of the

BLM administered lands from availability for livestock grazing. Other federal laws similarly place constraints on the USFS. The agency's broad response that "The management actions included in the Draft LUP Amendments/Draft EIS are in compliance with all laws, statutes and regulations" is woefully inadequate to address our concerns.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-27-1

**Organization:** Wyoming State Grazing Board

**Protestor:** Dick Loper

**Issue Excerpt Text:** Our next protest is on the almost complete lack of response by the BLM to the many comments we provided on the draft. The WSGB tried very hard to provide substantive comments on the draft document, and we are most disappointed that this Final document did not at least respond to comments that were very specific and to the point on specific narratives in the draft. It appears that none our comments had any effect on the Final document. If the BLM did not agree with our comments, they should have had the decency to at least convey a justification as to why they did not agree.



Taylor Grazing Act and the proposal to remove livestock grazing from public lands.

**Response:**

The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments, including:

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (40 CFR 1502.19). The entire document with a new cover sheet shall be filed as the final statement (40 CFR 1506.9).

According to the National Environmental Policy Act (NEPA), the BLM and Forest Service are required to identify and formally respond to all substantive public comments. A substantive comment does one or more of the following:

- Questions, with a reasonable basis, the accuracy of the information in the environmental impact statement;
- Questions, with a reasonable basis, the adequacy of environmental analysis as presented;
- Presents reasonable alternatives other than those presented in the draft EIS that meet the purpose and need of the proposed action and addresses significant issues;
- Causes changes or revisions in the proposal.

Nonsubstantive comments simply state a position in favor of, or against, an alternative; merely agree or disagree with BLM or Forest Service policy; or otherwise express an unsupported personal preference or opinion (Appendix O-2).

The BLM and Forest Service are required to respond only to substantive comments to fully

inform the public of concerns raised. For Appendix O, the BLM and Forest Service have provided responses to all substantive public concerns identified during comment analysis. Responses to substantive comments are more extensive, complete, and often offer an explanation of why a comment may or may not have resulted in a change to the Wyoming GRSG PLUPA/FEIS.

The BLM and Forest Service read all public response letters in their entirety and identified comments that related to a particular concern or resource consideration or that proposed management actions. Every effort was made to keep each comment within a letter as a stand-alone comment. The BLM and Forest Service looked not only for each action or change requested by the public, but also for any supporting information to capture the comment in its entirety. In doing so, paragraphs within a comment letter may have been divided into several comments because of multiple comments being presented or, alternatively, sections of a letter may have been combined to form one coherent statement.

It is important to note that during the process of identifying concerns, all comments were treated equally.

The comments were not weighted by organizational affiliation or status of respondents, and the number of duplicate comments did not add more bias to one comment than another. The process was not one of counting votes and no effort was made to tabulate the exact number of people for, or against, any given aspect of the Wyoming Greater GRSG Draft LUP Amendments and Draft EIS. Rather, emphasis was placed on the content of a comment (Appendix 0-3).

It is important for the public to understand that BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Wyoming GRSG PLUPA/FEIS.

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

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-2

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The Agencies also failed to fully cooperate with members of

the Coalition by adopting management prescriptions that conflict with local plans and policies in Sweetwater, Lincoln, Sublette, and Uinta County while adopting a significantly different alternative after several assurances that BLM would adopt the Wyoming Core Area Strategy.

**Summary:**

The BLM failed to properly cooperate with members of the Coalition and management actions in the Wyoming GRSG PLUPA/FEIS conflict with local plans and policies.

**Response:**

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)). Refer to the NFMA Coordination with State and Local Governments response for a discussion of comparable Forest Service requirements.

**Supplemental EIS**

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-10

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** In the present situation, the addition of the new USFS PHMA areas does not constitute a minor variation to one of the alternatives in the Draft Wyoming LUPA, nor is the imposition of the new USFS PHMAs within the spectrum of alternatives analyzed in the draft. None of the alternatives presented in the Draft Wyoming LUPA included the USFS PHMA areas. See Proposed Wyoming LUPA, pg. 1-2. The new USFS PHMAs in fact represents a wholesale shift in the management of over 150,000 acres of USFS lands.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-11

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Further, the BLM’s inclusion of the new USFS PHMAs in the Proposed RMP violates FLPMA because the public was not provided a meaningful opportunity to comment upon the new USFS

PHMAs. The BLM’s planning regulations require the public to be provided an opportunity to meaningfully participate in and comment upon preparation of land use plans. 43 CFR §1610.2. The Forest Service Planning Regulations similarly require significant public participation and a chance to comment. 36 CFR § 219.4(a). The BLM’s planning handbook unequivocally requires the agency to issue a supplement to either the draft or final EIS when “substantial changes to the proposed action, or significant new information/circumstances collected during the comment period” are presented. (BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24). (Rel. 1-1693 03/11/05). Because the new USFS PHMAs are unquestionably a “substantial change” when compared to any of the alternatives included in the Draft Wyoming LUPA, the BLM should have prepared and released for comment a supplement to the Draft Wyoming LUPA. Devon encourages the BLM Director and the USFS to remove the new USFS PHMAs and remand the proposed new Proposed Wyoming LUPA to the USFS so the agency can provide for additional public involvement and comment.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-9

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The addition of over 150,000 acres of new PHMA that was not discussed or described in the Draft Wyoming LUPA constitutes a substantial change between the draft EIS and the Final EIS for the Wyoming LUPA. Prior to issuing its ROD and final approved RMP, the BLM must provide a supplemental draft EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations. 40 C.F.R. § 1502.9(c);

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-12

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan. BLM first presented the public with these components when it released the Proposed LUPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-13

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Most troubling is the fact that the net conservation gain requirement, mitigation plan, and monitoring plan were not incorporated into the Proposed LUPA and Final EIS in response to public comment on the Draft RMP/Draft EIS or in response to environmental impacts disclosed in the Draft

EIS. See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, the agencies appear to have incorporated the net conservation gain requirement, mitigation plan, and monitoring plan to respond to national policies by BLM and U.S. Fish and Wildlife Service that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Serv., Greater GRSG Mitigation Framework (2014); BLM, The Greater GRSG Monitoring Framework (2014). The public never had the opportunity to review and comment on these new components.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-15

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The net conservation gain requirement was not presented in the Draft RMP. Although the Draft RMP acknowledged that the Proposed LUPA/Final EIS would include more details about the monitoring and mitigation plans, see Draft LUPA Appd. D, these “placeholders” did not allow the public a meaningful opportunity to comment on the substance of the monitoring and mitigation plans. The inclusion of the net conservation gain requirement, mitigation plan, and monitoring plan constitutes “substantial changes from the previously proposed actions that are relevant to environmental concerns” and should have been presented in a supplemental draft EIS for public comment.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-17

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** BLM’s own planning handbook unequivocally directs the agency to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information and circumstances collected during the comment period” are presented. BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan unquestionably are a “substantial change” when compared to the alternatives included in the Draft RMP, BLM should have prepared and released for comment a supplement to the Draft RMP.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-4

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** SFAs are not within the qualitative spectrum of previously analyzed alternatives. In all previous EIS stages, all habitat was analyzed as either PHMA, GHMA, connectivity, or seasonal habitat (winter concentration areas, breeding, brood rearing, etc.). The FEIS is the first time the SFAs have been seen by the public. The BLM states, however, that recommended withdrawals of SFAs and livestock grazing prioritization in SFAs were evaluated to be consistent with GRSG conservation objectives as part of Alternative E. See Wyoming LUPA at 2-1. The BLM misconstrues the issue. Priority habitat, in all previous EIS versions, was not layered with additional management restrictions like those in SFAs. Thus, management prescriptions in SFAs are stacked atop those for priority habitat as

well as those for adjacent general habitat areas. As a result, the suite of management restrictions in SFA, PHMA, seasonal and connectivity will interact to produce synergistic effects that the BLM has not previously analyzed when considering only “withdrawals” or livestock grazing limitations.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-5

**Organization:** CE Brooks & Associates for Vermillion Ranch and the Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The USFWS memorandum is new information that must be subject to review in a Supplemental EIS or is otherwise arbitrary and capricious under the APA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-20

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The Executive Order is currently being reviewed and adjusted according to input from local working groups. As the Coalition commented at the AFEIS stage, this alone requires the BLM to supplement the current FEIS because - it affects the analysis of the cumulative impacts on the BLM's management strategy for GRSG in Wyoming.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-4

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** SFAs are not within the qualitative spectrum of previously

analyzed alternatives. In all previous EIS stages, all habitat was analyzed as either PHMA, GHMA, connectivity, or seasonal habitat (winter concentration areas, breeding, brood rearing, etc.). The BLM states, however, that withdrawals of SFAs and livestock grazing prioritization in SFAs were evaluated to be consistent with GRSG conservation objectives as part of Alternative E. See LUPA at 2-1. The BLM misconstrues the issue. Priority habitat, in all previous EIS versions, was not layered with additional management restrictions like those in SFAs. Thus, management prescriptions in SFAs are stacked atop those for priority habitat as well as those for adjacent general habitat areas. As a result, a suite of management restrictions in SFA,

PHMA, seasonal and connectivity will interact to produce synergistic effects that the BLM has not previously analyzed when considering only "withdrawals" or livestock grazing limitations.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-5

**Organization:** CE Brooks & Associates for the Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The USFWS memorandum is new information that must be subject to review in a Supplemental EIS or is otherwise arbitrary and capricious under the APA.

### **Summary:**

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

- The Wyoming GRSG PLUPA/FEIS expanded habitat designations with SFAs and PHMA, and includes related management restrictions that the BLM has not previously analyzed.
- The Wyoming GRSG PLUPA/FEIS included livestock grazing in the Sagebrush Focal Area (SFAs) and GRSG lek buffers for range improvement.
- None of the alternatives presented in the Draft LUPA/EIS included the requirements that mitigation produce a net conservation gain.
- Management prescriptions in SFAs are added to those for priority habitat as well as those for adjacent general habitat areas resulting in synergistic effects that the BLM had not previously analyzed.

Considering the new components of the Proposed Action were not specifically described in the Draft LUPA/EIS, the agencies must provide a supplemental analysis to the public.

### **Response:**

A supplement to a draft or final EIS must be prepared if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- substantial changes are made to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- a new alternative is added that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); or
- there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

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

The Wyoming GRSG PLUPA/FEIS focuses on addressing public comments, while continuing to meet the BLM's and Forest Service's legal and regulatory mandates. The Proposed LUP Amendments are a variation of the Preferred Alternative (Alternative E) and is within the range of alternatives analyzed in the Draft EIS, and does not represent major changes from the Draft EIS Preferred Alternative.

Sagebrush Focal Areas have been identified in the Proposed LUP Amendments based on recommendations in a U.S. Fish and Wildlife Service (USFWS) memorandum, and are proposed to be managed as PHMAs with the following additional management: Recommended for withdrawal; NSO without waiver, exception, or modification for fluid mineral leasing; and prioritized for management and conservation actions including, but not limited to review of livestock grazing permits/leases. Alternative E (now the Proposed LUP Amendments) identified areas recommended for withdrawal, and/or prioritization for grazing, and analyzed the impacts of those decisions. See Draft EIS, Table2-4. As such, the management of these areas as SFAs and the impacts of the associated management decisions were addressed in the Draft EIS and is qualitatively within the spectrum of alternatives analyzed. As noted in the Draft EIS, one of the goals/objectives of this planning effort is to protect both the habitat and the species (see Management Goal 1 and Management Objectives 2 through 6). The habitat in the SFAs exhibits areas of high-quality sagebrush habitat, areas with highest breeding densities, and areas identified as essential to conservation and persistence of the species (Chapter 2, p. 2-1).

A quantitative cumulative effects analysis for Greater GRSG was included in the Final EIS. This analysis was completed to analyze the effects of management actions on Greater GRSG at a biologically significant scale which as determined to be at the WAFWA Management Zone. The Draft EIS, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the Final EIS at the WAFWA Management Zone.

The Draft EIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM disturbance and monitoring sub-team further enhanced the Appendix D in the Final EIS.

The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore Greater GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal. The Purpose and Need in the Final EIS as well as the Draft EIS states the BLM will consider such measures in the context of its multiple-use mandate under the Federal Land Policy and Management Act (FLPMA) and specifically states that the agency will incorporate measures that will help conserve, enhance,

and/or restore Greater GRSG habitat by reducing, eliminating, or minimizing threats to that habitat (Section 1.4, page 1-5).

Allocations for Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA)—allocations in the Proposed LUP Amendments/Final EIS provide more opportunities for uses in GHMAs, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat. In the Proposed LUP Amendments (previously identified as Alternative E in the Draft LUP Amendments/Draft EIS), the following areas that were identified as general habitat in Alternatives B, C, and D are managed like PHMA-core or PHMA-connectivity:

- 32,756.82 acres of PHMA-connectivity on the Bridger-Teton National Forest
- 63,195.32 acres of PHMA-core on the Bridger-Teton National Forest
- 54,252.59 acres of PHMA-core on the Thunder Basin National Grasslands
- 3,335.85 acres that were identified as core habitat in Alternatives B, C, and D are managed as Sagebrush Focal Areas (SFA) on the Bridger-Teton National Forest. While this change in acreage was made to the Preferred Alternative (Alternative E) in the Draft LUP Amendments/Draft EIS is new to the Proposed LUPA, it is still within the range of alternatives analyzed in the Draft EIS.

The BLM has given consideration to state, local and Tribal plans that are germane to the development of the Wyoming GRSG PLUPA/FEIS, including the Wyoming GRSG Core Area Strategy (Wyoming executive orders 2011-5 and 2013-3) and other related state and local plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Wyoming GRSG PLUPA/FEIS. Chapter 5 describes coordination that has occurred throughout the development of the Wyoming GRSG PLUPA/FEIS and discusses known inconsistencies with any officially approved state, local, and Tribal plans. A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.11. The agency will discuss why any remaining inconsistencies between the Wyoming GRSG PLUPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

In the FEIS, alternative A (the no action) and its impact analysis represent the baseline to which the other alternatives and their associated analyses are compared. Alternative A uses the terms "Greater GRSG core habitat" or "core areas" as described in the Wyoming Governor's Executive Order 2011-5 (WY EO 2011-5) and defined in this document's Glossary as habitat that is most important for Greater GRSG. Management actions proposed under the Alternative A are presented in Table 2-11 and reflected in Table 2-7 (land use restrictions) and Tables 2-8 and 2-9 (oil and gas leasing stipulations).

The Proposed LUP Amendments include components of the alternatives analyzed in the Draft EIS. Taken together, these components present a suite of management decisions that present a minor variation of the Preferred Alternative identified in the Draft LUP Amendments/Draft EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed LUP Amendments is a minor variation of the Preferred



Alternative and that the impacts of the Proposed LUP Amendments would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed LUP Amendments/Final EIS are similar or identical to those described Draft LUP Amendments/Draft EIS (Section 2.1, p. 2-3).

A Supplemental EIS is not necessary. Changes in the proposed action are not substantial. The effects of the changed proposed action are still within the range of effects analyzed in the Draft EIS.

### *Best Available Science*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-18

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM proposes that the use of guy wires to be “avoided” in PHMAs (FEIS at 2-30); instead the use of guy wires should be excluded to prevent the unnecessary and undue degradation (pursuant to FLPMA) that results from this unnecessary source of sage GRSG mortality. BLM proposes that met towers should be “avoided” within 2 miles of leks in PHMAs (FEIS at 2-30); this also is inadequate to prevent undue degradation to sage GRSG habitats. The record establishes that met towers can result in sage GRSG population declines (see Cotterel Mountain data reviewed in ‘Wind Power in Wyoming,’ attached to Guardians’ DEIS comments for this plan amendment), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied. In addition, this restriction should not be limited to PHMAs but should also extend to General Habitats, Winter Concentration Areas, Focal Areas, and Connectivity Areas as well.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-8

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** XTO also protests the Agencies’ failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final 9-Plan LUPA. The 9-Plan LUPA does not meet BLM’s science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA. (BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 CFR § 1500.1(b); 40 CFR § 1502.8). When developing a land use plan amendment, the BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-21

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The stipulations, restrictions, and conservation measures in the Proposed LUPA are largely based on the U.S. Fish and Wildlife Service’s Greater

GRSG (*Centrocercus urophasianus*) Conservation Objections: Final Report (Feb. 2013) (COT Report) and BLM's Report on National Greater GRSG Conservation Measures Produced by the BLM Sage-GRSG National Technical Team (Dec. 2011) (NTT Report). Reliance on these reports is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act (DQA), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-22

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the "Literature Cited" section. Megan Maxwell, BLM's NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?, p. 13-14 (May 20, 2013) (NWMA Review), Attachment 3. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34 percent of the citations had no corresponding source available to review. (Id. at 14.) Additionally, there are articles listed in the "Literature Cited" section that are not directly referenced and do not appear to have been used within the NTT Report itself. Id.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-23

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT Report also cites authority misleadingly in a number of cases. NWMA Review at 14. For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15 percent. NTT Report at 26. However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) ("Connelly et al. 2000"), does not support the NTT Report's conclusion. NWMA Review at 14. Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. NWMA Review at 14 (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15 percent canopy cover standard.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-24

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT Report also fails to adequately support its propositions and conclusions. For example, the NTT Report provided no scientific justification for the three percent disturbance cap, which is cited in that report. Rather, the

disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion, not fact. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”), Attachment 4. Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a viable population of any species, much less greater GRSG. Curtis H. Flather, et. al, Minimum Viable Populations: Is There a “Magic Number” for Conservation Practitioners?, 26 Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 5. Moreover, the Proposed LUPA’s noise restrictions, also recommended by the NTT report, are based upon flawed studies that relied on unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions. NTT DQA Challenge at 42 –46. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and should not have relied upon these studies nor the NTT Report in the Proposed LUPA. *Id.*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-25

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was

created. See NTT DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Rob R. Ramey, Laura M. Brown, & Fernando Blackgoat, Oil & Gas Development & Greater GRSG (*Centrocercus urophasianus*): A Review of Threats & Mitigation Measures, 35 J. of Energy & Development 49 (2011) (“Ramey, Brown, & Blackgoat”), Attachment 6. As explained by Ramey, Brown, and Blackgoat, studies released prior to the NTT Report’s publication were based upon older, more invasive forms of development: “Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to GRSG.”

Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5

(stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions). The Id.’ refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report’s recommendations for oil and gas development inapplicable to current practices.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-26

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

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

Report does not represent the best available science.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-27

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The COT Report also fails to utilize the best available science, and the agencies inappropriately relied upon it in the Proposed LUPA. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 8. The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions. COT DQA Challenge, Exhibit A at 1. For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and therefore underestimates the significance of predation as a threat. COT DQA Challenge at 56 – 63. The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence. COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., Greater GRSG Population Dynamics & Probability of Persistence, in Greater Sage- GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 293 (Steven T. Knick & John W. Connelly eds., 2011) (“Garton et

al. 2011”). This paper contains serious methodological biases and mathematical errors. (COT DQA Challenge, Exhibit A at 2) Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible. *Id.* Finally, the COT Report provides a table assigning various rankings to greater GRSG threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks. See COT Report at 16 – 29, tbl. 2. Absent a quantifiable methodology, these rankings are subjective and the *Id.* should not rely upon any conservation measures derived from them.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-28

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

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

reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30 percent in 1981 to 20 to 25 percent in 1987 to five to 10 percent in 2000. Reese & Connelly at 110 – 11. High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, as noted below in text taken directly from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone:

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-29

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA Review at 14; NTT DQA Challenge at 25 – 26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2; BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-30

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-11

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The data quality, methodology, and credibility issues of the NTT Report have been well documented and discussed. See Attachment 5, Ramey, et al. A Report on National Greater GRSG

Conservation Measures Produced by the BLM GRSG National Technical Team, (Dec. 21, 2011); Attach 6, Megan Maxwell, BLM's NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome? (May 20, 2013); Attach. 7, Taylor, R., Review of the Literature Cited in A Report on National Greater GRSG Conservation Measures Produced by: GRSG National Technical Team, (2013). The Wyoming LUPA, as being based on data with serious methodological flaws, is not the best available science, does not support the BLM's decisions and is arbitrary and capricious.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-12

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** Studies by Naugle and Doherty also do not advocate a 5 percent disturbance cap. Thus, it appears that the BLM has increased the 3 percent disturbance cap proposed by the NTT Report by an additional 2 percent. Standing alone, the decision to add 2 percent for cumulative total of 5 percent appears to have been plucked from thin air. Furthermore, conservation measures based upon "professional judgment" and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed Wyoming LUPA. See NTT Report at 7, n. iii.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-13

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The recommended noise levels are not based upon any standardized, repeatable data collection, or accepted methods of sound measurement. Blickley did not employ professionally recognized standards such as International Organization for Standardization, or sound propagation models. The BLM also appears to have ignored other studies developed near the same time as Blickley. Thus, the BLM has ignored other available science, used reports with basic methodological flaws, and therefore violates NEPA and the DQA in prescribing MA No. 136 (and the USFS equivalent).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-9

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The 4 mile buffer, however, is based on flawed studies and does not address the variations in habitat quality or use. Instead of applying a .6 mile buffer around a lek and building more buffer as necessary, the Wyoming LUPA removes 50 miles per lek without any further study as to topography or other site specific conditions that would limit the impact of disruptive activities. Stated otherwise, BLM arbitrarily and on the basis of flawed science, selects a 4 mile buffer when the affected land within that buffer may have no benefit to GRSG breeding (due to topography or other factors).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-4

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** The minimum average grass height prescribed in both the Wyoming Basin and northeastern Wyoming is shorter than recommended, and the additional caveats allowing managers to modify minimum grass height based local conditions render these provisions even less effective for managing GRSG nesting and brood-rearing habitat (see Table 1). Doherty et al. (2011) found that Ecological Site Descriptions were ineffective for predicting habitat use by GRSG or to base GRSG management decisions on.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-5

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** It is unclear what scientific reference supports a shorter 6-inch minimum average grass height in GRSG nesting and brood-rearing habitat.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-11

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** There is more data supporting the presence of forbs as an indicator of nesting success than the height of grasses and the BLM has arbitrarily relied on the NTT Report and the sources cited therein (Connelly, et al. 2000).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-13

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The data quality, methodology, and credibility issues of the

NTT Report have been well documented and discussed by this point.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-14

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The LUPA, as being based on data with serious methodological flaws, is not the best available science, does not support the BLM's decisions and is arbitrary and capricious.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-16

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** Studies by Naugle, and Doherty also do not advocate for a 5 percent disturbance cap. Thus, it appears that the BLM has used the 3 percent disturbance cap proposed by the NTT Report and added an additional 2 percent. Standing alone, the decision to add 2 percent for cumulative total of 5 percent appears to have been plucked from thin air. Furthermore, conservation measures based upon "professional judgment" and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the Proposed LUPA. See NTT Report at 7, n. iii.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-17

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The recommended noise levels are not based upon any

standardized, repeatable data collection, or accepted methods of sound measurement. Blickley did not employ professionally recognized standards such as International Organization for Standardization, or sound propagation models. The BLM also appears to have ignored other studies developed near the same time as Blickley. Thus, the BLM has ignored other available science, used reports with basic methodological flaws, and therefore violates NEPA and the DQA in prescribing MA No. 136 (and the USPS equivalent).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-18

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The LUPA includes one management action regarding predation in general and zero analysis with regards to ravens except with regard to a related human activity (i.e. transmission lines, vertical structures, roads, fences). MA No. 135; LUPA at 4-253,274, 335, 340,420. The BLM's treatment of ravens and other generalist predators is a material deficiency. The NTT Report ignored a substantial body of literature about raven predation including, but not limited to, 25 different studies mentioned by Ramey in his review of the NTT Report.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-8

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The 4 mile buffer, however, is based on flawed studies and does not address the variations in habitat quality or use. Instead of applying a .6 mile buffer around a lek and building more buffer



as necessary (and as suggested by the Coalition in our comments), the LUPA removes 50 miles per lek without any further study as to topography or other site specific conditions that would limit the impact of disruptive activities. Stated otherwise, BLM arbitrarily and on the basis

of flawed science, selects a 4 mile buffer when the affected land within that buffer may have no benefit to GRSG breeding (due to topography or other factors).

### **Summary:**

The Wyoming GRSG PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM's Land Use Planning Handbook's guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report) which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Wyoming GRSG PLUPA/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the BLM's Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances, habitat objectives, noise controls, disturbance caps, and predator control in the Proposed Alternative.

### **Response:**

Before beginning the Wyoming GRSG PLUPA/FEIS, the BLM and Forest Service considered data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

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

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

Both the NTT report and the COT report draw from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of Greater GRSG (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) then provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM and Forest Service in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service's "warranted but precluded" finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM and Forest Service consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and the Wyoming Game and Fish Department and relied on numerous data sources and scientific literature to support its description of baseline conditions (Wyoming GRSG PLUPA/FEIS, Chapter 3) and impact analysis (Wyoming GRSG PLUPA/FEIS, Chapter 4). A list of information and literature used is contained in Literature Cited section of the Wyoming GRSG PLUPA/FEIS.

As a result of these actions, the BLM and Forest Service gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Wyoming GRSG PLUPA/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (Wyoming GRSG PLUPA/FEIS, Chapter 4). Because of this, the BLM and Forest Service have taken a "hard look," as required by NEPA, at the environmental consequences of the alternatives in the Wyoming GRSG PLUPA/FEIS to enable the decision maker to make an informed decision. Finally, the BLM and Forest Service have made a reasonable effort to collect and analyze all available data.

The BLM and Forest Service considered a variety of literature with regard to lek buffer size, including the COT Report, the NTT Report, and Manier et al. 2013. The buffers in the Proposed LUP Amendments (consistent with the State's Core Areas Strategy) were designed based on recommendations from biologists in the USFWS, BLM, and WGFD, and based on WAFWA standards. The alternatives in the Wyoming GRSG PLUPA/FEIS considered a range for lek buffers sizes and dates (Record #219 through 134, p. 2-; Record #4118, pp. 2-178 through 2-96 ). The impacts of the various buffers are analyzed in Section 4.14 of Chapter 4 (p.4-250). As such, the BLM and Forest Service have considered the best available science when determining lek buffers.

The habitat objectives for GRSG in Tables 2-2 and 2-3 of the Wyoming GRSG PLUPA/FEIS summarize the characteristics that research has found represent the seasonal habitat needs for GRSG (p. 2-15). The studies relied on for those objectives are displayed in the table. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in this subregion. Thus, the habitat objectives provide the broad vegetative conditions to be obtained across the landscape that indicate the seasonal habitats used by GRSG.

The habitat objectives will be part of the GRSG habitat assessment to be used during land health evaluations (Monitoring Framework, Appendix D). The Wyoming GRSG PLUPA/FEIS recognizes that the habitat objectives are not obtainable on every acre within the designated GRSG habitat management areas. Therefore, the determination on whether the objectives have been met will be based on the specific site's ecological ability to meet the desired condition identified in Tables 2-2 and 2-3.

The Wyoming GRSG PLUPA/FEIS includes noise controls as Required Design Features on p. B-4. These noise controls are drawn from p. 64 of the NTT report. The Wyoming GRSG PLUPA/FEIS included measures to reduce predation as a result of raptors and corvids on p. B-3, B-4, and B-9. These measures are drawn from p. 63, 64, 66 and 68 of the NTT report.

The 5% disturbance cap was determined based off of Wyoming Executive Order (WY EO 2011-5) Core Area Strategy, BLM WY IM 2010-012, IM 2012-019, and BLM WO IM 2012-044; the National Technical Team Report, other best available science, input from USFWS, the State of Wyoming, cooperating agencies, and the public. Additionally, the 5% disturbance cap is calculated using the DDCT method. The Knick et al 2013 paper used a different scale of analysis/modeling than the Wyoming DDCT strategy, as well as which anthropogenic disturbances were used in the analysis (i.e.. the DDCT method considers the disturbance of roads, mines, wells, farmsteads, treated habitats, wildlife, urban areas etc.); whereas the Knick et al method considered developed urban, suburban, interstate, and state highways. Both methods are correct; however, the DDCT methodology provides a finer scale disturbance analysis than the Knick method. For more information, please see the Density and Disturbance Cap section of this report.

### Public Participation

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-03-2

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

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Wyoming 9-Plan LUPA states, “Sagebrush Focal Areas (SFAs)- These areas have been identified in the Proposed LUP Amendments based on recommendations in a U.S. Fish and

Wildlife Service (USFWS) memorandum, and are proposed to be managed as PHMAs. (Chapter 2, page 2-1).” The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by

NEPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-8

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests substantial changes made between the draft and Proposed Wyoming LUPA RMP without notice and an opportunity for public comment. In particular, Devon protests the unexpected adoption of new Priority Habitat Management Areas proposed by the USFS that were not included in any of the alternatives in the Draft Wyoming LUPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-4

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised LUPA developed with the benefit of supplemental NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration's policy on transparent and open government.

Under NEPA, BLM is required to supplement existing NEPA documents when, as it has done for the LUPA, it makes substantial changes to the proposed action. 40 CFR § 1502.9(c)(1)(i); *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the LUPA reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for

review and comment. Yet, the LUPA, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by BLM is a plain violation of NEPA.

Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including the BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation, competitiveness and job creation." BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different LUPA which reflects a management structure substantively and substantially different from the draft released for public review and comment.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-11

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest substantial changes made between the Draft RMP and Proposed LUPA without notice and an opportunity for public comment. In particular, the Trades protest the adoption of a whole new GRSG implementation policy found in Proposed LUPA, Appd. D. Although the agencies maintain that components of the GRSG implementation plan were analyzed in other alternatives, the vast majority of the information is completely new. The Proposed LUPA contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the

mitigation plan, and the monitoring plan. These proposed changes violate NEPA because they were not included in the Draft RMP and because the agencies did not allow the public an opportunity to meaningfully comment on these provisions.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-1

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The LUPA doubles the number of acres to be managed for GRSG conservation, while introducing new restrictions not previously seen by the public or analyzed by the Agencies.

### **Summary:**

The BLM and Forest Service violated NEPA because:

- The BLM did not allow the public an opportunity to comment on new provisions found in the Proposed LUPA or analyzed in the Final EIS, including the requirement that mitigation produces a net conservation gain, the mitigation plan, and the monitoring plan.
- The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.
- The BLM has not complied with Executive Order of 1/18/2011 directing agencies toward an open exchange of information with the public.
- The establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment.

### **Response:**

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-22-1

**Organization:** Avian Power Line Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SAFs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

There were changes made between the Draft and the Final EIS, and as required, the agencies provided a full text FEIS. The content of the Wyoming GRSG PLUPA/FEIS is substantially the same as the corresponding draft. Changes in or additions to the text of the EIS are summarized in Chapter 1, section 1.2, page 1-1, and also in Chapter 2, section 2.1, page 2-1. These summaries explain where new provisions found in the Proposed LUPA were actually considered and analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, lek buffer distances, and Sagebrush Focal Areas.

Responses to the public comments received and the public involvement process, consultation, and coordination have been at the heart of the planning process leading to the Wyoming GRSG PLUPA/FEIS. This was accomplished through open and inclusive collaboration, public meetings, informal meetings, individual contacts, news releases, planning bulletins, a planning website, and Federal Register notices. Chapter 5 of the Wyoming GRSG PLUPA/FEIS outlines the public involvement the process.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft LUP Amendments/Draft EIS, the BLM's and Forest Service's Preferred Alternative, identified as Alternative E in the Draft LUP Amendments/Draft EIS, has been modified and is now the Proposed LUP Amendments for managing BLM-administered lands and National Forest System lands within the Wyoming GRSG planning area. The Proposed LUP Amendments focus on addressing public comments, while continuing to meet the BLM's and Forest Service's legal and regulatory mandates.

The Proposed LUP Amendments include components of the alternatives analyzed in the Draft EIS. Taken together, these components present a suite of management decisions that present a minor variation of the Preferred Alternative identified in the Draft LUP Amendments/Draft EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Proposed LUP Amendments are a minor variation of the Preferred Alternative and that the impacts of the Proposed LUP Amendments would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Proposed LUP Amendments/Final EIS are similar or identical to those described Draft LUP Amendments/Draft EIS.

#### Allocations for Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA):

Allocations in the Wyoming GRSG PLUPA/FEIS provide more opportunities for uses in GHMAs, while still maintaining conservation management by establishing screening criteria for project/activity review in GRSG habitat. In the Proposed LUP Amendments (previously identified as Alternative E in the Draft LUP Amendments/Draft EIS), the following areas that were identified as general habitat in Alternatives B, C, and D are managed like PHMA-core or PHMA-connectivity:

- 32,756.82 acres of PHMA-connectivity on the Bridger-Teton National Forest

- 63,195.32 acres of PHMA-core on the Bridger-Teton National Forest
- 54,252.59 acres of PHMA-core on the Thunder Basin National Grasslands
- 3,335.85 acres that were identified as core habitat in Alternatives B, C, and D are managed as Sagebrush Focal Areas (SFA) on the Bridger-Teton National Forest.

While this change in acreage was made to the Preferred Alternative (Alternative E) in the Draft LUP Amendments/Draft EIS is new to the Proposed LUP, it is still within the range of alternatives analyzed in the Draft EIS.

Public involvement in the resource management planning process conforms to the requirements of the National Environmental Policy Act and associated implementing regulations. The agencies have fulfilled the requirements of providing opportunity for public involvement during the planning and NEPA process.

### *Impacts – Greater Sage GRSG*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-15

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The Final EIS asserts on Page 2-70 in Forest Service Proposed LUPA-GRSG-LR-SUA-GL-032 that: “In PHMA and sagebrush focal areas, outside of existing designated corridors and ROWs, new transmission lines and pipelines should be buried to limit disturbance to the smallest footprint...”. This Forest Service Guideline incorrectly indicates that burying a high voltage transmission line would result in fewer disturbances to habitat. The EIS and LUPA fail to address the short and long-term habitat and noxious weed related effects of constructing high voltage transmission lines below ground and the long-term maintenance impacts that are tied to underground operation. The actual habitat disturbance from undergrounding power lines is substantially higher than overhead construction.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-23

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM Has Not Adequately Analyzed the Impacts of the Alternatives on GRSG. For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-14-5

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** In attempting to assess potential threats to GRSG from locatable mineral mining, it is important to know: 1) whether active mining claims exist within core area, and 2) whether any actual mining operations are taking place (or proposed) within core area. Because so much basic information is missing, the 9 Plan FEIS fails to provide a complete and accurate picture of the potential threat to GRSG from mining. The absence of this

critical information (e.g. the under notices and plans of operations; and existing and proposed surface disturbance from these operations) makes assessing the threat to core population areas from existing and future mining operations impossible.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-11

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** ES-13 encourages the establishment of forage reserves, only on the minor component of Forest Service lands, but the plan amendment neither provides management direction for these nor does the FEIS analyze the impacts of designating and using forage reserves on GRSG and their habitats. If forage reserves are established within GRSG habitat, the recovery from the absence of perennial livestock grazing can quickly be undone by a single-season of active grazing use. The PLUPA/FEIS should rather have specified that forage reserves will be created for GRSG forage (e.g. allotments closed to domestic livestock), thus actually helping to conserve, protect, and recover the species, and include BLM lands which make up the vast majority of GRSG habitat in the planning area.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-17

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure to analyze whether the GRSG populations in the planning area will be conserved, enhanced, or recovered by the management actions within the plan.

For example, there is no analysis of whether the proposed disturbance cap is appropriate to the GRSG populations within the planning area, or whether the Wyoming

GRSG populations can actually withstand the 5% disturbance cap and exemptions proposed in the plan, combined with the failure to implement current science regarding habitat disturbance, lek buffers or the massive increases over current levels of disturbance and habitat degradation, or the fact that the proposed measures, limited as they are, do not cover over 30% of the leks and nesting habitat. This is a clear failure to take the required “hard look” under NEPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-18

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** NEPA requires that agencies take a ‘hard look’ at the direct impacts of activities approved under projects and plans, the efficacy of mitigation measures, and cumulative impacts considering other reasonably foreseeable impacts that will occur to the resource in question. BLM Resource Management Plans historically have had lifespans exceeding 20 to 30 years, and thus it is critical that the GRSG Plan Amendments strike the proper level of protection for this species. For no alternative does BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of sage GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et al. 2013, Taylor et al. 2012).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-23



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

**Issue Excerpt Text:** The FEIS regularly repeats the conclusion that “The USFWS has informed the BLM that the combined effect of these overlapping and reinforcing mechanisms give USFWS confidence that the lek buffer distances in the Core Area Strategy will be protective of breeding GRSG” FEIS at 1-3, yet the FEIS is entirely silent as to how this conclusion, which the BLM treats as an assumed fact, was arrived at. This appears to be more of the smoke and mirrors the BLM hopes will be believed. Unfortunately, failure to analyze this issue and discuss the literature related to lek buffers violates NEPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-28

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

**Issue Excerpt Text:** In the Special Status Species section beginning on 4-250 we see that the “indicators” used to determine impacts are:

- Acres and condition of native vegetation communities;
- Degree/magnitude/level of connectivity between sagebrush and other native vegetation communities;
- Degree/magnitude/level of human presence;
- Degree/magnitude/level of surface disturbance and vegetation removal;
- Introduction or development of non-natural structures or items into the native habitat.

Yet the FEIS fails to provide information, data or mapping for any of these “indicators”. As we have discussed earlier, there is no information whatsoever on the most critical factor in sage GRSG recovery, the condition of native vegetation communities.

### **Summary:**

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

- it fails to address the short and long-term habitat and noxious weed related effects of burying high voltage transmission lines;
- it fails to analyze whether GRSG populations will be conserved, enhanced, or recovered. There is no analysis of whether the proposed disturbance cap is appropriate, can GRSG withstand the disturbance cap exemptions. The plan fails to implement current science regarding habitat disturbance, lek buffers, disturbance, and habitat degradations;
- proposed measures are limited and do not cover significant areas of leks;
- the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;
- ES-13 encourages establishment of forage reserves on Forest Service lands. The plan amendment does not provide direction for forage reserves nor analyze the impact of designating forage reserves on GRSG and their habitats;
- the analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;
- it does not provided analysis supporting USFWS’s conclusion that “The USFWS has informed the BLM that the combined effect of these overlapping and reinforcing mechanisms give USFWS confidence that the lek buffer distances in the Core Area Strategy will be protective of breeding GRSG”;
- it fails to analyze literature related to lek buffers violates NEPA;

- the Special status Species Sections identifies indicators used to determine impacts; however, the FEIS fails to provide information, data or mapping for any of these “indicators”.

**Response:**

A land use planning-level decision is broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The effectiveness of these decisions on changes to GRSG populations will be evaluated based on criteria in the monitoring plan; see Appendix D the Greater-Sage GRSG Implementation Framework which contains the monitoring plan for the Wyoming GRSG LUPAs.

The Wyoming GRSG PLUPA/FEIS includes analysis of livestock grazing (which includes reserve allotments) on GRSG and their habitats. The designation and management criteria for future Reserve allotments are implementation planning level decisions to be made based on needs and resource objectives.

As the decisions under consideration by the BLM and Forest Service are programmatic in nature and would not result in on- the-ground planning decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to Drill). This analysis focuses on the direct, indirect, and cumulative impacts that could potentially result for the on-the-ground changes.

In Chapter 4 of the Wyoming GRSG PLUPA/FEIS the GRSG Key Habitat Areas and GRSG Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. The Wyoming GRSG PLUPA/FEIS in Chapter 4 discussion of impacts addresses general impacts as well as noxious weeds impacts that could result from surface disturbing activities such as land clearing, grading, and construction of roads, well pads, and other facilities.

The complete text of GRSG-LR-SUA-GL-032 states, “In priority habitat management areas and sagebrush focal areas, outside of existing designated corridors and rights-of-way, new transmission lines and pipelines should be buried to limit disturbance to the smallest footprint unless explicit rationale is provided that the biological impacts to GRSG are being avoided. If new transmission lines and pipelines are not buried, locate them adjacent to existing transmission lines and pipelines.” This guideline recognizes that the site specific impacts of proposed mitigation measures must be addressed at project implementation and that they may need to be modified.

Conservation measures included in the NTT based alternative focus primarily on GRSG PPH and includes percent disturbance caps as a conservation measure to maintain or increase GRSG populations. The data for this report were gathered from BLM, Forest Service, and other sources and were the "best available" at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

The FEIS is not required to provide analysis supporting USFWS’s conclusion. The BLM NEPA handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p 55. Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principles of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM and the Forest Service in the planning process. A baseline environmental report, titled “Summary of Science, Activities, Programs, and Policies That Influence the Rangewide Conservation of Greater GRSG” (*Centrocercus urophasianus*) (referred to as the BER), was released on June 3, 2013, by the U.S. Geological Survey. The peer-reviewed report summarizes the current scientific understanding about the various impacts to GRSG populations and habitats and addresses the location, magnitude, and extent of each threat. The data for this report were gathered from the BLM, Forest Service, and other sources and were the “best available” at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

The FEIS in conjunction with the Biological Evaluation disclose the effects on greater GRSG of the various alternatives on Forest Service lands. As indicated in the Biological Evaluation (Appendix M, page 75), under the Proposed Plan Amendment, “the GRSG population would have high probability of achieving a stable or upward trend. Many of the documented stressors are stabilized, reduced, or removed in GRSG habitat across the National Forests and Grassland. This alternative would encourage better habitat conditions. Therefore, it is my [the Wildlife Biologist’s] determination that Alternative E [that is, the Proposed Plan Amendment] may impact individuals but is not likely to cause a trend to federal listing or loss of viability’ for the GRSG for all three planning units.” The evaluation supporting this determination considered the scientific understanding of threats and conservation measures (e.g. the COT report and NTT), long- and short-term population trends (Garton 2011 and Garton 2015) along with local information for each National Forest, and an understanding of the proposed plan amendments.

### Impacts – Air Quality

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-15

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** This failing has been incorporated by the BLM in its plan amendment by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied

seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km (approximately 4 miles) from a GRSG lek could have indirect (noise disturbance) or direct (mortality) negative effects on GRSG populations.” (WBEA at 131.)

BLM proposes a limit of 10 dBA above ambient within 0.6 mile of leks in its

Required Design Features, with ambient defined at 20-24 dBA. (FEIS at Appendix B-4.) The ambient level should instead be set at 15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting

the noise level within 0.6 mile of the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

**Summary:**

The Wyoming GRSG PLUPA/FEIS violated NEPA by failing to adequately evaluate the effects of setting the noise level at the lek perimeter in the Required Design Features thus failing to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

**Response:**

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM and Forest Service to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

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

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

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

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

As the decisions under consideration by the agencies are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional,

programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Wyoming GRSG PLUPA/FEIS used the best information available and pertinent to the decisions to be made through these LUP Amendments, and has expended considerable effort to acquire and convert resource data into a digital format for use in the plan. Data have been acquired from BLM sources and outside sources, such as the state. Some information was not available for use in developing this plan, usually because there have been no inventories or inventories are not complete. Specific data not available include: Winter Concentration Areas, Connectivity Habitat, and Nesting/Early brood-rearing habitat. Because these data are not available, effects cannot be appropriately quantified given the proposed management of certain resources. In these cases, potential effects are described in qualitative terms or, in some cases, stated as unknown. Subsequent project-level analyses will provide the opportunity to collect and examine site-specific inventory data necessary to determine the appropriate application of the LUP level guidance. In addition, inventory efforts identified in Chapter 2 will continue to update and refine the information used to implement these plans.

The Wyoming GRSG PLUPA/FEIS used the best available research information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dBA instead of 15dBA. The Wyoming GRSG PLUPA/FEIS discusses impacts from noise throughout Chapter 4 for each resource. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the Wyoming GRSG PLUPA/FEIS, coupled with the mitigation of those activities and the goal of a net conservation gain. (Wyoming GRSG PLUPA/FEIS, Chapter 4). Many studies assessing impacts of energy development on GRSG have found negative effects on populations and habitats (Naugle et al. 2011; Taylor et al. 2012). Walker et al. (2007) found that up to one mile buffers result in an estimated lek persistence of approximately 30 percent, while lek persistence in areas without oil and gas development averaged 85 percent. Holloran (2005) found impacts on abundance at between 3 and 4 miles. Coates et al. (2013) recommended a minimum buffer of 3 miles to protect GRSG from energy development impacts. The USGS recently published a scientific review of conservation buffer distances for GRSG protection from different types of human disturbance (USGS 2014a)

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Wyoming GRSG PLUPA/FEIS planning effort regarding noise limits to leks. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Wyoming GRSG PLUPA/FEIS planning effort.

The Wyoming GRSG PLUPA/FEIS includes a bibliography and reference section starting on page LC-1 of the FEIS, which lists information considered by the BLM and the Forest Service in preparation of the Wyoming GRSG PLUPA/FEIS planning effort. The BLM and Forest Service

complied with NEPA's requirement to analyze the environmental consequences/impacts to noise limits to leks in the Wyoming GRSG PLUPA/FEIS.

### Impacts – Water

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-21

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** For Wyoming, a stunning 58% of the riparian areas are still failing to meet even the very low bar of PFC. As TR 1737-15 clearly states on page

16, PFC is merely the minimum physical functioning to withstand a 20 year flood event and is below the condition necessary to provide for watershed, wildlife and fisheries values. Yet despite this longstanding failure, the BLM maintains the same failed RMP direction regarding riparian management.

#### **Summary:**

The Wyoming GRSG PLUPA/FEIS violated NEPA by failing to consider and take a “hard look” at the current RMP direction which is failing to make improvements for riparian management including watershed, wildlife, and fisheries values.

#### **Response:**

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In Chapter 4, Section 4.16, Vegetation, including, riparian and wetland resources, page 4-180 to 4-194, the Wyoming GRSG PLUPA/FEIS discusses impacts to riparian and wetland resources. Riparian management actions and associated impacts would incorporate management to vary grazing between riparian habitat and upland habitat. This could reduce overall impacts to riparian habitat from livestock grazing and maintain or improve vegetative community health. (Chapter 4, page 4-363). As discussed in Chapter 4, all riparian areas are evaluated during application of the Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management for the Public Lands Administered by the BLM in the State of Wyoming and managed toward proper functioning condition (PFC). Management toward desired plant community (DPC) is assumed to exceed the requirements of managing toward desired future condition (DFC), which is assumed to exceed the requirements of managing toward PFC. The BLM generally avoids, whenever possible, impacts to riparian/wetland areas under all alternatives and minimizes impacts from projects or resource uses that involve riparian areas through applying BMPs. In addition, the BLM manages lotic and lentic riparian/wetland areas to meet PFC and the Wyoming Standards for Healthy Rangelands. Impacts to riparian and wetland areas and condition of those areas was considered and discussed and throughout Chapter 4 in each of the specific resource sections (e.g. Water Quality, Fish and Wildlife). (Chapter 4).

The Wyoming GRSG PLUPA/FEIS includes a bibliography and reference section starting on page LC-1 of the Wyoming GRSG PLUPA/FEIS, which lists information considered by the BLM in preparation of the Wyoming GRSG PLUPA/FEIS planning effort.

The BLM complied with NEPA's requirement to consider, analyze and take a hard look at the environmental consequences/impacts to riparian resources in the Wyoming GRSG PLUPA/FEIS planning effort.

### Impacts – Grazing

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-24

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In the proposed plan, the BLM erroneously prescribes livestock grazing as a means to reduce or control cheatgrass infestations. This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-16

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Furthermore, the newly included statement "and one or more defined responses that will allow the authorizing officer to make adjustments to livestock grazing that have already been subjected to NEPA analysis." lacks any foundation or analysis in the FEIS at all.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-27

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We see in Tables 2-7 through 2-10 that again livestock related

impacts and restrictions are excluded from the analysis and comparison. On 2-217, the analysis ignores the primary impact to vegetative resources, livestock grazing, or how those impacts affect GRSG and instead the section only deals with vegetative destruction, not degradation.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-27-2

**Organization:** Wyoming State Grazing Board

**Protestor:** Dick Loper

**Issue Excerpt Text:** We Protest item 50 on pg. 2 34 that conveys an authority for local BLM offices to “consider” if permits that are relinquished to the BLM should remain available for livestock grazing. This narrative is completely inconsistent with Federal Statues and BLM Grazing

Regulation at 4110.3-1(b). This part of the regulations state, “Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction to the permitted use to the permittees or lessees authorized to graze in the allotment in which the forage is available.”

This portion of the Regulations goes on to convey in 4110.3-1 that the BLM must fully consult, cooperate, and coordinate with the affected permittees and State having lands or managing resources on the disposition of "additional forage available on a sustained basis". Livestock AUM's relinquished to the BLM fall under these Regulations and the use of these livestock AUM's cannot be superseded by a LUP amendment.

### **Summary:**

The Wyoming GRSG PLUPA/FEIS inadequately addressed the impacts associated with livestock grazing by:

- failing to take a hard look at the impacts of livestock grazing on cheatgrass;
- failing to analyze the ability to make adjustments to livestock grazing that have already been subjected to NEPA analysis;
- failing to analyze livestock related impacts and grazing restrictions;
- violating 43 CFR Subpart 4110.3-1 by allowing for the consideration of whether or not livestock grazing permits relinquished by the permittee should remain available for livestock grazing.

### **Response:**

#### Impacts of Livestock Grazing on Cheatgrass:

The Wyoming GRSG PLUPA/FEIS fully disclosed the environmental consequences of livestock grazing on upland plant communities and cheatgrass (and other invasive species) in Section 4.7.7 Proposed Land Use Plan Amendments - Livestock Grazing (p. 4-100 to 4-105) and Cumulative Effects – Grazing (p. 4-540 to 543), Cumulative Effects – Spread of Weeds (p. 4-544 to 4-545) and in Appendix J, Greater GRSG Wildland Fire and Invasive Species.

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any



irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Wyoming GRSG PLUPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

With regard to the protest statement, “The BLM erroneously prescribes livestock grazing as a means to reduce or control cheatgrass infestations. This method fails NEPA’s scientific integrity and ‘hard look’ requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem”, the protester simply disagrees with the science supporting the BLM conclusion that “grazing can be used to reduce fuel load and reduce the risk of wildfire (Connelly et al. 2004, p.7, 28-30). Under certain conditions, grazing can reduce the spread of invasive grasses, if applied early in the season before the grasses have dried (Strand and Launchbaugh 2013). Light to moderate grazing does not appear to affect perennial grasses, which are important to nest cover (Strand and Launchbaugh 2013).” (Wyoming GRSG PLUPA/FEIS, p. 4-540)

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

#### Adjustments to Livestock Grazing:

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

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

Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits issued by the BLM are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR 4160 (BLM) and 36 CFR 214 (Forest Service) are still available to the affected parties. BLM and Forest Service have not taken a pre-decisional

approach because site-specific decisions regarding livestock grazing permits have not been made at this time and changes to permits would only occur to meet resource objectives outlined in the Proposed Plan after the proper monitoring data and Rangeland Health Assessment and Determination and NEPA analysis have been made.

The Wyoming GRSG PLUPA/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

Analysis of Livestock-Related Impacts and Grazing Restrictions:

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Wyoming GRSG PLUPA/FEIS fully assessed and disclosed the impacts from livestock grazing in Chapters 2 and 4, specifically in Section 3.7 Livestock Grazing (p. 3-74 to 3-97), Section 3.16 Vegetation (3-356 to 3-403), Section 4.7 Livestock Grazing (p. 4-89 to 4-106), Section 4.16 Vegetation (p. 4-352 to 4-365) and in the Livestock Grazing Cumulative Impacts discussion on p. 4-492 to 4-393.

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

The BLM developed a reasonable range of alternatives that met the purpose and need of the Wyoming GRSG PLUPA/FEIS and that addressed resource issues identified during the scoping period. The Wyoming GRSG PLUPA/FEIS analyzed five alternatives, which are described in Chapter 2. The alternatives analyzed in the Wyoming GRSG PLUPA/FEIS 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. Alternatives were developed and analyzed that considered varying degrees of restrictions to livestock grazing. For instance, under Alternative C, Livestock grazing would be prohibited within GRSG priority habitat. Table 2-11 (Wyoming GRSG PLUPA/FEIS, p. 2-99 to 2-199) provides a detailed

comparison of Livestock Grazing Management and Permit Renewals under the different Alternatives (Wyoming GRSG PLUPA/FEIS, p. 2-112 to 2-120).

The Wyoming GRSG PLUPA/FEIS presented the decision maker with sufficiently detailed information and a reasonable range of alternatives to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

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

Consideration of Whether or Not Livestock Grazing Permits Relinquished by the Permittee Should Remain Available:

Land use plan decisions may identify lands available or not available for livestock grazing, considering the following factors (BLM Handbook H-1601-1, Appendix C, p. 14):

- Other uses for the land;
- Terrain characteristics;
- Soil, vegetation, and watershed characteristics;
- Presence of undesirable vegetation, including significant invasive weed infestations; and
- Presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs.

Actual evaluation of specific conditions and or exclusions and an analysis of effects will be addressed at the implementation level, based on policy and regulations.

Livestock grazing permit modification must be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR subpart 4100, which provides discretion to decision-makers to the degree they are consistent with the grazing regulations. 43 CFR 4100.0-8 states: “The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).”

Future changes to livestock grazing permits would happen at the project-specific (allotment) level only after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. Changes to livestock grazing permits issued by BLM are still required be in accordance with 43 CFR 4110.3 Changes in Permitted Use and 4130.3 Terms and Conditions. Administrative Remedies detailed in 43 CFR 4160 are still available to the affected parties for

site specific actions.

The BLM did not violate the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100.

### Impacts – Other

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-22

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-22-2

**Organization:** Avian Power Line Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The Wyoming 9-Plan LUPA requires guy wires to be removed or marked. Chapter 2, Page 2-69 of the LUPA states, “GRSG-INFRA-GL-024-Guideline - In priority habitat management areas and sagebrush focal areas, when constructing new infrastructure and during maintenance, replacement, and upgrades to existing infrastructure, impacts to GRSG and their habitats should be mitigated.” Because guy

wires extend from a structure to the ground, there is theoretically a potential for GRSG collisions. However, data from APLIC-member utilities indicates that GRSG collisions with guy wires on electric utility structures have not been documented. The structures themselves may serve as a visual cue and flying birds may be avoiding guy wires because they are seeing the associated towers. Because of the lower risk of collision, large-scale marking of power pole guy wires in sagebrush habitats is not likely to provide a measurable conservation benefit. However, if collisions are documented on a particular structure or section of line, appropriate line marking methods could be implemented as part of a company’s APP. In addition to marking guy wires, the impacts of removing guy wires have not been analyzed in the LUPA FEIS. Guy wires cannot simply be removed without altering the stability, integrity, and safety of the line. The removal of guy wires would result in the need for taller, more robust structures, potential replacement of structures, and potentially more surface disturbance.

### **Summary:**

The Wyoming GRSG PLUPA/FEIS violated NEPA by failing to take a ‘hard look’ at the effectiveness of proposed mitigation measures; the impact analysis of cheatgrass invasion in determining patterns of rangeland fire; and failed to analyze the impacts of removing or marking guy wires and the lack of measureable conservation benefit from these actions.

### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR

1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Wyoming GRSG PLUPA/FEIS.

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

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground, site specific 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. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Chapter 4 of the Wyoming GRSG PLUPA/FEIS discusses impacts from cheatgrass under each of the alternatives and specifically under the Proposed Plan under Wildland Fire Management and considers cheatgrass invasion in relation to wildland fire (Wyoming GRSG PLUPA/FEIS, Section 4.20) and discusses the effects of vegetation and wildland fire management on Cheatgrass (invasive annuals). Additionally, Appendix J provides a tool with which local planning areas can prioritize wildland fire and invasive species assessments in relation to GRSG habitat.

Section 4.14 of the Wyoming GRSG PLUPA/FEIS discusses impacts to GRSG and other special status species. This section discusses how ROWs and energy infrastructure impact habitat and mortality according to each alternative. Upon renewal of existing authorizations or new proposed facilities, new site specific NEPA analysis would be conducted and the placement of guy wires would be assessed at that time. The Required Design Features for Lands and Realty

located in Appendix B would apply to renewals and new proposed projects.

### **Impacts – Lands with Wilderness Characteristics**

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-02-2

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** WWA’s inventory submissions meet the minimum standard for further review. However, the BLM has yet to evaluate the new information, document their findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM’s consideration. Without these steps, the BLM does not have the relevant information to adequately analyze the impacts of the amendment alternatives. NEPA requires an adequate analysis of this information, and the NEPA documents must be “high quality”. Additionally, “accurate scientific analysis” is also necessary for successfully carrying out NEPA procedures. (40 CFR 1500.1(b)). An analysis that is not

based on the most current information possible does not demonstrate “high quality” information or “accurate scientific analysis”. If the BLM is basing their analysis on older information, this does not constitute “high quality” information. This is especially relevant when the BLM has had adequate indication, provided by WWA’s inventory submission, that there is new information and that resource conditions may have changed. Additionally, BLM Manual 6310 recognizes that conditions related to wilderness characteristics can change over time. (BLM Manual 6310 at 2.) In order to meet the procedural requirements of NEPA and BLM Manual 6310, the BLM should ensure that they have evaluated the new citizens’ inventory information, documented their findings, made the findings available to the public, and retained a record of the evaluation and the findings as evidence of the BLM’s consideration before the release of the ROD.

#### **Summary:**

The BLM failed to document that it has considered citizen inventory information for Lands with Wilderness Characteristics reports.

#### **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.” Also, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B)

The BLM relied on a current inventory of the resources of the public lands when preparing the Wyoming GRSG PLUPA/FEIS. The BLM described the inventory information it used for lands

with wilderness characteristics in Section 3.6 and 4.6 of the Wyoming GRSG PLUPA/FEIS. As required by FLPMA, the BLM relied on its current inventory of the public lands to the extent it was available in developing the Wyoming GRSG PLUPA/FEIS.

As the BLM responded to the protester's concern in the comment response section of the Wyoming GRSG PLUPA/FEIS, Appendix O, the purpose and need of the GRSG planning effort is limited to making land use planning decisions specific to the conservation of GRSG habitats. No decisions related to the management of lands with wilderness characteristics are made as part of this planning effort; therefore, management of lands with wilderness characteristics is considered outside the scope of this plan amendment process. Impacts to lands with wilderness characteristics from the alternatives being analyzed for this planning effort are presented in Chapter 4.

### *GRSG-General*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-08-1

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** The BLM recognizes that wind energy development in PHMA is inappropriate and threatens the survival of GRSG by generally excluding wind development from PHMA and SFA across the GRSG plans. In fact, the Record of Decision for the Lander (Wyoming) Record of Decision provides that: “Until research on impacts of wind energy to GRSG is completed and adequate mitigation can be developed, exclude wind-energy development in Core Area.” Nonetheless, the Proposed Amendment classifies PHMA, including sagebrush focal areas, as avoidance areas instead of exclusion areas. (Proposed Amendment at p. 2-25). Notably, alternatives B, C and D in the Draft Land Use Plan Amendment designated priority and/or core habitat as exclusion areas for wind energy development. Draft RMP/EIS at pp. 2-18-2-19. The classification in the Proposed Amendment is inappropriate, is inconsistent with the rest of the BLM GRSG plans, and is a significant threat to habitat.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-25

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has not made a showing through its collective NEPA analyses that sage GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that responses of GRSG to human-induced habitat alternations are remarkably similar across the species’ range. Given that the science does not differ significantly across the species’ range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in

different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-10

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** XTO also protests BLM's decision to not follow its GRSG management decisions as provide in its 2014 Lander, Wyoming RMP and ROD. The 9-Plan LUPA's GRSG management prescriptions are substantially more restrictive than measures put in place for the GRSG in the 2014 Lander RMP revision, approved and signed on June 26, 2014. Reasonable GRSG measures on development, prescribing a 5 percent disturbance threshold with viable exception criteria as compared to the 9-Plan LUPA's proposed 3 percent disturbance threshold. However, despite this significant departure from a 2014 land use document, the LUPA provides no justification or explanation for this difference in GRSG protective measures. This dramatic difference in BLM land use plans for the same species is the hallmark of arbitrary and capricious decision-making that would not withstand legal scrutiny under a challenge brought pursuant to the Administrative Procedures Act. BLM must consider revising the LUPA to provide reasonable management prescriptions in line with the Lander RMP.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-34

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** In the LUPAs, the BLM expressly exempts certain renewable electric transmission projects from the species and habitat management prescriptions and restrictions. Yet, the BLM acknowledged in the LUPA and FEIS that these projects will have significant impacts in GRSG habitat. This disparate treatment is compounded by the fact that, under the LUPA, the BLM will still count these transmission projects significant environmental impacts and surface disturbance in priority habitat against the surface disturbance cap calculation imposed against the oil and gas industry and other developers of public resources.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-36

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The affected LUPAs contain inconsistent explanations, and do not consistently apply or explain what provisions apply and what provisions do not. For example, the Nevada and Northeastern California LUPA expressly explains that the transmission project's surface disturbance counts against the cap that is applicable to other industries, but in contrast, this application is only implicitly provided for in the NW Colorado LUPA and other LUPAs applicable to Wyoming and Utah.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-14

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner



**Issue Excerpt Text:** We protest the lack of consistent management parameters across the range of the species, or adequate explanations for variation where that exists. The management specified in the PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. GRSG habitat needs, especially hiding cover, do not vary widely across its range, thus it is a failure on the part of the agencies not to provide consistent parameters or at minimum an explanation for the variation between plans.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-26  
**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** A comparison of the BLM and Forest Service proposed actions shows significant differences in management requirements to achieve the same goals. GRSG are the same if they are on one side of a line or the other. For instance, why do GRSG need a 4-mile buffer on Forest Service lands during lekking and nesting season but don't need this protection on BLM lands? This appears to be arbitrary and the FEIS is entirely silent on this type of issue. GRSG habitat needs are provided for in all GRSG habitats on Forest Service lands, yet on BLM lands they are not provided for at all, until such time as the BLM gets around to planning to "prioritize" the analysis. And even if that ever happens, it only applies to PHMA not the >30% of GRSG habitat not within PHMA. Again this is arbitrary.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-9

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

**Issue Excerpt Text:** The Wyoming 9-Plan should follow the example set by the Nevada and Oregon plans. Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses the BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [GRSG] habitat due to climate stress" as a threat to GRSG; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on GRSG and sagebrush habitat, and the Proposed Plan adopts objectives and associated actions to adaptively manage for climate change impacts on the species.

The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas," generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for GRSG over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current GRSG range. The purpose of these areas is to benefit GRSG over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

**Summary:**

Protests identified inconsistencies among the various Sub-regional GRSG land use plan amendments and revisions. In the Wyoming GRSG PLUPA/FEIS, there are inconsistencies regarding how wind energy projects are mitigated and how disturbances from various industries are calculated. These differences may lead to arbitrary decisions in each sub-region.

**Response:**

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM and the Forest Service have used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level.

Regarding the exemptions for certain Transmission Line rights-of-way in this plan, these ROW applications are currently being analyzed and similar provisions and stipulations are proposed there as are required under this plan.

The agencies have allowed some inconsistencies among sub-regional plans as a means to address specific threats at a local and sub-regional level and for other reasons as discussed below.

Consistent with the National GRSG Planning Strategy (BLM 2011), the BLM as a lead agency, together with the Forest Service as a cooperating agency, prepared 14 EISs with associated plan amendments and revisions. Five of the 14 EISs involve national forest system lands. Threats affecting GRSG habitat were identified and the intensity of these threats vary by management zones. Within each management zone, differences in ecological conditions and ecological site potential affect the area's susceptibility to the various threats and its restoration potential. Further, each sub-region has varying local situations.

Each LUPA/FEIS takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests. Developing the LUPAs involved unprecedented collaboration with state agencies and leadership and were built upon local GRSG conservation efforts initiated by a number of states, including Wyoming's core area strategy, Idaho's three-tiered conservation approach, and Oregon's "all lands, all threats" approach. Where available, state population data and habitat use information were considered in developing management approaches in the LUPAs. Some states have regulatory measures in place for improved habitat protection, others rely on voluntary actions. These variations were accounted for in the analyses.

Conservation measures are in the context of all the laws governing public land use and reflect the differing regulations and policies for the BLM and Forest Service. For example, the BLM proposed plans identified goals, objectives, and management actions and Forest Service plans identified desired future conditions, objectives, standards, and guidelines. Conservation measures are also in the context of the objectives of each alternative, keeping in mind that each alternative represents a distinct approach to meeting the purpose and need

Each LUPA/FEIS, in the beginning of Chapter 4, recognizes that certain information was unavailable because inventories either have not been conducted or are not complete in that planning area, therefore some impacts cannot be quantified. Where this data gap occurs, subsequent site-specific inventory data could be collected for a project level analysis to determining appropriate application of LUPA-level guidance.

All these variables influenced the environmental analyses and management direction, resulting in portions of the LUPAs where there is uniformity across the landscape range and other aspects where there are differences.

See also responses to protest points about specific habitat objectives and management actions (such as density and disturbance caps).

### ***GRSG-Density and Disturbance Cap***

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-13

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In particular, the 5% cap on disturbance proposed for the Wyoming RMP amendment for Core Areas and Connectivity Areas (e.g., FEIS at 2-59) has been shown to be effective by no scientific study, ever. BLM asserts the following: The 3% disturbance cap proposed in Alternative B is based on the Knick et al 2013 disturbance calculation model that is based on a larger landscape area of disturbance. As a result the 5% disturbance cap using the DDCT method actually translates into a 2-3% disturbance using the Knick model methodology. FEIS at 4-339. The FEIS contains no analysis to support this asserting.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-14-2

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** The Final Wyoming 9-Plan should specify that exceedances of the density and disturbance limits applicable in core areas indicates, “Unnecessary or Undue Degradation” unless the effects can be offset by an agency-approved mitigation plan. We protest the absence of a clearly defined regulatory program to avoid, minimize or mitigate the effects from activities proposed inside core areas where density or disturbance limits may be exceeded due to the exercise of valid existing rights. Specifically, we protest the BLM's failure to explain the manner in which it will regulate activities that exceed the density and disturbance limits consistent with its legal duty to prevent “unnecessary or undue degradation” which, if left unchecked, could result in significant impacts to priority GRSG habitat.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-13

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure to prescribe consistent management among types of disturbance. The plan does not include grazing and grazing “improvements” as a surface disturbance subject to the disturbance cap. Rather, the plan appears to consider it a diffuse disturbance. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupt vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns to other uses. There are no RDF’s related to livestock grazing, the primary use of these public lands.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-22

**Organization:** Western Watersheds Project

**Summary:**

The application of density and disturbance caps are insufficient to protect GRSG, as the calculation does not include disturbance associated with livestock grazing. Additionally, there is no rationale or analysis sufficient to justify the 5% disturbance cap that applies only in Wyoming.

**Response:**

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011,p. 8): “GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The FEIS fails to provide rationale or research as to the effects of the disturbance caps on GRSG populations. For instance, the BLM should have provided data from known areas such as the PAPA field or the Jonah field, provided the disturbance calculations and then provided population data and trends which as we have discussed in our DEIS comments have demonstrated massive declines and lost leks. This failure violates NEPA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-15

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Kevin Phillips

**Issue Excerpt Text:** The 5% Disturbance Cap is Arbitrary and Capricious. The LUPA implements a 5% disturbance cap. (MA No. 126, 127). Neither the DEIS nor the FEIS cite to any authority for a 5% disturbance cap. Presumably, the BLM relies on the NTT Report and the reports cited therein for the 5% threshold. Regardless, the best available science does not support this 5% disturbance cap.

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Wyoming GRSG PLUPA/FEIS (pages 2-31 through 2-36) that address these impacts.

As the protestor highlights from the FEIS, there is a difference in methodology used in determining sufficient levels of habitat protection and disturbance caps. Appendix D (specifically Objective (1) further describes the methodology used in the Wyoming GRSG PLUPA/FEIS. Additionally the analysis on page 4-345 further discusses the effects of the 5% disturbance cap and the application of a 1 per 640 acre density cap:

“Under the Proposed LUP Amendments, the BLM and Forest Service could limit the density of oil and gas or mining activities to no more than an average of one disruptive activity to occur within 640 acres within PHMAs (core only); the combined value of surface disturbance (existing and proposed) may not exceed 5% loss. Holloran’s (2005) study showed that male GRSG were negatively influenced when well densities exceeded one per 640 acres. This level of density and development should allow for a minimal amount of disturbance of GRSG from disruptive activities and prevent decreases in populations from displacement and habitat loss and fragmentation.”

Therefore the analysis does discuss that the 5% disturbance cap and the density cap are sufficient to protect GRSG habitat.

Analysis regarding the effects of disturbance and density caps to GRSG and how they relate to various resource uses are discussed in the various effects analysis sections of Chapter 4 of the Wyoming GRSG PLUPA/FEIS.

While the density and disturbance caps may not specifically address the effects of livestock grazing, they do address other more discrete disturbances. There are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in the Wyoming GRSG PLUPA/FEIS.

### *GRSG-Required Design Features*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-7

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon is particularly concerned the BLM will attempt to impose the “Required Design Features” on all activities in the Planning Areas, including existing leases. Design features should be

site specific, and not one-size fits all. Thus, land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. See BLM Handbook H-1601-1, II.B.2.a, pg. 13 (Rel. 1-1693 3/11/05);

**Summary:**

Land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM's Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. See BLM Handbook H-1601-1, II.B.2.a, pg. 13

**Response:**

According to BLM's Land Use Planning Handbook (H-1601-1) at II.B.2.a, pg. 13: "The land use plan must set the stage for identifying site-specific resource use levels. Site-specific use levels are normally identified during subsequent implementation planning or the permit authorization process. At the land use plan level, it is important to identify reasonable development scenarios for allowable uses such as mineral leasing, locatable mineral development, recreation, timber harvest, utility corridors, and livestock grazing to enable the orderly implementation of future actions. These scenarios provide a context for the land use plan's decisions and an analytical base for the NEPA analysis. The BLM may also establish criteria in the land use plan to guide the identification of site-specific use levels for activities during plan implementation."

The application of RDFs and BMPs in the Wyoming GRSG PLUPA/FEIS (Appendix B) sets reasonable scenarios by which allowable uses may be permitted. These will also provide for site-specific analysis and activities upon implementation. While these will be applied at the implementation level, analysis of their effects to GRSG habitat are discussed in various sections of Chapter 4 of the Wyoming GRSG PLUPA/FEIS.

Therefore, the BLM is within its authority to establish and prescribe management actions and stipulations within a Land Use Plan according to Handbook H-1601.

For further discussion of RDFs (applied as COAs) in relation to valid existing rights of fluid mineral leases, see the "Valid Existing Rights" section of this report.

### [GRSG-Data and Inventories](#)

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-6

**Organization:** CE Brooks & Associates for Vermillion Ranch and Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The USFWS memorandum itself appears to have major quality and credibility issues. It cites a mere seven sources for identifying more than three million acres of SFAs across the GRSG's range and does not appear to have been peer reviewed – both are major methodological flaws straining against NEPA and the DQA.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-3

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** Identifying winter habitat in the planning area is critical to conserving GRSG, as well as establishing baseline conditions for understanding the Proposed Plan's impacts on the species. The BLM should immediately complete mapping of winter habitat, as it is uncertain, and perhaps unlikely, that these areas will be protected from disturbance in the meantime. Winter habitat "could be difficult to restore

to original conditions [once disturbed]... due to the composition and size of sagebrush in these areas” (Bighorn Basin FEIS: 4-315).

The plan also should not assume that designated priority habitat includes all winter habitat. Priority habitat areas, based on Doherty et al. (2010) and similar data and mapping, are generally established around GRSG leks. Connelly et. al. (2004: 4-19) (unpublished) noted that females migrate an average of 9.9 lrm between summer and winter habitat. Fedy (2012: 1066) reported average summer- to-winter migration of 21.18 lrm and average nest-to-winter migration of 12.55 lrm in north-central Wyoming. Manier et al. (2013: 26) summarized that a majority of GRSG move 10 km from summer to winter locations with movements of up to 90 mi (145 lrm) documented.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-8

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** Does the plan include specific, downscaled climate projections for the area including data from relevant Rapid Ecological Assessment(s), where available)? Section 3.2.7, “Global Climate Change” (3-17), contains no downscaled projections of climate conditions for the planning area. Most of the references within this section are to documents that discuss climate change at the global or national scales. A portion of the plan area has downscaled data available,

### **Summary:**

The Wyoming GRSG PLUPA/FEIS does not comply with CEQ regulations to obtain information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives by:

- Incorrectly identifying habitat and failing to identify winter habitat. The data relied on for delineating SFAs was inadequate.
- Failing to use the Wyoming Basins Rapid Ecological Assessment

in the form of the Northwestern Plains Rapid Ecological Assessment, but the plan does not refer to these data.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-8

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** This policy required BLM to complete an Ecoregional Assessment for the Wyoming Basins Ecoregion. Id. at 11. This Wyoming Basins Ecoregional Assessment publication (“WBEA”) was completed in 2011, and the BLM should reference the findings of this report as they apply to Wyoming, which falls substantially within the Wyoming Basins Ecoregion, in order for the BLM has not met its obligation to “use the best available science” including publications specifically mandated under the Strategy.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-6

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The USFWS memorandum appears to have major quality and credibility issues. It cites a mere seven sources for identifying more than three million acres of SFAs across the GRSG’s range and does not appear to have been peer reviewed - both are major methodological flaws straining against NEPA and the DQA.

**Response:**

A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although the BLM and the Forest Service realize that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13 and Chapter IV, B at 29; Forest Service Handbook 1909.12 – Land Management Planning).

The Draft LUPA/EIS identified Core Habitat Management Areas (renamed Priority Habitat Management Areas in the PLUPA/FEIS). These areas were identified as having the highest conservation value to maintaining sustainable GRSG populations per version 3 of the State of Wyoming EO GRSG Core Area of Protection (WY EO 2010-4). These areas include breeding, late brood-rearing, winter concentration areas and migration or connectivity corridors and correspond to Washington Office Instruction Memorandum (IM) No. WO-2012-043 as Preliminary Priority Habitat (PLUPA/FEIS, p. 1-2).

The USFWS memorandum dated October 27, 2014, entitled “Greater GRSG: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes” provides information in addition to that which was already considered in the Draft LUPA/FEIS, aiding the BLM and Forest Service in refining management within PHMAs in the PLUPA/FEIS. Page 2 of this memorandum described the valid criteria, process, and rationale for identifying the “strongholds” upon which SFAs were identified.

A model was developed by the USGS in order to map all of the breeding, nesting, brood rearing and wintering habitat of GRSG throughout Wyoming. The modeling exercise revealed that the Wyoming Game and Fish Department (WGFD) has limited data on habitat types such as wintering. As WGFD and other entities collect seasonal habitat data over time, the USGS model will become more accurate. The BLM and the Forest Service will continue to support those efforts (Record #1, p. 2-99; Record #14, p. 2-100).

The absence of this data does not impact the overall habitat designations, as those designations were based on a variety of information, including information from U.S. Fish and Wildlife and WGFD. The addition of that data in the future will help inform site-specific activities. BLM and the Forest Service will use the ‘GRSG Habitat Assessment Framework’ or the best available assessment tool to assess and evaluate GRSG habitats (Record #15, p. 2-100). As such, the BLM and Forest Service obtained information relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives with regard to GRSG habitat designations.

The BLM entered into an agreement in 2011 with the U.S. Geological Survey to perform the Rapid Ecoregional Assessment analysis for the Wyoming Basin. The final report has not been released. As such, it was not available for use in the Wyoming GRSG PLUPA/FEIS. The data used with regard to climate can be found in Sections 3.2.1 and 4.2 of the Wyoming GRSG



PLUPA/FEIS.

### GRSG-Habitat Objectives

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-07-2

**Organization:** Individual Consumer

**Protestor:** Albert Sommers

**Issue Excerpt Text:** My protest revolves around Table 2-2, specifically the Cover item starting on Page 2-15. I do not believe there is adequate scientific data to support that >80% of Nesting habitat needs to have the herbaceous percentages and heights listed in this table. This document does not define what constitutes Nesting Habitat. Is Nesting Habitat what is currently used by nesting birds, is it all sagebrush habitat, with a 5-25% canopy cover within 4 miles of a lek, or is it all sagebrush habitat that meets the 5-25% canopy cover? Perhaps, GRSG select for a nesting site with these attributes, but there is no statistical evidence that they need >80% of an undefined habitat to have the herbaceous characteristics described in Table 2-2.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-07-3

**Organization:** Individual Consumer

**Protestor:** Albert Sommers

**Issue Excerpt Text:** Table 2-2 states that nesting habitat should have >6 inches of perennial grass and forb height, and this height is dependent upon the Ecological Site Description. This implies that GRSG get the first 6 inches of grass, and then my cows can have what is left. What happens if the ESD does not support 6 inches, then perhaps my cows do not get any grass. Stiver suggests that the six inches should be measured with a line point intercept method and averaged over the transects. He further states: “Breeding habitat is not just nesting habitat,

but includes all sagebrush habitat the birds may use from March through June.” Since this is the method that the BLM and the Forest Service seem to be utilizing, I can assume we are not looking at grass height at the nest site. The six inch grass height requirement came out of a study conducted by Gregg (1991), and that study found that predated nests had a lower grass cover of taller grass species than non-predated nests. Gregg did not use grass height as an independent variable. Connelly’s habitat guidelines were based on this study, and this study was really about grass cover. A paper by Brad Schultz, an extension educator from Nevada, titled: “Analysis of Studies Used to Develop Herbaceous Height and Cover Guidelines for Sage GRSG Nesting Habitat”, clearly shows there is very little evidence to support the grass height requirement in Connelly’s guidelines. There are certainly no studies which suggest you need a 6 inch grass height over greater than 80% of nesting habitat. I believe the guidelines will be turned into standards either by the BLM or the courts.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-07-5

**Organization:** Individual Consumer

**Protestor:** Albert Sommers

**Issue Excerpt Text:** Table 2-5, on Page 2-65, gives the desired habitat conditions for GRSG. This table also requires that the cover requirements for nesting habitat be available over >80% of the breeding and nesting habitat. I object to this requirement for same reasons as I mentioned in the BLM section. This table also considers breeding and nesting habitat as that habitat existing within 5.3 miles of a lek, when, according to

studies, 75% of nests occur within 4 miles of a lek.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-07-6

**Organization:** Individual Consumer

**Protestor:** Albert Sommers

**Issue Excerpt Text:** Specific grazing guidelines are on Page 2-71, including Table 2-6. Table 2-6 requires 7 inches of perennial grass height within 5.3 miles of a lek for breeding and nesting, from March until June. It further requires 4 inches of perennial grass height post breeding, July to November. I object to these grass height requirements for the same reason as I do for the BLM guidelines. Post nesting height requirement were designed to allow for a residual grass for nesting, but that height was never contemplated to be used in areas of the National Forest where there is 2 to 4 feet of snow packing that residual grass down, making it unavailable for nesting cover the next spring. Table 2-6 also establishes a 4 inch stubble height objective for all riparian/mesic meadow vegetation in summer habitat. I do not believe there is any science behind this objective. Most studies show moderate grazing promotes forbs in riparian habitat, but 4 inches of stubble may or may not be moderate grazing depending upon the conditions and the species being grazed. Riparian and upland mesic areas are vastly different, and mesic would include all silver sage and cinquefoil dominated uplands. The grass species are much different between mesic uplands and carex dominated riparian zones. I do not believe this objective is based upon hard science, and I do not believe Stiver has a suggested grass height for summer habitat. Connolley does not give a hard number for grass height in late brood rearing habitat.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-10-1

**Organization:** Thunder Basin Grazing Association

**Protestor:** Frank Eathorne

**Issue Excerpt Text:** In the proposed plan, the BLM and Forest Service are inconsistent in their desired conditions / guidelines for Eastern Wyoming. For example, in nesting/early brood- rearing areas the BLM calls for “Adequate nesting cover of >6” or as determined by ESD site potential and local variability” (Table 2-3). In contrast, in breeding and nesting areas (5.3 miles from occupied leks) the Forest Service calls for upland perennial grass height of 7 inches from March 15 to June 30 and perennial grass height of 4 inches from July 1 to November 30 (Table 2-6). Likewise for sagebrush parameters. The BLM calls for 5-25% sagebrush cover with sagebrush heights of 4-31 inches in Wyoming big sagebrush areas (Table 2-3). The Forest Service calls for 15-25% cover with sagebrush heights of 16-32 inches and specifically states that Wyoming NGs are considered mesic. Table 2-5 indicates that mesic sites are characterized by *Artemisia tridentata vaseyana*. However, vegetative surveys of the Thunder Basin National Grassland indicate that *Artemisia tridentata wyomingensis* (the arid site indicator species) is the predominate sub-species found (Olsson Associates, Thunder Basin Watershed Management Plan and Thunder Basin Phase II Watershed Management Plan).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-21

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM proposes a Desired Condition of 6-inch grass height in

breeding and nesting habitats, and applies no grass height objective for brood-rearing habitats. FEIS at 2-20. There is no scientific study that supports a 6-inch threshold for breeding and nesting habitat, although multiple studies recommend a 7-inch (18 cm) threshold. The BLM Desired Condition is therefore in conflict with the best available science.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-24

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** It appears that the BLM interpretation of the literature defining sage GRSG habitat is flawed. Even though this is a critical issue, the FEIS is entirely silent on how it came to its interpretations. Since they do not match with the standard interpretation of the literature, the BLM must explain how it came to a differing conclusion than the experts.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-25

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The BLM establishes “proper functioning condition” as the “desired condition” for riparian areas and mesic meadows, yet the BLM ignores its own Technical Reference 1737-15 which clearly states that PFC is merely the minimum physical function to withstand significant flood events and PFC is below the level needed to provide wildlife habitat (See TR 1737-15 at 16).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-8

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Table 2-2 and 2-3 which provide the BLM’s review of the literature regarding sage GRSG habitat needs falsely concludes that the literature finds that the 6” grass height provides for nesting habitat. This is incorrect. The literature clearly determines that a minimum grass height of 7” is needed and as that is the minimum, higher than 7” improves recruitment.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-1

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** Thus, the objectives in the Wyoming LUPA do not reflect obtainable standards, would be arbitrarily applied to areas that may not be capable of supporting these objectives, are not supported by the best science, cannot be applied to the Checkerboard and should be withdrawn before the Record of Decision.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-10

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The BLM has not documented whether the lands in the Planning Area capable of producing sage brush can reach the 70 percent threshold in Sweetwater County, Lincoln County, Uinta County or Sublette County. Assuming arguendo that lands that produce sage brush can reach BLM's 70 percent threshold, BLM has not analyzed whether those lands can produce 10-30% canopy cover. LUPA at 2-23, 65. Thus, BLM's blanket prescription is not justified on the basis of any analysis that 70 percent in the Planning Area is in fact

more beneficial than another percentage. The BLM's cursory reference to Technical Reference 1734-6, Interpreting Indicators of Rangeland Health is inadequate. The Technical Reference details a visual observation made by a team of people as a starting point to describe a site. It is not

meant to be the binding guideline on which to base the 70 percent capability assumption. Thus, the BLM's reliance on the technical reference appears to be an arbitrary selection not tailored to the Planning Area - a clear violation of NEPA's hard look standard.

**Summary:**

- The BLM and Forest Service fail to use the best available science in the development of habitat objectives and failed to define what constitutes GRSG nesting habitat.
- The BLM incorrectly applied Technical Reference 1737-15 in regards to habitat objectives “desired condition” in riparian habitat and mesic meadows.
- The Wyoming GRSG PLUPA/FEIS fails to provide consistent habitat objectives between the BLM and the Forest Service. There is no scientific support for the USFS requirement of 7 inches of perennial grass height within 5.3 miles of a lek for breeding and nesting, from March until June or the 4 inches of perennial grass height post breeding, July to November.
- The BLM and Forest Service fail to show that sites are ecologically capable of meeting the habitat objectives and the Wyoming GRSG PLUPA/FEIS fails to disclose how those guidelines would be applied.

**Response:**

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)) and “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM and Forest Service developed and analyzed alternatives, including habitat objectives, in the Wyoming GRSG PLUPA/FEIS using the best available information in compliance with federal laws, guidelines, and policies. The BLM and Forest Service utilized the best available science to support alternative development and decisions related Habitat Management Objectives. Habitat management objectives are discussed in Section 2.6.3 BLM Proposed LUP Amendments (p. 2-12 to 2-64). Table 2-2, “Seasonal Habitat Objectives for Greater GRSG Wyoming Basin Ecoregion” (p. 2-15 through 2-18) and Table 2-3, “Seasonal Habitat Objectives for Greater GRSG NE Wyoming” (p. 2-18 through 2-22) outline each scientifically-referenced habitat objective. Forest Service seasonal habitat desired conditions are discussed in Section 2.6.4, specifically in Table 2-5.

BLM State Offices across the GRSG range have been directed to consider all applicable conservation measures when revising or amending RMPs in GRSG habitat, including appropriate measures developed by the GRSG National Technical Team (NTT) and presented in the December 2011 NTT Report entitled “A Report on National GRSG Conservation Measures.” The National Policy Team created the NTT in August of 2011 specifically to develop conservation measures based on the best available science.

Along with the reasonable, applicable measures that were outlined in the NTT Report, planning efforts associated with this National GRSG Planning Strategy also analyzed reasonable conservation measures that were submitted to the BLM and the Forest Service from various state governments and from citizens during the public scoping process.

The Western Association of Fish and Wildlife Agencies (WAFWA) produced a complete conservation assessment for GRSG and its habitat in 2002. In 2006, WAFWA established seven GRSG Management Zones which are based on populations within floristic provinces (detailed description in Conservation Assessment of GRSG and Sagebrush Habitats [Connelly et al. 2004]). The planning decisions/conservation measures in this strategy are intended to address the long-term population trends in each of the seven Management Zones (Map 1-4). The National BLM/Forest Service GRSG Planning Strategy is to maintain and enhance populations and distribution of GRSG by protecting and improving sagebrush habitat and ecosystems that sustain these populations. The overall objective of the WAFWA range-wide Strategy is to produce and maintain neutral or positive trends in populations and to maintain or increase the distribution of GRSG in each Management Zone.

A GRSG COT composed of State and USFWS representatives was created to develop range-wide conservation objectives for the GRSG. The COT created the Conservation Objectives Report (2013), which is composed of reasonable objectives, based upon the best scientific and commercial data, for the conservation and survival of GRSG. The Conservation Objectives Report defines the degree to which threats need to be reduced or ameliorated to conserve GRSG, so that it is no longer in danger of extinction or likely to become in danger of extinction in the foreseeable future.

The habitat objectives in Table 2-2 and 2-3 summarize the characteristics that research has found represent the seasonal habitat needs for GRSG. The specific seasonal components identified in the table were adjusted based on local science and monitoring data to define the range of characteristics used in the subregion. Thus, the habitat objectives provide the broad vegetative conditions we strive to obtain across the landscape that indicate the seasonal habitats used by GRSG. These habitat indicators are consistent with the rangeland health indicators used by the BLM. The best available science supports the BLM perennial grass and forb height habitat objective of “adequate nest cover greater than or equal to 6 inches or as determined by ESD site potential and local variability”. These references include:

- Connelly, J.W., M.A. Schroeder, A.R. Sands, and C.E. Braun. 2000. Guidelines to manage GRSG populations and their habitats. *Wildlife Society Bulletin* 28:967-985.
- Connelly, J.W., K.P. Reese, and M.A. Schroeder. 2003. Monitoring of Greater GRSG habitats and populations. University of Idaho College of Natural Resources Experiment Station Bulletin

80. University of Idaho, Moscow, ID.

- Doherty, K.E., D.E. Naugle, J.D. Tack, B.L Walker, J.M. Graham and J.L. Beck. 2014. Linking Conservation Actions to Demography: Grass Height Explains Variation in Greater GRSN Nest Survival. *Wildlife Biology*, 20(6): 320-325.
- Hagen, C.A., J.W. Connelly, and M.A. Schroeder. 2007. A meta-analysis of greater GRSN *Centrocercus urophasianus* nesting and brood-rearing habitats. *Wildlife Biology* 13 (Supplement 1):42-50.
- Stiver, S.J., E.T. Rinkes, D.E. Naugle, P.D. Makela, D.A. Nance, and J.W. Karl. In Press. GRSN Habitat Assessment Framework: Multi-scale Habitat Assessment Tool. Bureau of Land Management and Western Association of Fish and Wildlife Agencies Technical Reference XXXX-X. U.S. Bureau of Land Management, Denver, Colorado.
- And in Northeast Wyoming: Herman-Brunson, K.M., K.C. Jensen, N.W. Kaczor, C.C. Swanson, M.A. Rumble and R.W. Klaver 2009. Nesting Ecology of Greater GRSN *Centrocercus urophasianus* at the Eastern Edge of their Historic Distribution. *Wildlife Biology* 15: 237-246.

In Section 3.4, Special Status Species, the Wyoming GRSN PLUPA/FEIS discusses nesting habitat for the GRSN, specifically in the GRSN Section on p. 2-236 through 2-241. The section states, “No less important is the reliance of GRSN on sagebrush for protective nest cover during the breeding season. GRSN have been shown to nest at a variety of distances from active leks and use many different micro sites for nest placement, making identification and mapping of this habitat difficult (Braun 2002). Upon hatching, GRSN hens with chicks use areas close to locations of successful nests and gradually move towards moist areas as upland vegetation dries out (Braun 2002). In general, the GRSN is a mobile species, capable of movements greater than approximately 31 miles (50 kilometers) between seasonal ranges. Despite this mobility, GRSN appear to display substantial fidelity to seasonal ranges. GRSN breeding habitats are characterized by sagebrush 40 to 80 cm tall (Connelly et al. 2003). The average height of sagebrush most commonly used by nesting GRSN ranges from 11 to 32 inches (28 to 81 cm), and sagebrush canopy cover within sagebrush stands used for nesting generally ranges from 15% to 25% (Connelly et al. 2000). In Wyoming, Holloran (1999) found the mean height of nest shrubs to be 18.2 inches (46.4 cm), which was greater than the mean height of shrubs in the surrounding area. An analysis of GRSN nest site selection from seven study areas in Wyoming indicates that residual grass height should be a minimum of 3.9 inches (10 cm) in Wyoming big sagebrush dominated sites (Holloran et al. 2005).

Optimum early brood habitat, similar to that of breeding, consists of sagebrush stands that are 11 to 32 inches (30 to 80 cm) tall, with a canopy cover of 10% to 25% and an herbaceous understory of 15% grass canopy and 10% forb canopy (Bohne et al. 2007). The average height of current year’s growth should be at least seven inches (18 cm) by early June. Residual grasses from the previous year provide cover for nesting at the time of nest site selection by the hen and should be at least 3.9 inches (10 cm) in height in potential nesting habitat in these two vegetation types (Bohne et al. 2007)” (Wyoming GRSN PLUPA/FEIS p. 2-237 to 2-238).

Additionally, the Wyoming GRSN PLUPA/FEIS (p. 3-288) defines the preferred vegetation condition for GRSN nesting habitat as the sagebrush/bunchgrass ecological site (Cagney et al. 2010).

The BLM and Forest Service did not fail to use the best available science to identify habitat objectives nor did they fail to define GRSG nesting habitat because the references identified above reflect the best, most comprehensive and peer-reviewed understanding of GRSG habitat needs.

See the Range of Alternatives and Best Available Science response sections for more detail on these topics.

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

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

Table 2-2, "Seasonal Habitat Objectives for Greater GRSG Wyoming Basin Ecoregion" (p. 2-15 through 2-18) and Table 2-3, "Seasonal Habitat Objectives for Greater GRSG NE Wyoming" (p. 2-18 through 2-22) provide a list of indicators and values that describe GRSG seasonal habitat conditions. The values for the indicators were derived using a synthesis of current local and regional GRSG habitat research and data and reflect variability of ecological sites. The habitat cover indicators are consistent with existing indicators used by the BLM.

When determining if a site is meeting habitat objectives, the measurements from that particular site will be assessed based on the range of values for the indicators in the habitat objectives table. The habitat objectives table is one component of GRSG multi-scale habitat assessment. The results of the habitat assessment will be used during the land health evaluation to ascertain if the land health standard applicable to GRSG habitat (e.g., special status species habitat standard) is being met.

Riparian/wetland areas in the Planning Area are inventoried to estimate their functional status using PFC assessment methodologies developed by the BLM, USFS, NRCS, and others. These methodologies employ an interdisciplinary team that inspects and analyzes the attributes and processes associated with a riparian/wetland area's hydrology, vegetation, and soils to estimate its relative health. PFC is a riparian health assessment and communication tool that focuses on the attributes and processes associated with a riparian/wetland area's hydrology, vegetation, and soils instead of its values or uses.

The protester's assertion that the BLM misapplied Technical Reference 1737-15 is incorrect. The Brood Rearing/Summer Habitat cover attribute that would be assessed for riparian and mesic sites include multiple indicators and desired conditions (Table 2-2, p. 2-15 through 2-18 and Table 2-3 p. 2-18 through 2-22). They include: (1) perennial grass cover and forbs – desired

condition is “greater than 10 percent (for) mesic sites”, (2) riparian areas/mesic meadows – desired condition is “Proper Functioning Condition”, and (3) Upland and Riparian Perennial Forb Availability – desired condition is “Preferred forbs are common with several preferred species present”. These indicators would be collectively assessed in determining whether or not seasonal habitat objectives are being met in riparian and/or mesic areas; they do not stand alone from one another in evaluating the cover attribute for Brood Rearing/Summer habitat. Indicators roll up in sum to describe attributes and do not stand alone in describing an attribute such as cover.

The BLM did not fail to use the best available science or misapply BLM Technical Reference 1737-15 in regards to habitat objectives.

See the Best Available Science response section for more detail on this topic.

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)) and “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

Although the BLM and Forest Service propose plan amendments that are very similar, some differences exist. Differences are due to (1) variations in BLM and Forest Service planning regulations (see Section 1.7 in Chapter 1); (2) variation in agency authority (especially in minerals management); and (3) variation in management emphasis. Differences also occur as the result of variation in required terminology; the BLM provides direction in “Management Actions” while the Forest Service proposes direction in “Desired Conditions,” “Standards,” and “Guidelines.” Both agencies propose direction in “Objectives.”

The BLM and USFS developed and analyzed alternatives, including habitat objectives, in the Wyoming 9-Plan PLUPA/FEIS using the best available information in compliance with federal laws, guidelines, and policies. The BLM and Forest Service included references that support decisions with regard to Livestock Grazing Management and Habitat Management Objectives, specific to each agency. BLM Habitat Objectives are described in Table 2-2, “Seasonal Habitat Objectives for Greater GRSG Wyoming Basin Ecoregion” (p. 2-15 through 2-18) and Table 2-3, “Seasonal Habitat Objectives for Greater GRSG NE Wyoming” (p. 2-18 through 2-22). Forest Service Habitat Objectives are described in Table 2-5, “Seasonal Habitat Desired Conditions for Greater GRSG” (p. 2-65 to 2-66). Both Agencies’ Habitat Objectives provide best available science references supporting each presented Habitat Objective.



Forest Service guideline GRSG-LG-GL-038 as identified in Chapter 2 of the FEIS includes Table 2-6 that outlines Grazing Guidelines for Greater GRSG Seasonal Habitat and includes the seven inch grass height guideline. This table identifies the science basis for the guideline and notes that due to variability of annual precipitation and forage production, the 7" stubble height may not be possible every year, even in the absence of livestock grazing.

The BLM and USFS did not fail to use the best available science to identify habitat objectives and used the appropriate habitat objectives for the landscapes they manage.

The monitoring framework found in Appendix D, the habitat objectives in Tables 2-2 and 2-3 and the adaptive management and monitoring strategy found in Section 2.3.2 provide the science-based hard and soft adaptive management triggers that will indicate the ability to meet the GRSG conservation objectives.

The Wyoming Standards for Healthy Rangelands provide a standard for functioning rangeland conditions; modifications to operations could be made if grazing were the cause of failing to meet standards. Additionally, new guidance for incorporating the LUP Amendments decisions into grazing authorizations provides direction for thresholds based on GRSG habitat objectives and/or land health standards that would allow the BLM to make adjustments to livestock grazing. Because of the climate and topography of Wyoming, a single standard for stubble height, percentage standard, or other fixed measure for grazing would not be feasible. The range of management alternatives considered in the LUP Amendments for livestock are necessary to allow flexibility while providing functioning habitat and to meet ESDs, Rangeland Standards, and to provide necessary seasonal habitat components for GRSG. Appropriate grazing use levels are determined on a site-specific allotment or pasture basis depending on the vegetation type and condition, other uses, and monitoring information pertinent to the area. Monitoring also occurs on a site-specific allotment or pasture basis.

A range of protection measures for both lekking and nesting GRSG have been examined in the alternatives. Specifically, the buffer distances for roads in Alternative E, and the other protection measures in the alternative are based on the best available science for the protection of both lekking and nesting GRSG. These buffer distances must be considered in the context of all the conservation measures in the Proposed LUP Amendments, and the all lands approach taken by the Wyoming State Core Area strategy.

The Proposed LUP Amendment incorporates the guidance from the Washington Office Instruction Memorandum No. 2012-044 (12/27/2011) BLM GRSG Land Use Planning Strategy (WO IM No. 2012-044), the Wyoming Governor's Executive Order 2011-5 (WY EO 2011-5), and additional management based on the NTT recommendations. This alternative emphasizes management of GRSG seasonal habitats and maintaining habitat connectivity to support population objectives set by the Wyoming Game and Fish Department (WGFD). Major planning issues addressed include energy and minerals, lands and realty (including rights-of-way), wildfire, vegetation management (including invasive species and conifer encroachment), livestock grazing, recreation, travel management, and socioeconomics. See the Range of Alternatives and Best Available Science response sections for more detail on these topics.

Where site-specific areas are unable to meet desired objectives, the management guidelines provide consistent guidance on how guidelines may be adapted. In addition, the guidelines provide for site-specificity. For example, grazing guidelines provide direction that allows for adjustments to meet ecological site conditions. See GRSG-LG-GL-038: “Grazing guidelines in Table 2-6 should be applied in each of the seasonal habitats in Table 2-6. If values in Table 2-6 cannot be achieved based upon a site-specific analysis using Ecological Site Descriptions, long-term ecological site capability analysis, or other similar analysis, adjust grazing management to move towards desired habitat conditions in Table 2-5 consistent with the ecological site capability. Do not use drought and degraded habitat condition to adjust values. Grazing guidelines in Table 2-6 would not apply to isolated parcels of National Forest System lands that have less than 200 acres of GRSG habitat.”

The guidelines developed for the Wyoming GRSG PLUPA/FEIS allow for adaptation for site specific conditions.

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

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-10

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The PLUPA/FEIS doesn’t analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations. Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year,<sup>50</sup> the PLUPA/FEIS has not considered limiting grazing in this way within the planning area. The PLUPA/FEIS also doesn’t specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover GRSG, the PLUPA/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a fatal flaw.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-6

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated. In order to conserve, protect, and enhance GRSG populations, the plan must include restrictions on spring grazing in all GRSG breeding habitat. WWP Comments at 30, 35, 36. In addition to the needs for hiding cover and concealment of nests and young broods, GRSG eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting GRSG. See Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting season is crucial for the species’ survival because its reproductive rates are so low; failing to institute season-of-use restrictions for permitted grazing, and the failure to even consider it, are obvious

failures of the plan.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-9

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The agencies also fail to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1 – June 15). And yet, the best science recommends that grazing be

restricted during this same period. However, the only seasonal restrictions on livestock grazing pertain to vague and inadequate limits on trailing and bedding activities near occupied leks. This limited protection is inconsistent with other perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PLUPA/FEIS should be revised to limit spring season harms to leks.

**Summary:**

- The Wyoming GRSG PLUPA/FEIS fails to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science.
- Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.

**Response:**

- The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

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

To ensure BLM management actions are effective and based on the best available science, the National Policy Team created a National Technical Team (NTT) in August of 2011. The BLM’s objective for chartering this planning strategy effort was to develop new or revised regulatory mechanisms, through Resource Management Plans (RMPs), to conserve and restore the GRSG and its habitat on BLM administered lands on a range-wide basis over the long term.

The density and disturbance caps described in the Plan were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT

report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, Livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8):

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a, b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.” Though grazing is not identified as a discrete threat, impacts of improper grazing are assessed and there are provisions and management actions proposed in the NTT Report and incorporated in the Wyoming GRSG PLUPA/FEIS that address these impacts.

In following the NTT Report, the agencies did not fail to use the best available science in the Wyoming GRSG PLUPA/FEIS, as it provides the latest science and best biological judgment to assist in making management decisions.

See the Best Available Science response section for more detail on this topic.

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

In accordance with CEQ guidance and BLM's Land Use Planning Handbook and BLM IM No. 2012-169, BLM considered a range of alternatives with respect to both areas that are available or unavailable for livestock grazing and the amount of forage allocated to livestock on an area-wide basis. The analysis considers a range of alternatives necessary to address unresolved conflicts among available resources and includes a meaningful reduction in livestock grazing across the alternatives, both through reduction in areas available to livestock grazing and forage allocation.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Wyoming GRSG PLUPA/FEIS and that address resource issues identified during the scoping period. The Wyoming GRSG PLUPA/FEIS analyzed five alternatives which are described in Chapter 2, Proposed Action and Alternatives (p. 2-1 through 2-223). The Proposed Plan Amendment is detailed in Section 2.6 (p. 2-10 through 2-82) and Alternatives A through D are detailed in Section 2.8 Draft LUPA/EIS Alternatives (p. 2-82 through 2-83), 2.9 Summary Comparison of Proposed Plan Amendment and Draft Alternatives (p. 2-83 through 2-94), and 2.10 Detailed Description of Draft Alternatives (p. 2-95 through p. 2-99).

The BLM and Forest Service have considerable discretion through grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands and National Forest System lands in an

RMP/LMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in this FEIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental reviews and analyses. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the RMP/LMP objectives.

All alternatives would allow the reduction or elimination of livestock grazing or changes in season of use and/or stocking rates, in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Livestock grazing permit modification for permits issued by BLM would be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives. Livestock grazing permit modifications for permits issued by the Forest Service would be in accordance with the Range Management Regulations found in 36 CFR 222.

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

See the Range of Alternatives response section for more detail on this topic.

### [Administrative Procedure Act](#)

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-20

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest the agencies' adoption of several elements of the Proposed LUPA— specifically, the “net conservation gain” standard; the compensatory mitigation requirement; and the RDFs—because each constitutes a substantive rule that the agencies cannot apply before they complete the formal rulemaking procedures required by the

Administrative Procedures Act (APA). See 5 U.S.C. § 553. These provisions of the Proposed LUPA are void until the agencies adopt these rules in accordance with APA rulemaking procedures.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-18-3

**Organization:** CE Brooks & Associates for Vermillion Ranch / Rock Springs Grazing Association

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The BLM, therefore, has not: (1) justified this substantial increase

in protected habitat with benefits to GRSG populations; (2) evaluated the impacts of adding restrictions such as ROW avoidance to 5.9 million acres of newly designated habitat; or (3) analyzed an important aspect of the GRSG conservation strategy in Wyoming. Consequently, GHMA is an arbitrary and capricious predetermined outcome and the FEIS needs to either be amended to support this action and to evaluate the impacts, or withdrawn.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-20-3

**Organization:** CE Brooks & Associates for Wyoming Coalition of Local Governments

**Protestor:** Constance Brooks

**Issue Excerpt Text:** The NTT Report, however, states that “[g]eneral habitat conservation areas were not thoroughly discussed or vetted through the NTT...” (NTT Report at 5). Instead, the NTT Report offered conceptual “sub-objectives” for the designation of general habitat including

assessing “general GRSG habitats to determine potential to replace lost priority habitat” and “[e]nhance general GRSG habitat such that population declines in one area are replaced elsewhere within the habitat” without any analysis of whether general habitat is necessary in Wyoming. (*Id.* at 9-10). This fact is especially poignant when general habitat designation will have significant impacts on oil and gas operations. Managing GHMA's as avoidance areas for ROW and SUA permits will impede, if not entirely prevent, oil and gas operations across 6,208,990 acres. See LUPA at Map 2-13; LUPA at 4-125; Manuals 30 and 31. The BLM, therefore, has not: (1) justified this substantial increase in protected habitat with benefits to GRSG; (2) evaluated the impacts of adding restrictions such as ROW avoidance to 5.9 million acres of newly designated habitat; or (3) analyzed an important aspect of the GRSG conservation strategy in Wyoming.

### **Summary:**

The BLM and Forest Service acted arbitrarily and capriciously, and in violation of the Administrative Procedure Act, by:

- Proposing a number of changes to management practices - including a “net conservation standard,” required design features, lek buffer distances, and density and disturbance caps without first completing a formal rulemaking process; and
- Failing to analyze the impacts of a General Habitat Management Area on such designations as ROW exclusion and avoidance.

### **Response:**

The Federal Land Policy and Management Act (FLPMA) details the BLM’s broad responsibility to manage public lands and engage in land use planning to guide that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. (Refer to section 1.5.2 of the LUPA/FEIS for a discussion of corresponding Forest Service policy.) A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Wyoming GRSG PLUPA/FEIS is a targeted amendment specifically addressing goals, objectives, and conservation measures to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM's planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

#### Regulations v. Land Use Planning

The regulations concerning land use planning, 43 CFR 1610, states that "guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed... [including] national level policy which has been established through ... Director approved documents". (Section 1610.1(a)(1)).

Sections 1.4, 1.6, and 1.8.1 of the Wyoming GRSG PLUPA/FEIS detail how Director-approved guidance, BLM Instructional Memorandum 2012-044, forms the basis of the national GRSG strategy, including the landscape-scale net-conservation gain approach and its requisite parts.

Therefore, the elements of the Wyoming GRSG plan do not represent an exercise of rule-making authority, but a valid exercise of the land use planning process authorized by Section 202 of FLPMA, federal regulations, and BLM Director-approved planning guidance. Moreover, the planning process generally, and the process followed for this planning effort specifically, provided significant opportunities for public input akin to the opportunities provided by notice-and-comment rulemaking under the APA.

#### ROW Impacts Analysis

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an individual ROW application), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Lands and Realty section of the Affected Environment chapter, pages 3-50 through 3-70, describes in detail the existing conditions throughout the affected Field Offices and National Forest lands. Similarly, Chapter 4 of the Wyoming GRSG PLUPA/FEIS describes the environmental consequences of the Lands and Realty decisions, including ROWs, on pages 4-71 through 4-80. This analysis discusses all alternatives and a wide breadth of potential impacts.

Therefore, the BLM and Forest Service complied with NEPA's requirement to analyze the environmental consequences/impacts regarding Lands and Realty, including ROWs, in the Wyoming GRSG PLUPA/FEIS.

For responses to the NTT report and how the BLM and Forest Service utilized best available science, please see the Best Available Science section of this protest report.

### *Air Quality Climate Change Noise*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-14-1

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** Fourth, Patricelli, et al recommend that: "Noise levels should not exceed 25 dBA at the perimeter of the lek during lekking hours (6 p.m. to 9 a.m.) during the initiation of breeding (March 1 to May 15)". This recommended level is based on that fact that, "[s]everal studies have suggested that anthropogenic noise is detrimental to GRSG," and more recent studies, which have experimentally introducing industrial noise to otherwise undisturbed leks, showed declines in lek attendance and altered behaviors.

Again, although this specific maximum ambient noise level recommended by Patricelli, et al has not yet been subject to the scientific peer-review process, it has substantial bases in the literature, and thus should be used as an interim level pending additional science. When science is uncertain, plans should reflect the precautionary principle. As noted in the BLM's Science Strategy, "[b]y making use of the most up-to-date and accurate science

and technology and working with scientific and technical experts of other organizations, [the BLM] will be able to do the best job of managing the land for its environmental, scientific, social, and economic benefits."

The Patricelli et al. recommendations reflect the most up-to-date and accurate science on noise impacts to GRSG. Moreover, BLM principles and practices are that it will "[u]se the best available scientific knowledge relevant to the problem or decision being addressed, relying on peer reviewed literature when it exists." The absence of peer reviewed science is not a basis for rejecting the credible science from established researchers that does exist.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-19-10

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** Properly addressing climate change in GRSG planning would require the BLM to analyze the effectiveness of their proposed conservation actions in light of climate change impacts and make appropriate modifications to ensure they are effective over the long-term. Proper analysis



of climate change would also require the agency to examine the cumulative environmental consequences of their proposed actions in a changed climate as their baseline for analysis. For example, the impacts of habitat disturbance may be more

pronounced when combined with the effects of climate change, which could lead agencies to different management decisions about whether, where, how much, and in what manner development activities should occur.

### **Summary:**

In order to properly address impacts of climate change in GRSG planning, the BLM failed to do the following:

- Evaluate effectiveness of conservation actions in light of climate change and make appropriate modifications over time;
- Examine cumulative environmental consequences in a changed climate as the baseline; and
- Examine impacts such as habitat disturbance in concert with climate change.

Also, the BLM did not use best available science when establishing noise restrictions in GRSG planning in the Wyoming GRSG PLUPA/FEIS.

### **Response:**

#### Climate Change

DOI Secretarial Order 3289 and DOI Secretarial Order 3226 require that the BLM “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources”. The Forest Service also has internal guidance to use the best available science on climate change that is relevant to the planning unit and the issues being considered in planning. Forest Service guidance goes on to state, “The affected environment section of the EIS is a good place for a basic description of the influence of climate change on the planning unit. This discussion establishes the current climatic baseline, describes predicted changes, and the uncertainty associated with the predicted changes.” The BLM and Forest Service apply this direction to the preparation of RMP revisions and amendments, as indicated in Chapter 1, Section 1.8.1 “Issues Addressed” of the Wyoming GRSG PLUPA/FEIS. Climate is discussed in Chapter 3, Sections 3.2.1 (Climate) and 3.2.7 (Global Climate Change) as well as in Chapter 4, Sections 4.2.5 and 4.16 (Global Climate Change) of the Wyoming GRSG PLUPA/FEIS.

As indicated in the Chapter 4 discussion of environmental consequences, climate change is considered with regard to the potential effect it could have on various resources to the extent that is practicable. For example on page 4-57, “...if global climate change results in a warmer and drier climate, increased particulate matter impacts could occur due to increased wind-blown dust from drier and less stable soils. Cool season plant species’ spatial ranges are predicted to shift north and to higher elevations, and extinction of endemic threatened/endangered plants may be accelerated. Due to loss of habitat or competition from other species whose ranges may shift northward, the population of some animal species may be reduced. Less snow at lower elevations would be likely to impact the timing and quantity of snowmelt, which, in turn, could result in a

longer wildfire season...” It would be highly speculative to analyze a future climate change scenario as a baseline for the cumulative impacts assessment.

In the future, as tools for predicting climate change in a management area improve and changes in climate affect resources and necessitate changes in how resources are managed, the BLM may be required to reevaluate decisions made as part of this planning process and to adjust management accordingly.

The BLM and Forest Service complied with Secretarial Order 3289 and Forest Service guidance in developing the Wyoming GRSG PLUPA/FEIS.

### Noise

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM and Forest Service to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

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

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

The Wyoming GRSG PLUPA/FEIS used the best information available and pertinent to the decisions to be made with regard to noise limitations. Data have been acquired from BLM sources and outside sources, such as the state. The Wyoming GRSG PLUPA/FEIS used the best available research information for setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 25dB. The Wyoming GRSG PLUPA/FEIS discusses impacts from noise throughout Chapter 4 for each resource. Chapter 4 describes the environmental consequences associated with the impacts on GRSG and their habitat from activities carried out in conformance with the Wyoming GRSG PLUPA/FEIS, coupled with the mitigation of those activities and the goal of a net conservation gain. (Wyoming GRSG PLUPA/FEIS Chapter 4)

The Wyoming GRSG PLUPA/FEIS includes a bibliography and reference section starting on page LC-1 of the document, which lists information considered by the BLM in preparation of the PLUPA/FEIS. Many studies assessing impacts of energy development on GRSG have found negative effects on populations and habitats (Naugle et al. 2011; Taylor et al. 2012). Walker et al. (2007) found that up to one mile buffers result in an estimated lek persistence of approximately 30 percent, while lek persistence in areas without oil and gas development averaged 85 percent. Holloran (2005) found impacts on abundance at between 3 and 4 miles. Coates et al. (2013) recommended a minimum buffer of 3 miles to protect GRSG from energy development impacts. The USGS recently published a scientific review of conservation buffer distances for GRSG protection from different types of human disturbance (USGS 2014a).

The BLM and Forest Service complied with NEPA's requirement to use best available science in the preparation of the Wyoming GRSG PLUPA/FEIS.

### *Areas of Critical Environmental Concern*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-30

**Organization:** Western Watersheds Project

**Protector:** Travis Bruner

**Issue Excerpt Text:** The BLM's failure to designate GRSG Areas of Critical Environmental Concern (ACEC) violates FLPMA. The power to protect areas of critical environmental concern (ACECs) is the seminal tool Congress gave BLM to protect unique and special values on lands it manages. FLPMA imposes a duty on BLM to use this tool by placing a priority on protecting ACECs in the land use planning process. However, BLM has violated this duty in the National GRSG Planning Strategy, as the FEIS uniformly fails to recommend designation of GRSG ACECs – even though the science and analysis in the FEIS underscores that GRSG ACECs are the only means to achieve adequate protection of critical sagebrush-steppe habitats needed to ensure survival of the GRSG across its range.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-31

**Organization:** Western Watersheds Project

**Protector:** Travis Bruner

**Issue Excerpt Text:** The BLM has violated its FLPMA duties in the FEIS, individually and cumulatively, both by failing to conduct the analysis of potential ACECs required under FLPMA and its implementing regulations and BLM Handbook; and by failing to designate GRSG ACECs in all key habitats (focal areas and priority habitats) which are essential to conservation of the species in each state and across the range.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-32

**Organization:** Western Watersheds Project

**Protector:** Travis Bruner

**Issue Excerpt Text:** BLM's Wyoming 9-Plan fails to prioritize the designation and protection of ACECs. Indeed, although BLM received several nominations for sage GRSG ACECs, and BLM concluded that these nominations met the "significance" and "importance" criteria, BLM failed to designate any GRSG ACEC. BLM similarly failed to provide any reasoned explanation

for its refusal to prioritize and protect ACECs, which is especially troubling here since BLM acknowledged that ACEC designation would provide better protections to GRSG.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-33

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Specifically, the FEIS violates FLPMA in the following ways:

- 1) The BLM acknowledged that a land class designation affording greater protection to GRSG was necessary, but failed to establish GRSG ACECs;
- 2) The BLM failed to explain its decision not to designate ACECs;
- 3) The BLM arbitrarily and capriciously determined not to protect all PPH as ACECs; and

### **Summary:**

The Wyoming GRSG PLUPA/FEIS fails to comply with the FLPMA mandate to give priority to designating eligible ACECs to protect relevant and importance values. The BLM failed to conduct appropriate analysis of potential ACECs and failed to explain its decision not to designate ACECs in this amendment. BLM created Sagebrush Focal Areas, which are less restrictive than an ACEC designation and failed to provide an explanation as to how such a designation would protect the identified resource values.

### **Response:**

The BLM has acted consistent with FLPMA, which provides that BLM in its land use plans give priority to the designation and protection of areas of critical environmental concern. BLM policy does not require that a potential ACEC's relevant and important values be protected to the same level or degree of protection in all plan alternatives: "[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention" (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that "[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes" (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

4) The BLM relied on inappropriate assumptions in identifying potential ACECs.

The BLM failed to give priority to designation and protection of ACECs because it did not designate areas that, by its own admission, satisfied the criteria for ACEC designation.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-34

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** BLM's failure to give priority to designating ACECs in the land-use planning process is arbitrary and capricious, an abuse of discretion, and violates FLPMA. BLM should remedy this key defect by adopting GRSG ACECs across all areas on BLM that are defined now as focal or priority habitats.

The Wyoming GRSG PLUPA/FEIS analyzed a range of alternatives for the management of potential ACECs. The Wyoming GRSG PLUPA/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative. Additionally, Section 2.6.1, Development of the Proposed Land Use Plan Amendments for Greater GRSG Management, describes how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for GRSG in the most valuable habitat.

Finally, the Wyoming GRSG PLUPA/FEIS explained in Section 2.12, Alternatives Eliminated from Detailed Analysis, why all the GRSG habitat wasn't considered as ACECs: "The GRSG general habitat areas did not meet the ACEC importance criteria due to the cumulative buildup of anthropomorphic disturbances over time that has reduced habitat effectiveness to the point that the GRSG has been identified as eligible for listing under the Endangered Species Act. The combination of disturbances industrial and agricultural in general habitats negates the benefits of the added protection needed in priority habitat and may inadvertently increase fragmentation of priority habitat..."

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

### **Fluid Minerals**

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-12-7

**Organization:** Beatty & Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Wyoming Game and

Fish Department (WGFD) and FWS, BLM is ceding its authority over oil and gas development to the FWS – in other words, providing FWS a de facto veto authority over decision-making vested solely with BLM via the Mineral Leasing Act and FLPMA. BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate that authority to another agency. See 43 C.F.R. § 3101.1-4.

#### **Summary:**

The Wyoming GRSG PLUPA/FEIS violates FLPMA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

#### **Response:**

As stated in 43 CFR 3101.1-4, "a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts."

While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer's determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, "BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented," (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

The Wyoming GRSG PLUPA/FEIS does not specifically contain language requiring the unanimous approval of the BLM, Wyoming Game and Fish Department and the USFWS to authorize exceptions to lease stipulations; however, the LUPA does recognize the BLM's ongoing coordination with the Wyoming Game and Fish Department in the approval of exceptions, modifications, or waivers.

The Wyoming GRSG PLUPA/FEIS provides specificity to the process of granting exceptions, modifications and waivers, and therefore does not violate FLPMA, the MLA, or BLM policy and guidance for the aforementioned reasons.

### *Solid and Non-Energy Leasable Minerals*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-9

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has not analyzed the potential impacts of oil shale leasing and development on sage GRSG in this EIS, and has not applied specific protections against this land use

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-14-3

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** It appears this language in the 9 Plan for Action #12 and Action #79 is "borrowed" from a Wyoming BLM Instruction Memorandum, WY-2012-019, which we believe fundamentally misstates the BLM's authority to regulate

locatable mineral mining. With its exclusive reliance on voluntary measures, this language undermines the BLM's responsibilities under 43 CFR subpart 3809 (surface management of locatable mineral mining) and substantially impedes the BLM's ability to implement the GRSG conservation strategy. Further, this language in the 9-Plan directly conflicts with the terms of an Instruction Memorandum issued by the BLM's Washington, DC Office, IM 2012-043.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-14-4

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** The requirements set forth in IM 2012-043 are stated quite clearly: the BLM must ensure that "that new notices and plans of operation comply with

the requirements in 43 CFR 3809 to prevent unnecessary or undue degradation.” The word voluntary does not appear in this statement. Accordingly, and in order to demonstrate the existence of an effective regulatory mechanism, the language in Management Action #12 and Management Action #79 must be deleted and replaced with the language from the BLM Washington Office IM 2012-043.

The requirements set forth in IM 2012-043 are stated quite clearly: the BLM must

ensure “that new notices and plans of operation comply with the requirements in 43 CFR 3809 to prevent unnecessary or undue degradation.” The word voluntary does not appear in this statement. Accordingly, and in order to demonstrate the existence of an effective regulatory mechanism, the language in Management Action #12 and Management Action #79 must be deleted and replaced with the language from the BLM Washington Office IM 2012-04.

**Summary:**

The Wyoming GRSG PLUPA/FEIS incorrectly represents the BLM’s authority under the mining law, fails to properly mitigate the impacts of mining on GRSG habitat, and fails to analyze the impacts of oil shale development on GRSG.

**Response:**

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Wyoming GRSG PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Wyoming GRSG PLUPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Wyoming GRSG PLUPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

Mining Law Regulations

The mining law and regulations at 43 CFR 3809 applicable to surface management pertaining to hardrock mining have specific provisions, with which the Proposed LUPA is consistent with. When the BLM can require certain mitigation under 43 CFR 3809, it does.

In Section 2.4, the Wyoming Greater GRSG LUPA describes the rationale used for determining a range of alternatives. For this planning effort, the BLM considered a wide range of alternatives for the management of mineral development consistent with the mining law, from a no-action alternative that would leave all lands not currently withdrawn available for mineral entry to more restrictive alternatives that would recommend withdrawal of as much as 5.1 million acres from mineral entry in order to provide more protection from mining impacts than the BLM would otherwise be able to impose. The BLM’s decision to tailor the recommended withdrawal to Sagebrush Focal Areas, detailed on page 2-46, is based on the value of the habitat to the GRSG. Also, action 79, detailed on page 2-46, provides additional information on how the BLM would manage mineral resources in PHMA and GHMA areas to avoid, minimize, and mitigate impacts of that resource use on the GRSG habitat.

Congress recognizes that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM does not consider activities that comply with applicable statutes, regulations, and BLM policy – and that include appropriate mitigation measures – to cause unnecessary or undue degradation.

The Wyoming GRSG PLUPA/FEIS will not result in unnecessary or undue degradation of public lands. Moreover, whether a particular project or other implementation-level action will cause unnecessary or undue degradation, and what steps the BLM will take to prevent it, will be evaluated at the implementation stage.

### Oil Shale Development

The Proposed Plan makes no decisions with respect to oil shale leasing and development. As discussed in Section 2.12.1 of the Wyoming GRSG PLUPA/FEIS, alternatives including stipulations for the protection of sage GRSG habitat from oil shale resources were considered but not carried forward for further analysis.

“[The] lack of specific information regarding the specific technological requirements and environmental consequences that might be associated with the development of oil shale resources on the public lands also means that, with respect to this GRSG planning effort, it would be premature for the BLM to consider specific protective stipulations. At this point, there is insufficient analytical basis for such consideration. For this reason, the BLM is not carrying forward for more detailed analysis in this EIS consideration of protective stipulations to be adopted for oil shale development,” (p. 2-200).

In accordance with the 2008 and 2013 Oil Shale and Tar Sands PEISs, additional NEPA will be required prior to any future leasing of oil shale, which could result in specific stipulations or decisions not to lease certain areas.

### Special Status Species

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-12

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** For the foregoing reasons, protections applied to existing oil and gas leases both inside Priority Habitats and in General Habitats are scientifically unsound, biologically inadequate, and legally deficient in light of the Purpose and Need for this EIS as well as the BLM’s responsibility to prevent undue degradation to sage GRSG habitats under FLPMA and the agency’s duty to uphold the

responsibilities outlined in its Sensitive Species policy. The BLM’s failure to apply adequate lek buffers to conserve sage GRSG, both inside and outside of Priority Habitats, in the face of scientific evidence, its own expert opinion, and its own NEPA analysis to the contrary, is arbitrary and capricious and an abuse of discretion.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-4

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar



**Issue Excerpt Text:** In the Wyoming Amendment EIS, the BLM has failed to apply in its preferred Alternative E the recommended GRSG protections presented to it by its own experts (the BLM National Technical Team), and as a result development approved under the proposed plan violate the directives of the BLM's Sensitive Species Policy and will result in both unnecessary and undue degradation of sage GRSG Priority Habitats and result in sage GRSG population declines in these areas, undermining the effectiveness of the Core Area strategy as an adequate regulatory mechanism in the context of the decision.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-6

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The Objectives of the BLM's sensitive species policy includes the following: "To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA." (BLM Manual 6840.02.) Under this policy, District Managers and Field Managers are tasked with "Ensuring that land use and implementation plans fully address appropriate conservation of BLM special status species." BLM Manual 6840.04(E)(6).

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-7

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the GRSG

toward ESA listing in violation of BLM's Sensitive Species policy.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-29

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Again, this section is fatally flawed from a NEPA as well as FLPMA compliance perspective because the BLM ignored its planning requirements, laid out in our comments to the DEIS to implement management requirements to address the impacts of livestock grazing and its infrastructure, past current and future on Special Status Species, and thus, did not take the required "hard look" at the limitations and requirements that the BLM planning requirements mandate.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-15-7

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The need for seasonal restrictions has been affirmed by leading GRSG scientists and the courts. Dr. Clait Braun identified the need for the seasonal restrictions in 2006: "Grazing should not be allowed until after June 20, and all livestock should be removed by August 1, with a goal of leaving at least 70% of the herbaceous production each year to form residual cover to benefit GRSG nesting the following spring."<sup>49</sup> The courts have also established that "to avoid conflicts with GRSG nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1)." (WWP v. Salazar, 843 F.Supp.2d 1105, 1123 [D. Idaho 2012]). The absence

of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing

in accordance with these guidelines is a failure to conserve, protect, and enhance GRSG habitats.

**Summary:**

The BLM is tasked with ensuring that land use and implementation plans fully address conservation of BLM Special Statue Species. Application of ineffective stipulations and continuing to drive the GRSG toward ESA listing is a violation of the BLM’s Sensitive Species Policy. In the Wyoming GRSG PLUPA/FEIS, the BLM fails to apply its preferred alternative E which violates directives of the BLM’s Sensitive Species Policy.

The BLM ignored its planning requirements to implement management requirements to address impacts to livestock grazing, infrastructure, past and future on Special Status Species provided in our comments. The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve, protect, and enhance GRSG habitats.

**Response:**

The Wyoming GRSG PLUPA/FEIS does satisfy the BLM’s Special Status Species policies and the management requirements under FLPMA. A primary objective of the BLM Special Status Species is to initiate proactive conservation measures that reduce or eliminates threats to Bureau sensitive species to minimize the likelihood of and the need for listing of the species under the ESA (Manual Section 6840.02. B). Manual 6840 directs the BLM to “address Bureau sensitive species and their habitats in land use plans and associated NEPA documents” when engaged in land use planning with the purposes of managing for the conservation. (Manual 6840.2.B). This policy, however, acknowledges that the implementation of such management must be accomplished in compliance with existing laws, including the BLM’s multiple use mission as specific in the FLMPA (Manual 6840.2). The BLM’s Land Use Planning Handbook (Handbook 1601-1) also provides guidance for developing the management decisions for sensitive species that “result in a reasonable conservation strategy for these species “ and “should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation level plans.” (Handbook 1601-1, Appendix C at 4). The Handbook indicates that management decisions “may include identifying stipulations or criteria that would be applied to implementation actions.” (Handbook 1601-1 Appendix C at 4). The BLM did consider measures that conserve the GRSG as contemplated in policies (See Alternative B in the FEIS).

As described and analyzed in the FEIS, the BLM considered relevant baseline information and studies about GRSG, including the NTT report and proposed conservation measures to address GRSG and its habitat for all alternatives, and focused on a proposed plan that would reduce or eliminate the threat to the species and minimize the likelihood for listing. In Chapter 2, the BLM describes in detail its effort in analyzing the management for the conservation of GRSG and the information it relied on in such analysis. (See FEIS page 2-83) specifically, the BLM

incorporated conservation measures identified in the NTT Report, COT Report in table 2-7 starting on page 2-85.

The BLM discussed for the proposed plan and the alternatives the management decisions and the impacts to the GRSG and provided for conservation measures in the FEIS. For example, Under Alternative B, new transmission corridors would not be authorized within GRSG priority and connectivity areas which would prevent habitat loss from linear corridors within the area and could protect GRSG habitat from removal, loss, degradation...”. Analysis of land use plan alternatives are typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. Again, the Proposed Plan/ Final EIS the GRSG Key Habitat Areas and GRSG Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations. In short, based on the science considered and impact analysis in the Wyoming GRSG PLUPA/FEIS, the management proposed in the Wyoming GRSG PLUPA/FEIS satisfies BLM’s intent to manage public lands in a manner that avoids the need for listing on Bureau sensitive species under the ESA.

Additionally, the BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H – 1601-1, p. 23-24).

NEPA directs that data and analysis in the EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and the NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1)(b)). In compliance with NEPA, The BLM considered all public comments submitted on the Draft Wyoming GRSG PLUPA/FEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix O of the Wyoming GRSG PLUPA/FEIS presents the BLM’s responses to all substantive comments. Page O-335 of Appendix O, provided responses summarized comments provide on the Draft LUPA/DEIS relating to grazing (also see the Impacts-Grazing section of this report for additional information). A land planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on- the-ground planning decision or actions , the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling). This analysis focuses on the direct, indirect, and cumulative impacts that could potentially result for the on-the ground changes. Impacts relating to livestock grazing begin on page 4-541 in Chapter 4, and is addressed in the Impacts-Grazing section located within this report..

## *Lands with Wilderness Characteristics*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-02-1

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** Lands with Wilderness Characteristics: Inadequate Response to Citizens' Inventory regarding "Required Response During Planning Process".

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-02-3

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The necessity on the part of the BLM to revisit their inventory information and update their inventories is further highlighted by divergences between the BLM's and citizens' inventory data. While the BLM does have recent inventories

on record for these areas, their inventory findings diverge from WWA's inventory findings. Upon review of the BLM inventory documents, it is clear that the difference in inventory findings is likely a result of a difference in procedure, particularly as related to adhering to BLM Manual 6310. These differences and the relevant guidance provided by BLM Manual 6310 are detailed below for each area of interest below. Our areas of interest related to this topic include:

(1) Harris Slough: BLM Unique Identifier- WY 040-2011-095;

(2) South Honeycomb Buttes: BLM Unique Identifier- Bear Creek Trail (Revised) WY 040-2011-088 (also identified by the BLM as an LWC);

(3) South Buffalo Hump: BLM Unique Identifier- WY 040-2011-177.

### **Summary:**

The BLM did not provide an adequate response to citizens' wilderness inventories during the planning process, and the documentation provided for inventories indicates that BLM did not follow Manual 6130 for the following areas: Harris Slough, South Honeycomb Buttes, and South Buffalo Hump.

### **Response:**

The BLM's efforts to inventory for and consider lands with wilderness characteristics in the Wyoming GRSG PLUPA/FEIS conform to BLM Manuals 6310 and 6320, BLM IM No. 2013-106, and the underlying requirements of Sections 201 and 202 of FLPMA. Manual 6310 provides BLM direction in inventorying for lands with wilderness characteristics as required by section 201(a) of FLPMA, i.e., "...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." The policy provides direction for reviewing new inventory information including requiring the BLM to "compare existing data with the submitted information, determine if the conclusion reached in previous BLM inventories remains valid, determine whether the area qualifies as lands with wilderness characteristics, and document its findings." (See Manual 6310

at B.2) It also directs the BLM “to document the rationale for the findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM’s consideration.” (See Manual 6310 at B.2.) Manual 6320 provides the BLM with direction on the consideration of inventoried lands with wilderness characteristics through the land use planning process as part of BLM’s land use planning obligations under Section 202(c)(4) of FLPMA, i.e., “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”. Further, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

The BLM relied on a current inventory of the resources of the public lands when preparing the Wyoming GRSG PLUPA/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Section 3.6.6, including a field office-by-field office breakdown of the inventories taken and the general results of those inventories..

### Travel Management

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-16

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** Road densities are also an issue, because GRSG avoid habitats adjacent to roads. Holloran (2005) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to GRSG populations. This road density should be applied as a maximum density in Priority and General Habitats, and in areas that already exceed this threshold, existing roads should be decommissioned and revegetated to meet this standard on a per-square-mile-

section basis. BLM’s proposed plan amendment fails to provide adequate limits on road density.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-11-17

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In order to bring the Wyoming RMP amendment up to scientific standards for road location and development, the BLM must apply NTT (2011) recommendations as well as road density limits in accord with the best available science.

### **Summary:**

The Wyoming GRSG PLUPA/FEIS violates NEPA by failing to utilize best available science to identify limits on road location and density.

### **Response:**

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

As discussed previously under the NEPA—Range of Alternatives Section, of this report, the BLM complied with NEPA regulations in developing the range of alternatives; the spectrum of actions considered all meet BLM regulations, policy, and guidance. The management actions in the Proposed RMPA/Final EIS fall within the range of alternatives for protecting GRSG related to travel management, including travel limitations, road maintenance, and road construction.

As described in responses to comments, the BLM and Forest Service have not added a restriction that would limit road densities to less than 0.09 km per km<sup>2</sup> (Wisdom et al. 2011) in GRSG habitat because the threshold established by Wisdom used coarse road data. When taking into consideration actual road density information, use of this threshold is not appropriate. Based on the GRSG Monitoring Framework, the Wyoming GRSG PLUPA/FEIS includes surface disturbance direct areas of influence when calculating acreage for the disturbance cap, which would include consideration of existing disturbance (e.g., existing roads) when determining whether a project should be deferred or permitted.

The Wyoming GRSG PLUPA/FEIS considered alternative B, which was based on “A report on National Greater GRSG Conservation Measures” (NTT 2011). Consistent with the NTT report (p. 11) this alternative would limit travel “within PHMAs...to designated roads, primitive roads, and trails. Individual route designations will occur during subsequent implementation level travel management planning. Until implementation level travel management plans and route designations are complete, motorized travel will be limited to existing roads and trails” (Wyoming GRSG PLUPA/FEIS, p. 2-101) all action alternatives include the same requirement. In respect to road densities, in light of the USGS report released in November 2014 “the USFWS has indicated that the Core Area Strategy’s overlapping and reinforcing mechanisms gives the USFWS confidence that the lek-buffer distances in the State’s Core Area Strategy will be protective of breeding GRSG for habitat within the State of Wyoming. The buffers in the Proposed LUP Amendments (consistent with the State’s Core Areas Strategy) were designed based on recommendations from biologists in the USFWS, BLM, and WGFD, and based on WAFWA standards” (Wyoming GRSG PLUPA/FEIS, p. 2-2). Additionally, Alternative C considered prohibiting new road construction within 4 miles of active Leks and avoidance of new road construction in priority and general habitat and Alternative D considered avoiding avoidance of new road construction within .25 miles of the perimeter of occupied leks within GRSG core and connectivity habitat areas (Wyoming GRSG PLUPA/FEIS, p. 2-153).

The Wyoming GRSG PLUPA/FEIS includes a Literature Cited section (LC-1), which lists information considered by the BLM and Forest Service in preparation of the Wyoming GRSG PLUPA/FEIS.

The BLM and Forest Service relied on high quality information in the preparation of the Wyoming GRSG PLUPA/FEIS.

### *Clarifications and Clerical Errors*

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-04-13

**Organization:** Devon Energy Production Company

**Protestor:** Dru Bower-Moore

**Issue Excerpt Text:** Proposed Management Action No. 131 indicates that surface use should be restricted within PHMA from March 15 to June 30 each year. The BLM's proposed stipulation in Appendix E, however, states that surface use should be restricted from March 1 to June 30. Proposed Wyoming LUPA, pg. E-11. Executive Order 2011-5 only limits activities from March 15 to June 30. The BLM's timing restriction is thus inconsistent with not only the Wyoming Executive Order, but even the text of the Wyoming Proposed LUPA itself. The BLM must correct this inconsistency. Similarly, with respect to timing limitations within Connectivity Areas, Proposed Management Action 132 states that surface use will be limited from March 15 to June 30. Proposed Wyoming LUPA, pg. 2-61. Nonetheless, the stipulation attributable to this Management Action indicates that surface use will be limited from March 1 to June 30. Again, this timeline is inconsistent both with Wyoming Executive Order 2011-5 and the BLM's proposed Management Action in Chapter 2.

**Issue Number:** PP-WY-NINEPLAN-GRSG-15-13-3

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Proposed Management Action No. 131 indicates that surface use should be restricted within PHMA from March 15 to June 30 each year. (Proposed LUPA, pg. 2-60) The BLM's proposed stipulation in Appendix E, however, states that surface use should be restricted from March 1 to June 30. Proposed LUPA, pg. E-11. Executive Order 2011-5 only limits activities from March 15 to June 30. BLM's timing restriction is thus inconsistent with not only the Wyoming Executive Order, but even the text of the Proposed LUPA itself. The BLM must correct this inconsistency. Similarly, with respect to timing limitations within Connectivity Areas, Proposed Management Action No. 132 states that surface use will be limited from March 15 to June 30. Proposed LUPA, pg. 2-61. Nonetheless, the stipulation attributable to this Management Action indicates that surface use will be limited from March 1 to June 30. Again, this timeline is inconsistent both with Wyoming Executive Order 2011-5 and the BLM's proposed Management Action in Chapter 2.

#### **Summary:**

An error in the description of timing restrictions between Chapter 2 (pg. 2-60) and Appendix E (E-11) wherein the starting date for restriction varies from March 1 to March 15

#### **Response:**

This error is noted. The starting date for timing restrictions should in fact be March 15 (ending June 30), as referenced in management action 131 of the proposed plan. This correction will be noted in the ROD.